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TITLE 1. ADMINISTRATION.

CHAPTER 11. CONTRACTS.

Subchapter I. General Provisions.

Subchapter II. Minority Contracting.

Subchapter II-B. Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises.

Subchapter I. General Provisions.

§ 1-1104. Bonds required from public contractors; amount; waiver.

(a) Before any contract, exceeding $25,000 in amount, for the construction, alteration, or repair of any public building or public work of the District of Columbia is awarded to any person, such person shall furnish to the District of Columbia the following bonds, which shall become binding upon the award of the contract to such person, who is hereinafter designated as "contractor": (1) A performance bond with a surety or sureties satisfactory to the Mayor of the District of Columbia, and in such amount as he shall deem adequate, for the protection of the District of Columbia; (2) a payment bond with a surety or sureties satisfactory to the Mayor for the protection of all persons supplying labor and material in the prosecution of the work provided for in said contract for the use of each such person. Whenever the total amount payable by the terms of the contract shall be not more than $1,000,000, the payment bond shall be in a sum equal to one-half the total amount payable by the terms of the contract. Whenever the total amount payable by the terms of the contract shall be more than $1,000,000 and not more than $5,000,000, the said payment bond shall be in a sum equal to 40 per centum of the total amount payable by the terms of the contract. Whenever the total amount payable by the terms of the

contract shall be more than $5,000,000 the payment bond shall be in the sum of $2,500,000.

(b) Nothing in this section shall be construed to limit the authority of the Mayor to require a performance bond or other security in addition to those, or in cases other than the cases specified in subsection (a) of this section, or the authority of the Mayor to waive the requirement for performance and payment bonds in such cases as he shall determine.

(c) Any surety bond required by this section shall be executed by a surety certified by the U.S. Department of Treasury to do business pursuant to § 9305 of Title 31, United States Code, or a surety company licensed in the District of Columbia which meets the statutory capital and surplus requirements or as otherwise determined by the Mayor to be appropriate and necessary in the amount for underwriting such bonds. (Aug. 3, 1968, 82 Stat. 628, Pub. L. 90-455, § 1; 1973 Ed., § 1-804a; Aug. 14, 1973, 87 Stat. 305, Pub. L. 93-89, title V, § 501; Mar. 29, 1977, D.C. Law 1-95, § 11(a), 23 DCR 9532b; July 23, 1994, D.C. Law 10-140, § 3, 41 DCR 3053; Apr. 12, 2000, D.C. Law 13-91, § 115, 47 DCR 520; Oct. 4, 2000, D.C. Law 13-169, § 5, 47 DCR 5846.)

Effect of amendments. — D.C. Law 13-91, in (b), substituted "Local" for "Minority" and validated a previously made technical correction.

D.C. Law 13-169 substituted "the authority of the Mayor to" for "he, through the District of Columbia Local Business Opportunity Commission, may" in (b).

Temporary legislation. — Section 5 of D.C. Law 13-(Act 13-468) substituted "the authority of the Mayor to" for "he, through the District of Columbia Local Business Opportunity Commission, may" in (b).

Section 11(b) of D.C. Law 13-(Act 13-468) provides that the act shall expire 225 days after its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 5 of the Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Emergency Amendment Act of 2000 (D.C. Act 13-415, August 14, 2000, 47 DCR 7296).

Legislative history of Law 13-91. — Law 13-91, the "Technical Amendments Act of 1999," was introduced in Council and assigned Bill No. 13-435. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

Legislative history of Law 13-169. — Law 13-169, the "Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Amendment Act of 2000," was introduced in Council and assigned Bill No. 13-341. The Bill was adopted on first and second readings on April 4, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-373 and transmitted to both Houses of Congress for its review. D.C. Law 13-169 became effective on October 4, 2000.

§ 1-1132. Same — Manner of payment; reimbursement for costs of demonstrations.

(a) Subject to 31 U.S.C. § 1537, the Mayor, with the approval of the Council, and the Director of the Office of Management and Budget, is authorized and empowered to enter into an agreement or agreements concerning the manner and method by which amounts owed by the District to the United States, or by the United States to the District, shall be ascertained and paid.

(b) The United States shall reimburse the District for necessary expenses incurred by the District in connection with assemblages, marches, and other demonstrations in the District which relate primarily to the federal government. The manner and method of ascertaining and paying the amounts needed to so reimburse the District shall be determined by agreement entered into in accordance with subsection (a) of this section. (1973 Ed., § 1-827; Dec. 24,

1973, 87 Stat. 824, Pub. L. 93-198, title VII, § 737(a), (b); Apr. 12, 2000, D.C. Law 13-91, § 116, 47 DCR 520.)

Effect of amendments. — D.C. Law 13-91 substituted "31 U.S.C. § 1537" for "§ 1-1131.1" in (a).

Legislative history of Law 13-91. — See note to § 1-1104.

Subchapter II. Minority Contracting.

§ 1-1141. Findings.

Repealed.

(1973 Ed., § 1-851; Mar. 29, 1977, D.C. Law 1-95, § 2, 23 DCR 9532b; Apr. 12, 2000, D.C. Law 13-91, § 117(c), 47 DCR 520; _____, 2000, D.C. Law 13- (Act 13-234), § 117(c), 47 DCR 520.)

§ 1-1142. Definitions.

Repealed.

(1973 Ed., § 1-852; Mar. 29, 1977, D.C. Law 1-95, § 3, 23 DCR 9532b; Sept. 13, 1980, D.C. Law 3-91, § 2, 27 DCR 3280; Mar. 9, 1983, D.C. Law 4-167, § 2(a), 29 DCR 4983; Apr. 12, 2000, D.C. Law 13-91, § 117(c), 47 DCR 520; _____, 2000, D.C. Law 13- (Act 13-234), § 117(c), 47 DCR 520.)

§ 1-1143. Minority Business Opportunity Commission — Established; composition; appointment; term of office; qualifications; vacancies; removal; oath of office; compensation.

(a) There is hereby established the District of Columbia Local Business Opportunity Commission (the "Commission"). The Commission shall exercise such powers as are necessary and appropriate to fulfill its duties under subchapter II-B of this chapter.

(b)(1) Within 60 days from September 13, 1980, the Mayor shall appoint 4 commissioners for terms that expire on March 28, 1982, and 3 commissioners for terms that expire on March 28, 1981. Thereafter, the Commission shall consist of 7 persons appointed by the Mayor for staggered, 2-year terms.

(2) All members of the Commission shall be residents of the District of Columbia, except that this provision shall not affect the status of present Commission members during the remainder of their current terms.

(3) Commissioners are eligible for reappointment and shall continue in office until a successor has been qualified, appointed, and taken office.

(4) All commissioners shall have knowledge of the minority business community as it relates to employment and economic development.

(c) Any person appointed to fill a vacancy on the Commission shall be appointed only for the unexpired term of the member whose vacancy he is filling in the same manner, and according to the same criteria, as the member whose term he is appointed to fill. Within 30 days after a term expires or a vacancy occurs, the Mayor shall nominate someone to fill the vacancy or to begin the new term.

(d) The Mayor may remove any member of the Commission for misconduct, incapacity, or neglect of duty in accordance with a procedure which the Mayor shall establish that shall include procedure for notification, opportunity for hearing and review.

(e) Each member of the Commission shall, before entering upon the discharge of the duties of his office, take, subscribe and file with the Corporation Counsel of the District of Columbia, a required oath of office.

(f) The Mayor is authorized to establish the rates of compensation, if any, for members of the Minority Business Opportunity Commission (in accordance with § 1-612.8). (1973 Ed., § 1-853; Mar. 29, 1977, D.C. Law 1-95, § 4, 23 DCR 9532b; Sept. 13, 1980, D.C. Law 3-91, § 3, 27 DCR 3280; Aug. 1, 1985, D.C. Law 6-15, § 3(a), 32 DCR 3570; Apr. 12, 2000, D.C. Law 13-91, § 117(a), 47 DCR 520.)

Effect of amendments. — D.C. Law 13-91 rewrote (a).

Legislative history of Law 13-91. — See note to § 1-1104.

§ 1-1144. Same — Regulations; disclosure of interest in pending measure; meetings; quorum; voting; appointment of Chairperson; staff; records.

(a) The Commission may promulgate, amend, repeal, and enforce such regulations, consistent with the provisions of subchapter II-B of this chapter, as may be necessary and appropriate to promote the ethical practice of contracting and subcontracting and to carry out the provisions, intents, and purposes of subchapter II-B of this chapter.

(b) Any Commission member who has direct financial or personal interest in any measure pending before the Commission shall disclose this fact to the Commission and shall not vote upon such measure.

(c) The Commission shall meet at least once each month for the purpose of transacting such business as may properly come before it. Special meetings may be held at such times as a majority of the Commission provides. Notice of each meeting and the time and place thereof shall be given to each member in such manner as the Commission may provide. A majority of the members appointed to the Commission at any given time shall constitute a quorum for the transaction of business. Official actions of the Commission shall be based on a majority vote of the members participating at the meeting.

(c-1) The commission may permit members to participate in meetings for the certification of joint ventures by means of a conference telephone, interactive conference video, or other similar communications equipment when it is otherwise difficult or impossible for the members to attend the meeting in person, provided that each member participating by such device can be identified when speaking, all participants are able to hear each other at the same time, and members of the public attending the meeting are able to hear any member of the Commission who speaks during the meeting.

(d) The Mayor shall appoint the Chairperson of the Commission, who shall serve at the pleasure of the Mayor.

(e) The Mayor shall appoint a staff director and such additional staff as may be necessary to carry out the purposes of subchapter II-B of this chapter.

(f) A record of the proceedings of the Commission shall be kept and files shall be maintained. The Commission shall maintain a register of all applicants for registration showing for each applicant the date of the application, name, qualifications, place of business, place of applicant's residence, and whether the certificate was granted or refused. The books and register of the Commission shall be prima facie evidence of all matters recorded herein. (1973 Ed., § 1-854; Mar. 29, 1977, D.C. Law 1-95, § 5, 23 DCR 9532b; Sept. 13, 1980, D.C. Law 3-91, § 4, 27 DCR 3280; Apr. 27, 1999, D.C. Law 12-268, § 8, 46 DCR 969; Apr. 12, 2000, D.C. Law 13-91, § 117(b), 47 DCR 520.)

Effect of amendments. — D.C. Law 13-91 substituted "subchapter II-B of this chapter" for "this subchapter" twice in (a) and once in (e).

Emergency legislation. — For temporary amendment of section, see § 8 of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Congressional Review Emergency Act of 1999 (D.C. Act 13-39, March 22, 1999, 46 DCR 3019).

Legislative history of Law 13-91. — See note to § 1-1104.

§ 1-1145. Same — Reports.

Repealed.

(1973 Ed., § 1-855; Mar. 29, 1977, D.C. Law 1-95, § 6, 23 DCR 9532b; Sept. 13, 1980, D.C. Law 3-91, § 5(a), (b), 27 DCR 3280; Apr. 12, 2000, D.C. Law 13-91, § 117(c), 47 DCR 520; _____, 2000, D.C. Law 13- (Act 13-234), § 117(c), 47 DCR 520.)

§ 1-1146. Allocation of agency contracts to local minority enterprises; quarterly agency reports on contracts; Council review of goals.

Repealed.

(1973 Ed., § 1-856; Mar. 29, 1977, D.C. Law 1-95, § 7, 23 DCR 9532b; Mar. 9, 1983, D.C. Law 4-167, § 2(b), 29 DCR 4983; Apr. 12, 2000, D.C. Law 13-91, § 117(c), 47 DCR 520; _____, 2000, D.C. Law 13- (Act 13-234), § 117(c), 47 DCR 520.)

§ 1-1147. Assistance programs for minority contractors.

Repealed.

(1973 Ed., § 1-857; Mar. 29, 1977, D.C. Law 1-95, § 8, 23 DCR 9532b; Sept. 13, 1980, D.C. Law 3-91, § 5(c), 27 DCR 3280; Apr. 12, 2000, D.C. Law 13-91, § 117(c), 47 DCR 520; _____, 2000, D.C. Law 13- (Act 13-234), § 117(c), 47 DCR 520.)

§ 1-1148. Certificates of registration.

Repealed.

(1973 Ed., § 1-858; Mar. 29, 1977, D.C. Law 1-95, § 9, 23 DCR 9532b; Sept. 13, 1980, D.C. Law 3-91, § 5(d), (e), (f), 27 DCR 3280; Apr. 12, 2000, D.C. Law 13-91, § 117(c), 47 DCR 520; _____, 2000, D.C. Law 13- (Act 13-234), § 117(c), 47 DCR 520.)

§ 1-1149. Functions of the Commission.

Repealed.

(1973 Ed., § 1-859; Mar. 29, 1977, D.C. Law 1-95, § 10, 23 DCR 9532b; Sept. 13, 1980, D.C. Law 3-91, § 5(g), 27 DCR 3280; Mar. 9, 1983, D.C. Law 4-167, § 2(c), (d), 29 DCR 4983; Mar. 14, 1985, D.C. Law 5-159, § 11, 32 DCR 30; Apr. 12, 2000, D.C. Law 13-91, § 117(c), 47 DCR 520; _____, 2000, D.C. Law 13- (Act 13-234), § 117(c), 47 DCR 520.)

§ 1-1150. Advance, partial, or progress payments.

Repealed.

(1973 Ed., § 1-860; Mar. 29, 1977, D.C. Law 1-95, § 12, 23 DCR 9532b; Apr. 12, 1997, D.C. Law 11-259, § 306, 44 DCR 1423; Apr. 12, 2000, D.C. Law 13-91, § 117(c), 47 DCR 520; _____, 2000, D.C. Law 13- (Act 13-234), § 117(c), 47 DCR 520.)

§ 1-1150.1. Rules proposed by Commission.

Repealed.

(Mar. 29, 1977, D.C. Law 1-95, § 12a, as added Mar. 9, 1983, D.C. Law 4-167, § 2(e), 29 DCR 4983; Aug. 1, 1985, D.C. Law 6-15, § 3(b), 32 DCR 3570; Apr. 12, 2000, D.C. Law 13-91, § 117(c), 47 DCR 520; _____, 2000, D.C. Law 13- (Act 13-234), § 117(c), 47 DCR 520.)

Subchapter II-A. Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises.

§ 1-1152. Findings.

Emergency legislation. — For temporary establishment, on an emergency basis, of new standards for small business enterprise categories, requiring an assessment every 3 years of the continued need for local, small, and disadvantaged programs, establishing a 2-tier set-aside program for small business enterprises, and establishing affiliated interest standards for small and disadvantaged business enterprises, see §§ 2-7 of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Congressional Review Emergency Act of 1999 (D.C. Act 13-39, March 22, 1999, 46 DCR 3019).

Subchapter II-B. Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises.

§ 1-1153.1. Definitions.

For the purpose of this subchapter, the term:

(1) "Agency" means an agency, department, office, or instrumentality of the District of Columbia government.

(1A) "Blanket Order Blitz" means a program established by the Office of Contracting and Procurement to award requirement contracts, indefinite quantity contracts, or blanket purchase agreements for the provision of goods

or services (including construction services) to more than one agency or to multiple sub-units of the same agency.

(2) "Commission" means the District of Columbia Local Business Opportunity Commission established by § 1-1143.

(2A) "Director" means the Director of the Office of Local Business Development.

(3) "Disadvantaged business enterprise" means a local business enterprise, or a business enterprise that has satisfied the requirements established in § 1-1153.5(13), owned, operated, and controlled by economically disadvantaged individuals.

(4) "Economically disadvantaged individual" means an individual whose ability to compete in the free enterprise system is impaired because of diminished opportunities to obtain capital and credit as compared to others in the same line of business where such impairment is related to the individual's status as "socially disadvantaged". An individual is "socially disadvantaged" if the individual has reason to believe the individual has been subjected to prejudice or bias because of his or her identity as a member of a group without regard to his or her qualities as an individual.

(5) "Enterprise zone" means an area within the District for which an application for designation as an enterprise zone has been submitted to or has been designated by the United States Secretary of Housing and Urban Development as an enterprise zone pursuant to 42 U.S.C. § 11501 et seq., or any similar area designated by the Mayor and Council under the provisions of Chapter 14 of Title 5.

(6) "Joint venture" means a combination of property, capital, efforts, skills or knowledge of 2 or more persons or businesses to carry out a single project.

(7) "Local business enterprise" means a business enterprise that is licensed pursuant to Chapter 28 of Title 47 or subject to the tax levied under subchapter X of Chapter 18 of Title 47 and with its principal office located physically in the District of Columbia.

(7A) "Office" means the Office of Local Business Development.

(8) "Owned, operated, and controlled" means a business enterprise that is one of the following:

(A) A sole proprietorship owned, operated or controlled by a District resident;

(B) A partnership, joint venture, or corporation owned, operated, or controlled by one or more District residents who own at least 51% of the beneficial ownership interests in the enterprise and who also hold at least 51% of the voting interests of the enterprise; or

(C) A sole proprietorship, partnership, joint venture or corporation that may be owned, operated and controlled by a non-resident of the District when one of the following factors is met:

(i) The majority of enterprise's employees are District residents;

(ii) The majority of total sales or other revenues of the enterprise are derived from the transaction of business in the District of Columbia; or

(iii) The enterprise is a local business enterprise as defined in this subchapter.

(8A) "Resident business ownership" means a local business enterprise owned by an individual, or a majority number of individuals, subject to personal income tax in the District of Columbia.

(9) "Small business enterprise" means a local business enterprise, or a business enterprise that has satisfied the requirements established in § 1-1153.5(13), which is independently owned, operated and controlled and which has had average annualized gross receipts or average numbers of employees for the 3 years preceding certification not exceeding the following limits:

Construction:	
Heavy (Street and Highways, Bridges, etc.)	$ 23 million
Building (General Construction, etc.)	$ 21 million
Specialty Trades	$ 13 million
Goods and Equipment	$ 8 million
General Services	$ 19 million
Professional Services:	
Personal (Hotel, Beauty, Laundry, etc.)	$ 5 million
Business Services	$ 10 million
Health and Legal Services	$ 10 million
Health Facilities Management	$ 19 million
Manufacturing Services	$ 10 million
Transportation and Hauling Services	$ 13 million
Financial Institutions	$300 million

(Apr. 27, 1999, D.C. Law 12-268, § 2, 46 DCR 969; Oct. 14, 1999, D.C. Law 13-49, § 13(a), 46 DCR 5153; Oct. 4, 2000, D.C. Law 13-169, § 2(a), 47 DCR 5846.)

Effect of amendments. — D.C. Law 13-49 validated a previously made correction in (4); and deleted the former last undesignated paragraph.

D.C. Law 13-169 inserted (1A), (2A), (7A) and (8A).

Temporary legislation. — Section 2(a) of D.C. Law 13- (Act 13-194) inserted a subsection (1A) defining "Blanket Order Blitz."

Section 4(b) of D.C. Law 13- (Act 13-194) provides that the act shall expire after 225 days of its having taken effect.

Section 2(a) of D.C. Law 13-(Act 13-468) inserted (1A), (2A), (7A) and (8A).

Section 9(b) of D.C. Law 13-(Act 13-468) provides for the temporary repeal of the Blanket Order Blitz Increased Opportunity for Local, Small, and Disadvantaged Business Enterprises Temporary Amendment Act of 1999 (D.C. Law 13-(Act 13-194)).

Section 11(b) of D.C. Law 13-(Act 13-468) provides that the act shall expire 225 days after its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 2(a) of the Increased Opportunity for Local, Small, and Disadvantaged Business Enterprises Emergency Amendment Act of 1999 (D.C. Act 13-136, August 4, 1999, 46 DCR 6794).

For temporary amendment of section, see § 2(a) of the Blanket Order Blitz Increased Opportunity for Local, Small, and Disadvantaged Business Enterprises Emergency Amendment Act of 1999 (D.C. Act 13-184, November 2, 1999, 46 DCR 9745).

For temporary repeal of the Increased Opportunity for Local, Small, and Disadvantaged Business Enterprises Emergency Amendment Act of 1999 (D.C. Law 13-136, August 4, 1999, 46 DCR 6794), see § 3 of the Blanket Order Blitz Increased Opportunity for Local, Small, and Disadvantaged Business Enterprises Emergency Amendment Act of 1999 (D.C. Act 13-184, November 2, 1999, 46 DCR 9745).

For temporary amendment of section, see § 2(a) of the Blanket Order Blitz Increased Opportunity for Local, Small, and Disadvantaged Business Enterprises Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-278, March 7, 2000, 47 DCR 2019).

For temporary amendment of section, see § 2(a) of the Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Emergency Amendment Act of 2000 (D.C. Act 13-415, August 14, 2000, 47 DCR 7296).

For temporary repeal of the Blanket Order Blitz Increased Opportunity for Local, Small, and Disadvantaged Business Enterprises Temporary Amendment Act of 1999, see § 9(b) of the Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Emergency Amendment Act of 2000 (D.C. Act 13-415, August 14, 2000, 47 DCR 7296).

Legislative history of Law 13-49. — Law 13-49, the "Criminal Code and Clarifying Technical Amendments Act of 1999," was introduced in Council and assigned Bill No. 13-61. The Bill

was adopted on first and second readings on March 2, 1999, and April 13, 1999, respectively. Signed by the Mayor on May 13, 1999, it was assigned Act No. 13-69 and transmitted to both Houses of Congress for its review. D.C. Law 13-49 became effective on October 14, 1999.

Legislative history of Law 13-169. — See note to § 1-1104.

§ 1-1153.2. District government contracting with local business enterprises; quarterly agency reports on contracts; Council review of goals.

(a) Each agency of the District, including those agencies that contract a portion of their procurement through the Office of Contracting and Procurement unless otherwise determined by the Office, shall:

(1) Allocate its construction contracts in order to reach a goal of 50%, or such other goal as may be determined by the Office under the provisions set forth below, of the dollar volume of all construction contracts to be let to small business enterprises;

(2) Allocate its procurement of goods and services, other than construction, in order to reach the goal of 50%, or such goal as may be determined by the Office under provisions set forth in § 1-1153.3, of the dollar volume to small business enterprises;

(3) Allocate 5% of its contracts to prime contractors that agree to subcontract a portion of the contract work with local or disadvantaged business enterprises; and

(4) Provide quarterly reports to the Office within 30 days after the end of a quarter specifying with respect to the contracts and subcontracts subject to the provisions of this section:

(A) The means by which it intends to implement the programs provided in § 1-1153.3 during the next 12 months;

(B) The dollar percentage of all contracts and subcontracts it has awarded during the quarter which were awarded to local business enterprises, disadvantaged business enterprises, and small business enterprises;

(C) The dollar volume of contracts and subcontracts let during the quarter to local business enterprises, disadvantaged business enterprises, and small business enterprises; and

(D) A description of its past and current activities under § 1-1153.3.

(b) Upon receipt of the semi-annual report from the Office, the Council shall review the goals set forth under this section and consider appropriate amendments to this subchapter. Every 3 years following April 27, 1999, the Council shall also review the goals, intent, and purpose of this act to assess the continued need for the local, small and disadvantaged business enterprise programs.

(c) Every 3 years following April 27, 1999, the Office shall submit to the Mayor and the Council the results of an independent evaluation of the local, small, and disadvantaged business enterprise programs. This evaluation shall compare the costs of contracts awarded pursuant to this subchapter to the cost of contracts awarded without use of the set-asides and bid preferences authorized by this subchapter. This evaluation shall also compare economic outcomes such as revenue, tax payments, and employment of District residents for local, small, and disadvantaged business enterprises certified by the Office to economic outcomes for similar firms that are not certified by the Commission.

(d) Each agency of the District shall submit to the Office, within 60 days of October 4, 2000, an implementation plan setting forth the manner in which the agency shall comply with the requirements of subsection (a) of this section.

(e) The Office shall monitor agency compliance with the requirements of subsections (a) and (d) of this section and shall review whether the plans required by subsections (a) and (d) of this section have been submitted in a timely manner by the agency and whether the plans acceptably meet the goals of this section. (Apr. 27, 1999, D.C. Law 12-268, § 3, 46 DCR 969; Oct. 14, 1999, D.C. Law 13-49, § 13(b), 46 DCR 5153; Oct. 4, 2000, D.C. Law 13-169, § 2(b), 47 DCR 5846.)

Effect of amendments. — D.C. Law 13-49 validated previously made technical corrections in (a), (a)(4)(D), and (b); and added (c).

D.C. Law 13-169 substituted "Office" for "Commission" in the introductory language of (a) and in (a)(1), (a)(2), (a)(4), and (b); substituted "the Office shall" for "the Commission shall" in the first sentence of (c); and added (d) and (e).

Temporary legislation. — Section 2(b) of D.C. Law 13-(Act 13-468) substituted "Office" for "Commission" in the introductory language of (a) and in (a)(1), (a)(2), (a)(4), and (b); substituted "the Office shall" for "the Commission shall" in the first sentence of (c); and added (d) and (e).

Section 11(b) of D.C. Law 13-(Act 13-468) provides that the act shall expire 225 days after its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 2(b) of the Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Emergency Amendment Act of 2000 (D.C. Act 13-415, August 14, 2000, 47 DCR 7296).

Legislative history of Law 13-49. — See note to § 1-1153.1.

Legislative history of Law 13-169. — See note to § 1-1104.

§ 1-1153.3. Assistance programs for local business enterprise contractors, disadvantaged business enterprise contractors, and small business enterprise contractors.

(a) To achieve the goals set forth in § 1-1153.2, programs designed to assist contractors who are certified as local business enterprises, disadvantaged business enterprises, or small business enterprises shall be established by rules issued by the Mayor pursuant to § 1-1153.6. Such programs shall be implemented by each agency within 10 days of March 17, 1993. Local, small, or disadvantaged business enterprises shall not be limited to bidding only on contracts within these programs.

(b)(1) The Mayor shall include among these programs:

(A) A bid preference mechanism for local and disadvantaged business enterprises;

(B) A two-tier small business set-aside program at the contract level that shall:

(i) Include a separate set-aside program for small business enterprises with gross revenues of $ 1 million or less; and

(ii) Provide that a business becomes ineligible for participation in this set-aside program when the business has gross revenues in excess of $ 1 million for 2 consecutive years;

(C) Set-aside programs for all small business enterprises, and for local and disadvantaged business enterprises, at the subcontracting level; and

(D) A set-aside program for local, small, or disadvantaged business enterprises for the Blanket Order Blitz at the contract level.

(2) In evaluating bids and proposals, agencies shall award preferences:

(A) In the form of points, in the case of proposals, as follows:

(i) Three points for resident business ownership;

(ii) Four points for local business enterprises;

(iii) Two points for businesses located in enterprise zones; and

(iv) Three points for disadvantaged business enterprises.

(B) A percentage reduction in price, in the case of bids, as follows:

(i) Three percent for resident business ownership;

(ii) Four percent for local business enterprises;

(iii) Two percent for businesses located in enterprise zones; and

(iv) Three percent for disadvantaged business enterprises.

(3) A bid or proposal from a qualified business enterprise may be entitled to any or all of the preferences provided in paragraph (2) of this subsection.

(c) A prime contractor certified by the Commission shall perform at least 50% of the contracting effort, excluding the cost of materials, goods, and supplies, with its own organization and resources, and if it subcontracts, 50% of the subcontracted effort excluding the cost of materials, goods, and supplies shall be with certified local, disadvantaged, or small business enterprises. The contract will include a certified statement to this effect. Waivers of the above requirements may be given in writing by the Director.

(d) For construction contracts of up to $1 million, a prime contractor certified by the Commission shall perform at least 50% of the on-site work with its own work force, excluding the cost of materials, goods, supplies, and equipment, and, if it subcontracts, 50% of its subcontracts, excluding the cost of materials, goods, supplies and equipment, shall be with certified local, small, or disadvantaged business enterprises. The bid document shall contain a certification form to be signed by all bidders to this effect. Waivers of the above requirements may be given in writing by the contracting officer but only with the written approval of the Director. (Apr. 27, 1999, D.C. Law 12-268, § 4, 46 DCR 969; Oct. 14, 1999, D.C. Law 13-49, § 13(c), 46 DCR 5153; Apr. 12, 2000, D.C. Law 13-91, § 118, 47 DCR 520; Oct. 4, 2000, D.C. Law 13-169, § 2(c), 47 DCR 5846.)

Effect of amendments. — D.C. Law 13-49, in the first sentence of (c), validated a previously made technical correction near the beginning, and inserted a comma following "subcontracts."

D.C. Law 13-91 validated a previously made technical correction in (c).

D.C. Law 13-169 rewrote (b); and deleted "of the Local Business Development Administration" from the end of (c) and (d).

Temporary legislation. — Section 2(b) of D.C. Law 13- (Act 13-194), in (b)(1), deleted the former last sentence, and added "and for local, small, or disadvantaged business enterprises for the Blanket Order Blitz at the contract level" to the end of the present last sentence.

Section 4(b) of D.C. Law 13- (Act 13-194) provides that the act shall expire after 225 days of its having taken effect.

Section 2(c) of D.C. Law 13-(Act 13-468) rewrote (b); and deleted "of the Local Business Development Administration" from the end of (c) and (d).

Section 9(b) of D.C. Law 13-(Act 13-468) provides for the temporary repeal of the Blanket Order Blitz Increased Opportunity for Local, Small, and Disadvantaged Business Enterprises Temporary Amendment Act of 1999 (D.C. Law 13-(Act 13-194)).

Section 11(b) of D.C. Law 13-(Act 13-468) provides that the act shall expire 225 days after its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 2(b) of the Increased Opportunity for Local, Small, and Disadvantaged Business Enterprises Emergency Amendment Act of 1999 (D.C. Act 13-136, August 4, 1999, 46 DCR 6794).

For temporary amendment of section, see § 2(b) of the Blanket Order Blitz Increased Opportunity for Local, Small, and Disadvantaged Business Enterprises Emergency

Amendment Act of 1999 (D.C. Act 13-184, November 2, 1999, 46 DCR 9745).

For temporary repeal of the Increased Opportunity for Local, Small, and Disadvantaged Business Enterprises Emergency Amendment Act of 1999 (D.C. Law 13-136, August 4, 1999, 46 DCR 6794), see § 3 of the Blanket Order Blitz Increased Opportunity for Local, Small, and Disadvantaged Business Enterprises Emergency Amendment Act of 1999 (D.C. Act 13-184, November 2, 1999, 46 DCR 9745).

For temporary amendment of section, see § 2(b) of the Blanket Order Blitz Increased Opportunity for Local, Small, and Disadvantaged Business Enterprises Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-278, March 7, 2000, 47 DCR 2019).

For temporary amendment of section, see § 2(c) of the Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Emergency Amendment Act of 2000 (D.C. Act 13-415, August 14, 2000, 47 DCR 7296).

For temporary repeal of the Blanket Order Blitz Increased Opportunity for Local, Small, and Disadvantaged Business Enterprises Temporary Amendment Act of 1999, see § 9(b) of the Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Emergency Amendment Act of 2000 (D.C. Act 13-415, August 14, 2000, 47 DCR 7296).

Legislative history of Law 13-49. — See note to § 1-1153.1.

Legislative history of Law 13-91. — Law 13-91, the "Technical Amendments Act of 1999," was introduced in Council and assigned Bill No. 13-435. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

Legislative history of Law 13-169. — See note to § 1-1104.

§ 1-1153.4. Certificate of registration.

(a) Notwithstanding any other provisions of law, no enterprise shall be permitted to participate in the program established under § 1-1153.3 unless the enterprise has been issued a certificate of registration under the provisions of this subchapter, has self-certified under regulations issued pursuant to this subchapter, or has submitted a notarized certification application for consideration as a local, small, or disadvantaged business for the purpose of the Blanket Order Blitz. Eligibility criteria for certification under this subchapter shall include the following:

(1) Written evidence that the applicant is:

(A) A bona fide local business enterprise;

(B) A bona fide disadvantaged business enterprise;

(C) A bona fide small business enterprise; or

(D) A bona fide local business enterprise located in an enterprise zone;

(2) Compliance with the regulations set forth in subsection (b) of this section; and

(3) Fulfillment of such other criteria as the Commission may require by regulation.

(b) Any enterprise seeking to be registered as a local business enterprise, a disadvantaged business enterprise, or a small business enterprise in the District shall make and file with the Commission a written application as may be prescribed, which shall include a certification of the correctness of the information provided. The applicant shall be required to furnish evidence of eligibility, ability, character, and financial position, which may be the applicant's most recent financial statement. For purposes of this subchapter, the term "recent" means produced from current data no more than 90 days prior to the application date. If the information provided in the application submitted is satisfactory to the Commission, the Commission shall issue the applicant a certificate of registration to engage in the programs established under § 1-1153.3.

(b-1) An enterprise seeking to participate in the Blanket Order Blitz shall be deemed certified upon submission of a notarized certification application to

the Commission, and the enterprise shall be eligible to participate in the program until the Commission makes a determination of its eligibility based on the application.

(c) A certificate of registration shall expire 2 years from the date of approval of the application.

(d) The Commission may revoke or suspend the certificate of registration of any enterprise registered who is found guilty of any of the following conditions:

(1) Fraud or deceit in obtaining the registration;

(2) Furnishing of substantially inaccurate or incomplete ownership or financial information;

(3) Failure to report changes that affect the requirement for certification;

(4) Gross negligence, incompetence, financial irresponsibility, or misconduct in the practice of a trade or profession; or

(5) Willful violation of any provision of this subchapter or rules adopted pursuant to this subchapter.

(e) Any person may file with the Commission a complaint alleging a violation of this subchapter against any applicant for registration or contractor registered pursuant to this subchapter. The complaint shall be in writing and sworn to by the complainant. The Commission may, without a hearing, dismiss a complaint which is frivolous or otherwise without merit. Any hearing shall be heard within 3 months of the filing of the complaint. The Commission shall determine the time and place of the hearing. The Commission shall cause to be issued and served on the person or organization alleged to have committed the violation, hereafter called the respondent, a written notice of the hearing together with a copy of the complaint at least 30 days prior to the scheduled hearing. Notice shall be served by registered or certified mail, return receipt requested, or by personal service. At the hearing the respondent shall have the right to appear personally or by a representative and to cross-examine witnesses and to present evidence and witnesses. The Commission shall have authority to issue subpoenas requiring the attendance of witnesses and to compel the production of records, papers, and other documents. If, at the conclusion of the hearing, the Commission determines that the respondent has violated the provisions of this subchapter, the Commission shall issue, and cause to be served on the respondent, a decision and order, accompanied by findings of fact and conclusions of law, requiring the respondent's registration to be revoked or suspended, or take any other action as it deems appropriate.

(f) In addition to the penalties provided in subsection (e) of this section, the Corporation Counsel may bring a civil action in the Superior Court of the District of Columbia against a business enterprise and the directors, officers, or principals that is reasonably believed to have obtained certification by fraud or deceit or have furnished substantially inaccurate or incomplete ownership information to the Commission. A business enterprise or individual found guilty under this subsection shall be subject to a civil penalty of not more that $100,000.

(g) The Commission may at any time reissue a certificate of registration to any firm or joint venture whose certificate has been revoked, provided 4 or more members of the Commission vote in favor of reissuance. The Commission may consider whether the firm should be required to submit satisfactory proof that conditions within the company which led to the violation have been

corrected. (Apr. 27, 1999, D.C. Law 12-268, § 5, 46 DCR 969; Oct. 14, 1999, D.C. Law 13-49, § 13(d), 46 DCR 5153; Oct. 4, 2000, D.C. Law 13-169, § 2(d), 47 DCR 5846.)

Effect of amendments. — D.C. Law 13-49 validated previously made technical corrections in (e) and (f).

D.C. Law 13-169 rewrote the first sentence of (a); and inserted (b-1).

Temporary legislation. — Section 2(c) of D.C. Law 13- (Act 13-194) rewrote the first sentence of (a); and added a subsection (b-1), concerning conditions of participation in the program established by § 1-1153.3.

Section 4(b) of D.C. Law 13- (Act 13-194) provides that the act shall expire after 225 days of its having taken effect.

Section 2(d) of D.C. Law 13-(Act 13-468) rewrote the first sentence of (a); and inserted (b-1).

Section 9(b) of D.C. Law 13-(Act 13-468) provides for the temporary repeal of the Blanket Order Blitz Increased Opportunity for Local, Small, and Disadvantaged Business Enterprises Temporary Amendment Act of 1999 (D.C. Law 13-(Act 13-194)).

Section 11(b) of D.C. Law 13-(Act 13-468) provides that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 2(c) of the Increased Opportunity for Local, Small, and Disadvantaged Business Enterprises Emergency Amendment Act of 1999 (D.C. Act 13-136, August 4, 1999, 46 DCR 6794).

For temporary amendment of section, see § 2(c) of the Blanket Order Blitz Increased Opportunity for Local, Small, and Disadvantaged Business Enterprises Emergency Amendment Act of 1999 (D.C. Act 13-184, November 2, 1999, 46 DCR 9745).

For temporary repeal of the Increased Opportunity for Local, Small, and Disadvantaged Business Enterprises Emergency Amendment Act of 1999 (D.C. Law 13-136, August 4, 1999, 46 DCR 6794), see § 3 of the Blanket Order Blitz Increased Opportunity for Local, Small, and Disadvantaged Business Enterprises Emergency Amendment Act of 1999 (D.C. Act 13-184, November 2, 1999, 46 DCR 9745).

For temporary amendment of section, see § 2(c) of the Blanket Order Blitz Increased Opportunity for Local, Small, and Disadvantaged Business Enterprises Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-278, March 7, 2000, 47 DCR 2019).

For temporary amendment of section, see § 2(d) of the Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Emergency Amendment Act of 2000 (D.C. Act 13-415, August 14, 2000, 47 DCR 7296).

For temporary repeal of the Blanket Order Blitz Increased Opportunity for Local, Small, and Disadvantaged Business Enterprises Temporary Amendment Act of 1999, see § 9(b) of the Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Emergency Amendment Act of 2000 (D.C. Act 13-415, August 14, 2000, 47 DCR 7296).

Legislative history of Law 13-49. — See note to § 1-1153.1.

Legislative history of Law 13-169. — See note to § 1-1104.

§ 1-1153.5. Functions of the Commission.

The Commission shall:

(1) Establish procedures and guidelines for the implementation of the programs established pursuant to this subchapter;

(2) Determine which local business enterprises, disadvantaged business enterprises, small business enterprises, or joint ventures will be eligible for certification under this act and establish criteria to identify those enterprises and joint ventures which will be given priority consideration for government contracts;

(3) [Repealed.]

(4) [Repealed.]

(5) Determine that portion of the dollar amount of a joint venture which may be attributed toward an agency's percentage goal;

(6) Recommend that an agency waive bonding in excess of the standard waiver provided in §§ 1-1104 and 1-1107, where such a waiver is appropriate and necessary to achieve the purposes of this subchapter;

(7) Recommend that an agency make advance payments to a certified contractor or to subdivide a contract into smaller parts where the Commission

has determined that such payments or such subdivisions are necessary to achieve the purposes of this subchapter. Subdivisions may be recommended in order to fall within the $100,000 bond exemption provided by § 1-1107, where feasible;

(8) [Repealed.]

(9) Maintain contacts with the business community, including financial institutions and bonding companies, and elicit cooperation for economic development in the District;

(10) [Repealed.]

(11) Review and determine the continued eligibility of contractors certified by the Commission;

(12) Insert in bid solicitations for procurement of property or services, a provision limiting advance or progress payments to local, small, and disadvantaged business enterprises, to provide that payments may not exceed the unpaid contract price;

(13) Determine that a small or disadvantaged business enterprise without a principal office located physically in the District is a small or disadvantaged business enterprise, if the business enterprise meets 4 of the following criteria:

(A) The principal office of the business is located in the Washington Standard Metropolitan Statistical Area;

(B) More than 50% of the assets of the business are located in the District;

(C) More than 50% of the employees of the business are residents of the District;

(D) The owners of more that 50% of the business are residents of the District;

(E) More than 50% of the total sales or other revenues are derived from the transactions of the business in the District.

(13A)(A) Determine that a business enterprise that does not otherwise meet the criteria of § 1-1153.1(7) or paragraph (13) of this section, is a local business enterprise for the purposes of the development and construction of the new Washington Convention Center, if the business enterprise has its principal office located in the Washington Standard Metropolitan Statistical Area and agrees by contract with the Washington Convention Center Authority to meet at least 2 of the following 4 criteria:

(i) Provide substantially greater employment opportunities to District residents than would be required under applicable laws and regulations, including, the First Source Employment Agreement Act of 1984 and Mayor's Order No. 85-85, issued June 10, 1985;

(ii) Provide substantially greater subcontracting opportunities for business enterprises that are certified as local, small, or disadvantaged business enterprises by the Commission than would otherwise be required under applicable law;

(iii) Enter into a mentoring relationship with one or more business enterprises that are certified as small or disadvantaged enterprises by the Commission; or

(iv) Joint venture with one or more business enterprises that are certified as local, small, or disadvantaged, and the constituent members of the

joint venture so certified realize a substantial portion of the joint venture as economic growth or job opportunities for District residents.

(B) For a mentoring relationship entered into under subparagraph (A)(iii) of this paragraph, the relationship shall be documented in writing between the certified small or disadvantaged business enterprise and the contractor to be certified for a specific project, and shall be designed to assist the small or disadvantaged business enterprise independently to compete more effectively. The mentoring relationship must include meaningful assistance to the small or disadvantaged business enterprise in obtaining bonding, capital, or future contracting opportunities.

(C) The Commission may, on its own initiative or in response to a request from an agency or instrumentality of the District of Columbia, decide that a specific project undertaken or supported by such agency or instrumentality be eligible for project-specific determinations. The Commission's decision shall take into account all relevant factors, including:

(i) The nature of the project;

(ii) The benefits project-specific determinations would bring to the District and its residents; and

(iii) The composition of the contracting community with respect to the project.

(D) The Commission shall establish rules to implement the procedures applicable to this paragraph.

(E) This paragraph shall expire 2 years after October 4, 2000. If the Commission believes there is a reason for extension of the law, the Commission shall vote on this decision and forward a request to the Council to extend the law.

(14) Determine according to rules adopted by the Mayor that a small business enterprise affiliated with other business enterprises through common ownership, management, or control is a small enterprise if:

(A) The consolidated financial statements of the affiliated companies do not exceed the limits established by § 1-1153.1(9); and

(B) In the event of a parent-subsidiary affiliation, the parent company qualifies for certification as a small business;

(15) Determine according to rules adopted by the Mayor that a disadvantaged business enterprise affiliated with other business enterprises through common ownership, management, or control is a disadvantaged business enterprise, provided that, in the event of a parent-subsidiary affiliation, both enterprises meet the requirements of § 1-1153.1(3); and

(16) Whenever a small business enterprise is affiliated with a business that is in a different line of business, paragraph (14) of this subsection shall not be applicable, and such affiliates shall be eligible for certification as a small business enterprise if it meets the requirements of § 1-1153.1(9). (Apr. 27, 1999, D.C. Law 12-268, § 6, 46 DCR 969; Oct. 14, 1999, D.C. Law 13-49, § 13(e), 46 DCR 5153; Oct. 4, 2000, D.C. Law 13-169, § 2(e), 47 DCR 5846.)

Effect of amendments. — D.C. Law 13-49 validated a previously made technical correction in (4).

D.C. Law 13-169 repealed (3), (4), (8), and (10); and inserted (13A).

Temporary legislation. — Section 2 of D.C. Law 13-33 added a paragraph (13A).

Section 4 of D.C. Law 13-33 provides that the act shall automatically expire on the second anniversary date of its enactment by the Coun-

cil. If the Commission believes there is a reason for extension of the law, the Commission shall vote on this decision and forward a request to the Council to reconsider extending the law.

Section 5(b) of D.C. Law 13-33 provides that the act shall expire after 225 days of its having taken effect.

Section 2(e) of D.C. Law 13-(Act 13-468) repealed (3), (4), (8), and (10); and inserted (13A).

Section 9(a) of D.C. Law 13-(Act 13-468) provides for the temporary repeal of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Congressional Review Emergency Act of 2000 (D.C. Act 13-342).

Section 11(b) of D.C. Law 13-(Act 13-468) provides that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 2 of the Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Emergency Amendment Act of 1999 (D.C. Act 13-89, June 4, 1999, 46 DCR 5322).

For temporary amendment of section, see § 2 of the Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Second Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-160, October 18, 1999, 46 DCR 9214).

Section 4 of D.C. Act 13-160 provides that the act shall apply as of September 2, 1999.

For temporary amendment of section, see § 2 of the Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-342, May 9, 2000, 47 DCR 4666).

Section 4 of D.C. Act 13-342 provides that the act shall automatically expire on the second anniversary date of its enactment by the Council. If the Commission believes there is a reason for extension of the law, the Commission shall vote on this decision and forward a request to the Council to reconsider extending the law.

For temporary amendment of section, see § 2(e) of the Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Emergency Amendment Act of 2000 (D.C. Act 13-415, August 14, 2000, 47 DCR 7296).

For temporary repeal of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Congressional Review Emergency Act of 2000, see § 9(a) of the Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Emergency Amendment Act of 2000 (D.C. Act 13-415, August 14, 2000, 47 DCR 7296).

Legislative history of Law 13-33. — Law 13-33, the "Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Temporary Amendment Act of 1999," was introduced in Council and assigned Bill No. 13-234. The Bill was adopted on first and second readings on May 4, 1999, and June 8, 1999, respectively. Signed by the Mayor on June 24, 1999, it was assigned Act No. 13-99 and transmitted to both Houses of Congress for its review. D.C. Law 13-33 became effective on October 7, 1999.

Legislative history of Law 13-49. — See note to § 1-1153.1.

Legislative history of Law 13-169. — See note to § 1-1104.

CHAPTER 11A. PROCUREMENT.

Subchapter I. General Provisions.

§ 1-1181.1. Purposes, rules of construction.

(a) This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

(b) In enacting this chapter, the Council of the District of Columbia ("Council") supports the following statutory purposes:

(1) To simplify, clarify, and modernize the law governing the procurement of property, supplies, services, and construction by the District of Columbia government ("District government");

(1A) To centralize procurement and the authority to dispose of supplies, services, and construction for District government departments, agencies, and instrumentalities in an office headed by a chief procurement officer with a team of procurement professionals who are dedicated exclusively to procurement, property dispositions, and contract administration;

(1B) To establish the Office of Contracting and Procurement as a service agency whose performance will be judged against the needs and reasonable expectations of its clients (the user agencies and its contractors) and the citizens of the District of Columbia;

(1C) To implement technologies based on processes to manage procurement, including the use of electronic forms and signature and electronic commerce for placing orders for goods and services;

(2) To foster effective and equitably broad-based competition in the District of Columbia ("District") through support of the free enterprise system, insuring support of the local, small, and disadvantaged business opportunity program as set forth in subchapter II-B of Chapter 11 of this title and its implementing regulations;

(3) To provide increased procurement opportunities for District-based, women-owned businesses;

(4) To provide for increased public confidence in the procedures followed in public procurement;

(5) To eliminate overlapping or duplication of procurement and related activities;

(6) To provide increased economy in procurement activities and to maximize, to the fullest extent allowed by law, the purchasing power of the District government;

(7) To insure the fair and equitable treatment of all persons who deal with the procurement system of the District government;

(8) To improve the understanding of procurement laws and policies within the District by organizations and individuals doing business with the District government;

(9) To permit the continued development of procurement laws, policies, and practices;

(10) To promote the development of uniform procurement procedures District government-wide;

(11) To provide safeguards for the maintenance of a procurement system of quality and integrity; and

(12) To promote overall efficiency in the District government procurement organization and operation. (Feb. 21, 1986, D.C. Law 6-85, § 101, 32 DCR

7396; Apr. 12, 1997, D.C. Law 11-259, § 101(a), 44 DCR 1423; Apr. 12, 2000, D.C. Law 13-91, § 119(a), 47 DCR 520.)

Effect of amendments. — D.C. Law 13-91 substituted "local, small, and disadvantaged business opportunity program as set forth in subchapter II-B of Chapter 11 of this title" for "minority business opportunity program as set forth in subchapter II of Chapter 11 of this title" in (b)(2).

Emergency legislation. — For temporary amendment of section, see § 2 of the Advisory Neighborhood Commission Procurement Exclusion Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-316, April 17, 2000, 47 DCR 2875).

Section 4 of D.C. Act 13-316 provides that the act shall apply as of March 1, 2000.

Legislative history of Law 13-91. — Law 13-91, the "Technical Amendments Act of 1999," was introduced in Council and assigned Bill No. 13-435. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

Cited in Murphy v. A.A. Beiro Constr. Co., App. D.C., 679 A.2d 1039 (1996); Dano Resource Recovery, Inc. v. District of Columbia, 923 F. Supp. 249 (D.D.C. 1996).

§ 1-1181.4. Application of chapter.

(a) Except as provided in § 1-1183.20, this chapter shall apply to all departments, agencies, instrumentalities, and employees of the District government, including agencies which are subordinate to the Mayor, independent agencies, boards, and commissions, but excluding the Council of the District of Columbia, District of Columbia courts, and the District of Columbia Financial Responsibility and Management Assistance Authority.

(b) This chapter shall apply to any contract for procurement of goods and services, including construction and legal services, but shall not apply to a contract or agreement receiving or making grants-in-aid or for federal financial assistance.

(c) The Council of the District of Columbia, the Corporation Counsel, Inspector General, Auditor, and Chief Financial Officer may contract for the services of accountants, lawyers, and other experts when they determine and state in writing that good reason exists why such services should be procured independently of the CPO. During a control year, as defined by § 47-393(4), the Office of the Chief Financial Officer of the District of Columbia shall be exempt from the provisions of this chapter, and shall adopt, within 30 days of April 12, 1997, the procurement rules and regulations adopted by the District of Columbia Financial Responsibility and Management Assistance Authority. During years other than control years, the Office of the Chief Financial Officer shall be bound by the provisions contained in this chapter.

(d) This chapter shall apply to the Board of Education, except that the Board of Education shall have the authority to solicit, award, and execute contracts independently of the Office of Contracting and Procurement and the Chief Procurement Officer. (Feb. 21, 1986, D.C. Law 6-85, § 104, 32 DCR 7396; Mar. 8, 1991, D.C. Law 8-258, § 2(a), 38 DCR 974; Mar. 19, 1994, D.C. Law 10-79, § 2(a), 40 DCR 8696; May 8, 1996, 1996, D.C. Law 11-117, § 18(a), 43 DCR 1179; Apr. 12, 1997, D.C. Law 11-259, § 101(b), 44 DCR 1423; May 8, 1998, D.C. Law 12-104, § 2(a), 45 DCR 1687; Oct. 19, 2000, D.C. Law 13-172, § 702, 47 DCR 6308.)

Effect of amendments. — D.C. Law 13-172 added (d).

Temporary legislation. — Section 2 of D.C. Law 13- (Act 13-169) added "and District of

Columbia Advisory Neighborhood Commission" to the end of (a).

Section 4(b) of D.C. Law 13- (Act 13-169) provides that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 2 of the Advisory Neighborhood Commission Procurement Exclusion Emergency Amendment Act of 1999 (D.C. Act 13-150, December 1, 1999, 46 DCR 10393).

For temporary amendment of section, see § 702 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary amendment of section, see § 702 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — Law 13-172, the "Fiscal Year 2001 Budget Support Act of 2000," was introduced in Council and assigned Bill No. 13-679. The Bill was adopted on first and second readings on May 19, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-375 and transmitted to both Houses of Congress for its review. D.C. Law 13-172 became effective on October 19, 2000.

Editor's notes. — Section 701 of D.C. Law 13-172 provides that Subtitle A of Title VII of the act may be cited as the "Board of Education Independent Procurement Authority Amendment Act of 2000."

Cited in Lawlor v. District of Columbia, App. D.C., 758 A.2d 964 (2000).

§ 1-1181.5. Claims by contractor against District government.

Emergency legislation. — For temporary amendment of section, see § 202(a) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

§ 1-1181.5a. Criteria for Council review of multiyear contracts and contracts in excess of $1 million.

(a) Pursuant to § 1-1130 ("FRMAA"), prior to the award of a multiyear contract or a contract in excess of $1,000,000 during a 12-month period, the Mayor (or executive independent agency) shall submit the proposed contract to the Council for review and approval in accordance with the criteria established in this section.

(b)(1) A proposed multiyear contract shall be deemed disapproved by the Council unless, during the 45-calendar-day review period beginning on the first day (excluding Saturdays, Sundays, and holidays) following its receipt by the Office of the Secretary to the Council, the Council adopts a resolution to approve the proposed multiyear contract.

(2) A proposed contract in excess of $1,000,000 during a 12-month period shall be deemed approved by the Council if one of the following occurs:

(A) During the 10-calendar-day period beginning on the first day (excluding Saturdays, Sundays, and holidays) following its receipt by the Office of the Secretary to the Council, no member of the Council introduces a resolution to approve or disapprove the proposed contract; or

(B) If a resolution has been introduced in accordance with subparagraph (A) of this paragraph, the Council does not disapprove the contract during the 45-calendar-day period beginning on the first day (excluding Saturdays, Sundays, and holidays) following its receipt by the Office of the Secretary to the Council.

(c)(1) Proposed contracts submitted pursuant to this section shall contain a summary, including, but not limited to, the following:

(A) The proposed contractor, contract amount, unit and method of compensation, contract term, and type of contract;

(B) The goods or services to be provided, including a description of the economic impact of the proposed contract, the social impact of the proposed contract, the methods of delivering goods or services, and any significant program changes reflected in the proposed contract;

(C) The selection process, including the number of offerors, the evaluation criteria, and the evaluation results, including price and technical components;

(D) The background and qualifications of the proposed contractor, including its organization, financial stability, personnel, and prior performance on contacts with the District government;

(E) Performance standards and expected outcomes of the proposed contract;

(F) A certification that the proposed contract is within the appropriated budget authority for the agency for the fiscal year and is consistent with the financial plan and budget adopted in accordance with §§ 47-392.1 and 47-392.2;

(G) A certification that the proposed contract is legally sufficient and has been reviewed by the Office of the Corporation Counsel, including whether the proposed contractor has any currently pending legal claims against the District;

(H) A certification that the proposed contractor is current with its District and federal taxes or has worked out and is current with a payment schedule approved by the District or federal government;

(I) The status of the proposed contractor as a certified local, small, or disadvantaged business enterprise;

(J) Other aspects of the proposed contract that the Chief Procurement Officer deems significant; and

(K) A statement indicating whether the proposed contractor is currently debarred from providing services to any governmental entity (federal, state, or municipal), the dates of the debarment, and the reasons for debarment.

(2) For the purposes of subsection (c)(1)(I) of this section, the term:

(A) "Local business enterprise" means a business enterprise with its principal office located physically in the District of Columbia and which is licensed pursuant to Chapter 28 of Title 47 or subject to the tax levied under subchapter X of Chapter 18 of Title 47.

(B) "Small business enterprise" means a local business enterprise, or a business enterprise that has satisfied the requirements established in subparagraph (C)(ii) of this paragraph, which is independently owned, operated, and controlled and which has had average annualized gross receipts or average numbers of employees (for the 3 years preceding certification) not exceeding the following limits:

Construction:	
Heavy (Street and Highways, Bridges, etc)	$23 million
Building (General Construction, etc)	$21 million
Specialty Trades	$13 million
Goods and Equipment	$ 8 million
General Services	$19 million

Professional Services	
Personal (Hotels, Beauty, Laundry, etc)	$ 5 million
Business Services	$10 million
Health and Legal Services	$10 million
Health Facilities Management	$19 million
Manufacturing Services	$10 million
Transportation and Hauling Services	$13 million
Financial Institutions	$300 million in assets.

(C) "Disadvantaged business enterprise" means:

(i) A local business enterprise, or a business enterprise that is owned, operated, and controlled by economically disadvantaged individuals; and

(ii) The District of Columbia Minority Business Opportunity Commission, established by § 1-1143, has determined that the business enterprise meets 4 of the following criteria:

(I) The principal office of the business is located in the Washington Standard Metropolitan Statistical Area;

(II) More than 30% of the assets of the business are located in the District;

(III) More than 50% of the employees of the business are residents of the District;

(IV) The owners of more than 50% of the business are residents of the District;

(V) More than 30% of the total sales or other revenues are derived from the transactions of the business in the District; or

(VI) Other factors evidencing close economic ties to the District.

(d) After July 28, 1995, no proposed multiyear contract or lease and no proposed contract or lease worth over $1,000,000 for a 12-month period may be awarded until after the Council has reviewed and approved the proposed contract or lease as provided in this section.

(e) After July 28, 1995, any employee or agency head who shall knowingly or willfully enter into a proposed multiyear contract or a proposed contract or lease in excess of $1,000,000 without prior Council review and approval in accordance with this section shall be subject to suspension, dismissal, or other disciplinary action under the procedures set forth in § 1-617.1(d)(1) and (18). This subsection shall apply to subordinate agency heads appointed according to subchapter XI-A of Chapter 6 of this title, and to independent agency heads.

(f)(1) No contractor who knowingly or willfully performs on a contract with the District by providing a product or service worth in excess of $1,000,000 for a 12-month period based on a contract made after July 28, 1995, without prior Council approval, can be paid more than $1,000,000 for the products or services provided.

(2) No contractor who knowingly or willfully performs on a multiyear contract based on a multiyear contract with the District after July 28, 1995, without prior Council approval of the multiyear contract, can be paid in more than one calendar year for the products or services provided.

(g) Subsection (c) of this section shall not apply to contracts to implement a federal program where the federal government requires the use of federal contracting procedures as a condition for the receipt of federal assistance.

(h) Review and approval by the Council of the annual capital program of federal highway aid projects shall constitute the Council review and approval, required by § 1-1130, of individual federal-aid highway contracts that make up the annual program.

(i) Reserved.

(j)(1) Notwithstanding the provisions of this section or any other law, a proposed contract in excess of $1,000,000 during a 12-month period or a proposed multiyear contract submitted to the Council by the Mayor (or executive independent agency) shall be deemed approved by the Council when a time stamp is affixed to the proposed contract by the Secretary to the Council, provided that a summary of the proposed contract has been filed with the Chairman of the Council ("Chairman") at least 96 hours in advance of the proposed contract's submission. The 96-hour period shall not include a Saturday, Sunday, or legal holiday.

(2) The proposed contract shall be deemed approved if within the 96-hour period after the receipt of the summary by the Chairman, a resolution of disapproval has not been signed and introduced by at least 5 members of the Council. If a resolution of disapproval has been introduced by at least 5 members of the Council within the 96-hour period, the period of Council review shall be extended by an additional 10 days from the date that the Mayor submits the proposed contract to the Council. The extended 10-day period shall not include a Saturday, Sunday, or legal holiday. If the resolution of disapproval has not been approved within the 10-day extended period, the proposed contract shall be deemed approved.

(3) The proposed contract summary shall include the following:

(A) The name of the proposed contractor, the contract amount, and the term of the proposed contract;

(B) A description of the goods and services to be provided;

(C) A description of the selection process, including the number of offerors, the evaluation criteria, the evaluation results, and the basis for selecting the proposed contractor;

(D) The background and qualifications of the proposed contractor;

(E) The performance standards and the expected outcomes of the proposed contract;

(F) A description of the funding source for the proposed contract and a certification that the proposed contract is consistent with the District's financial plan and budget; and

(G) A certification of legal sufficiency, including the proposed contractor's compliance with District and federal tax laws.

(4) This subsection shall not apply to Year 2000 remediation contracts. For the purposes of this subsection, the term "Year 2000 remediation contracts" means procurements for the correction of computers, computer-operated systems, and equipment operated by embedded computer chips, to ensure the proper recognition and processing of dates on or after January 1, 2000.

(5) This subsection shall expire on December 31, 2002. (Feb. 21, 1986, D.C. Law 6-85, § 105a, as added Mar. 8, 1991, D.C. Law 8-257, § 3, 38 DCR

969; July 28, 1992, D.C. Law 9-136, § 2, 39 DCR 4083; May 16, 1995, D.C. Law 10-255, § 3, 41 DCR 5193; Apr. 27, 1999, D.C. Law 12-265, § 2, 46 DCR 2096; Oct. 20, 1999, D.C. Law 13-38, § 102, 46 DCR 6373; Apr. 12, 2000, D.C. Law 13-91, § 120, 47 DCR 520; Oct. 19, 2000, D.C. Law 13-172, § 102, 47 DCR 6308.)

Effect of amendments. — D.C. Law 12-265 rewrote this section.

D.C. Law 13-38 added (j).

D.C. Law 13-91 validated previously made technical corrections in (c)(1)(I) and in the introductory language of (c)(2); and substituted "subchapter XI-A of Chapter 6 of this title" for "§ 1-611.1" in (e).

D.C. Law 13-172 inserted "(or executive independent agency)" in (j)(1); and substituted "2002" for "2000" in (j)(5).

Temporary legislation. — Section 2 of D.C. Law 13-17 added a subsection (i).

Section 7(b) of D.C. Law 13-17 provides that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 2 of the Establishment of Council Contract Review Criteria and Budget Support Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-47, April 6, 1999, 46 DCR 5481).

For temporary amendment of section, see § 2 of the Chief Technology Officer Year 2000 Remediation Procurement Authority Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-106, July 9, 1999, 46 DCR 6028).

For temporary amendment of section, see § 102 of the Service Improvement and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

For temporary amendment of section, see § 102 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary amendment of section, see § 102 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 12-265. — Law 12-265, the "Establishment of Council Contract Review Criteria, Alley Closing, Budget Support, and Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-144. The Bill was adopted on first and second readings on April 7, 1998, and June 2, 1998, respectively. Signed by the Mayor on June 23, 1998, it was assigned Act No. 12-397 and transmitted to both Houses of Congress for its review. D.C. Law 12-265 became effective on April 27, 1999.

Legislative history of Law 13-17. — Law 13-17, the "Chief Technology Officer Year 2000 Remediation Procurement Authority Temporary Amendment Act of 1999," was introduced in Council and assigned Bill No. 13-130. The Bill was adopted on first and second readings on March 2, 1999, and April 13, 1999, respectively. Signed by the Mayor on May 3, 1999, it was assigned Act No. 13-66 and transmitted to both Houses of Congress for its review. D.C. Law 13-17 became effective on July 17, 1999.

Legislative history of Law 13-38. — Law 13-38, the "Service Improvement and Fiscal Year 2000 Budget Support Act of 1999," was introduced in Council and assigned Bill No. 13-161. The Bill was adopted on first, amended first, and second readings on May 11, 1999, June 8, 1999, and June 22, 1999, respectively. Signed by the Mayor on July 8, 1999, it was assigned Act No. 13-111 and transmitted to both Houses of Congress for its review. D.C. Law 13-38 became effective on October 20, 1999.

Legislative history of Law 13-91. — See note to § 1-1181.1.

Legislative history of Law 13-172. — See note to § 1-1181.4.

Editor's notes. — Subsection (i) has been set forth above as "Reserved" pending passage of a permanent version of D.C. Law 13-17.

Section 101 of D.C. Law 13-172 provides that Title I of the act may be cited as the "Extension of Streamlined Procedure for Council Review of Contracts Amendment Act of 2000."

§ 1-1181.5e. Director of the Office of Contracting and Procurement.

(a) The head of the OCP shall have the title of Chief Procurement Officer ("CPO").

(b) The CPO shall be appointed by the Mayor with the advice and consent of the Council. The CPO's nomination and confirmation shall be consistent with the provisions of § 1-633.7.

(c) The Mayor shall appoint the CPO as soon as practicable, but not less than 180 days after the effective date of the Procurement Reform Amendment

Act of 1996. Upon appointment, the CPO will immediately assume the responsibilities as the head of the OCP pending review and action on the appointment by the Council. Until the CPO is appointed by the Mayor, the highest ranking employee of the OCP shall serve as Acting CPO.

(d) The CPO shall have not less than 7 years of senior-level experience in procurement and shall have demonstrated, through his or her knowledge and experience, the ability to administer a public procurement system of the size and complexity of the program established by this chapter.

(e) The CPO shall serve for one 5-year term.

(f) The CPO shall not be removed from office before expiration of the 5-year term except for cause, subject to the right of appeal as provided in subchapter VI of Chapter 6 of this title. (Feb. 21, 1986, D.C. Law 6-85, § 105e, as added Apr. 15, 1997, D.C. Law 11-259, § 101(d), 44 DCR 1423; Mar. 24, 1998, D.C. Law 12-82, § 2(a), 45 DCR 772; May 8, 1998, D.C. Law 12-104, § 2(c), 45 DCR 1687; Oct. 14, 1999, D.C. Law 13-49, § 4, 46 DCR 5153; Apr. 12, 2000, D.C. Law 13-91, § 121, 47 DCR 520.)

Effect of amendments. — D.C. Law 13-49 rewrote (d).

D.C. Law 13-91 added "as provided in subchapter VI of Chapter 6 of this title" to the end of (f).

Legislative history of Law 13-49. — Law 13-49, the "Criminal Code and Clarifying Technical Amendments Act of 1999," was introduced in Council and assigned Bill No. 13-61. The Bill was adopted on first and second readings on March 2, 1999, and April 13, 1999, respectively. Signed by the Mayor on May 13, 1999, it was assigned Act No. 13-69 and transmitted to both Houses of Congress for its review. D.C. Law 13-49 became effective on October 14, 1999.

Legislative history of Law 13-91. — See note to § 1-1181.1.

§ 1-1181.7. Definitions.

For the purposes of this chapter, the term:

(1) "Acquisition" means the obtaining by contract of property, supplies, and services (including construction) by and for the District through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated, and includes the establishment of agency needs, the description of requirements to satisfy agency needs, solicitation of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

(2) "Agency" means any officer, employee, office, department, board, commission, or entity of the District as described in § 1-1181.4(a).

(3) "Architect-engineer and land surveying services" means those professional services within the scope of the practice of architecture, professional engineering, or land surveying, as defined by the laws of the District.

(4) "Best interest of the District government" means courses of action that result in the most favorable position within the market for goods and services, or will maximize the achievement of certain socioeconomic policies as expressed in this chapter or other existing laws.

(5) "Bid bond" means a form of security assuring that the bidder will not withdraw a bid within the period specified for acceptance and will execute a written contract within the time specified in the bid.

(6) "Bond" means a written instrument executed by a contractor (principal) and a second party (surety or sureties) to assure fulfillment of the

contractor's obligations to a third party (obligee or the District). If the principal's obligations are not met, the bond assures payment, to the extent stipulated, of any loss sustained by the obligee.

(7) "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity through which business is conducted.

(8) "Centralized purchasing" means a system of purchasing in which authority, responsibility, and control of purchasing activities are concentrated in 1 administrative unit.

(9) Repealed.

(10) "Competitive bidding" means the offer of prices by individuals or firms competing for a contract, privilege, or right to supply specified services or materials.

(11) "Competitive sealed proposals" means a process which includes the submission of sealed written technical and price proposals from 2 or more sources and a written evaluation of each proposal in accordance with evaluation criteria which consider price, quality of the items, performance, and other relevant factors.

(12) "Construction" means the process of building, altering, repairing, or improving any public structure or building, or other public improvements of any kind to any public real property. The term "construction" does not include the operation or routine maintenance of existing structures, buildings, or real property.

(13) "Contract" means a mutually binding agreement covered by this act, which, except as otherwise authorized, is in writing. It includes, but is not limited to:

(A) Awards and notices of award;

(B) Contracts providing for the issuance of job or task orders;

(C) Letter contracts;

(D) Purchase orders;

(E) Supplemental agreements and contract modifications with respect to any of the foregoing;

(F) Orders;

(G) Any order or agreement, mutually agreed upon between the District and a contractor, implemented through electronic commerce; and

(H) Agreements to acquire goods or services which do not involve the appropriation or expenditure of funds by the District.

(14) "Contract modification" means any written alteration in the specifications, delivery point, rate of delivery, contract period, price, quantity, or other contract provisions of any existing contract, whether accomplished by unilateral action in accordance with a contract provision, or by mutual action of the parties to the contract. The term "contract modification" includes actions such as change orders, administrative changes, notices of termination, and notices of the exercise of a contract option.

(15) "Contracting officer" means the Mayor or the CPO or the CPO's designee vested with the authority to execute contracts on behalf of the District in compliance with the provisions of this act.

(16) "Contractor" means any business which enters into a contract agreement with the District.

(17) "Cooperative purchasing" means procurement conducted by the District government with, or on behalf of, a neighboring jurisdiction.

(18) "Cost-plus incentive fee contract" means a type of contract that specifies a target cost, a target fee, minimum and maximum fees, and a fee adjustment formula.

(19) "Cost-reimbursement contract" means a contract under which the District reimburses the contractor for those contract costs, within a stated ceiling, which are recognized as allowable and allocated in accordance with cost principles, and a fee, if any.

(20) "Data" means recorded information, regardless of form or characteristics.

(21) "Designee" means a duly authorized representative of a person holding a superior position.

(22) "Director" means the Director of the Department of Administrative Services, established by Mayor's Order 84-52, dated March 2, 1984.

(22A) "Electronic commerce" means the electronic exchange of all information needed to do business.

(23) "Employee" means an individual receiving a salary from the District government, whether elected or not, and any nonsalaried individual performing personal services for the District government.

(24) "Established catalogue price" means the price included in the most current catalogue, price list, schedule, or other form that:

(A) Is regularly maintained by the manufacturer or supplier of an item;

(B) Is either published or otherwise available for inspection by customers;

(C) States prices at which sales are currently or were last made to a significant number of buyers constituting the general public for that item; and

(D) States discontinued prices at which sales are currently or were last made to state, local, or federal agencies.

(25) "Evaluated bid price" means the dollar amount of a bid after bid price adjustments are made under objective measurable criteria, set forth in the invitation for bid, which affect the economy and effectiveness in the operation or use of the product, such as reliability, maintainability, useful life, and residual value.

(26) "Excess supplies" means any supplies other than expendable supplies having a remaining useful life but which are no longer required by the using agency.

(27) "Expendable supplies" means all tangible supplies other than nonexpendable supplies.

(28) "Fixed-price contract" means a contract where the price is not subject to any adjustment on the basis of the contractor's cost experience in the performance of the contract.

(29) "Fixed-price incentive contract" means a contract that provides for adjusting profit and establishes the final contract price by a formula based on the relationship of final negotiated price to total target cost. The final price is subject to a target ceiling that is negotiated at the outset.

(29A) "Human care agreement" means a written agreement for the procurement of education or special education, health, human or social services, pursuant to § 1-1183.6a, to be provided directly to individuals who

are disabled, disadvantaged, displaced, elderly, indigent, mentally ill, physically ill, unemployed, or minors in custody of the District of Columbia.

(29B) "Internet site" means the location of material and information provided by the OCP on the global computer network. The material and information provided at the site shall include not only general information about procurement programs and policies, but also public notice of invitations to bid and requests for qualifications, and notice of contract and procurement awards.

(30) "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids pursuant to § 1-1183.3.

(31) "Mayor" means the Mayor of the District of Columbia or a designee.

(32) "Negotiation" means discussions to determine the terms and conditions of a contract or procurement pursuant to §§ 1-1183.4, 1-1183.5, or 1-1183.6a.

(33) "Nonexpendable supplies" means all tangible supplies having an original acquisition cost of over $100 per unit and a probable useful life of 2 years or more.

(34) "Payment bond" means a bond to assure payment, as required by law, to all persons supplying labor or material in the performance of the work provided in the contract.

(35) "Performance bond" means a bond to secure performance and fulfillment of the contractor's obligations under the contract.

(36) "Person" means any business entity, individual, union, committee, club, or other organization or group of individuals.

(36A) "Pre-qualification" means the process, set out in § 1-1183.2(d), by which the OCP determines whether a bidder or prospective bidder is responsible.

(37) "Procurement" means acquisition.

(37A) "Procurement card" means a credit card issued by a bank, with conditions and terms, issued through the District's agent for the purchase of goods and services.

(38) "Procurement request" means a document in which a using agency requests that a contract be obtained for a specified need, and may include, but is not limited to, the technical description of the requested items, delivery schedule, transportation criteria for evaluation of solicitees, suggested sources of supply, and information supplied for the making of any required written determination and finding.

(39) "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals pursuant to § 1-1183.4.

(39A) "Request for qualifications" means a written document issued by the OCP, pursuant to § 1-1183.2(d), that invites prospective bidders to submit a statement of their qualifications to provide certain goods or services.

(40) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

(41) "Responsive bidder" means a person who has submitted a bid which conforms in all material respects to the invitation for bids.

(41A) "School children with disabilities" means children with any of the disabilities defined in 34 C.F.R. § 300.24.

(42) "Services" means the rendering, by a contractor, of its time and effort rather than the furnishing of a specific product other than reports which are merely incidental to the required performance of services.

(43) "Sole source" means that a single source in a competitive marketplace can fulfill the specifications of a contract or is found, for a justifiable reason, to be most advantageous to the District government for the purpose of contract award.

(44) "Source selection" means the process of soliciting a bidder or offeror for the awarding of a contract.

(44A) "Special education services" means the services defined in 34 C.F.R. § 300.24.

(45) "Specification" means any description of physical or functional characteristics, or of the nature of a supply, service, or construction item. The term "specification" may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

(45A) "Statement of qualifications" means a written document submitted to the OCP by a vendor wishing to bid on a District government contract or procurement. The document shall provide information, pursuant to § 1-1183.2(d), about the vendor's type of business or organization, the professional qualifications of staff, financial capability, a summary of similar contracts awarded to the bidder and the bidders' performance of those contracts, compliance with wage, hour, workplace safety, and other labor standards, compliance with federal and District equal opportunity and human rights laws, and legal action against the vendor. The OCP shall use the statement of qualifications to determine if the vendor is a responsible bidder for a particular procurement.

(46) "Supplemental agreement" means any contract modification which is accomplished by the mutual action of the parties.

(47) "Supplies" means all personal property subject to this chapter.

(48) "Surety" means a business legally liable for the debt, default, or failure of a principal to satisfy a contractual obligation.

(49) "Term contract" means a contract established for a period of time for bulk purchase of certain common-use items.

(50) "Using agency" means any agency of the District government which utilizes any supplies, services, or construction procured under this chapter.

(50A) "Voucher" means a written authorization, to a service provider who has been awarded a human care agreement, to provide the services authorized in the agreement and described in the voucher directly to an individual identified in writing. (Feb. 21, 1986, D.C. Law 6-85, § 107, 32 DCR 7396; May 23, 1986, D.C. Law 6-116, § 3(a), 33 DCR 2432; June 28, 1994, D.C. Law 10-134, § 6(a), 41 DCR 2597; Apr. 12, 1997, D.C. Law 11-259, § 101(e), 44 DCR 1423; May 8, 1998, D.C. Law 12-104, § 2(d), 45 DCR 1687; Sept. 16, 2000, D.C. Law 13-155, § 2(a), 47 DCR 5035.)

Effect of amendments. — D.C. Law 13-155 rewrote (32); and added (29A), (29B), (36A), (39A), (41A), (44A), (45A), and (50A).

Emergency legislation. — For temporary amendment of section, see § 2(a) of the Procurement practices Human Care Agreement Emergency Amendment Act of 2000 (D.C. Act 13-348, June 5, 2000, 47 DCR 5009).

Legislative history of Law 13-155. — Law 13-155, the "Procurement Practices Human Care Agreement Amendment Act of 2000," was introduced in Council and assigned Bill No.

13-353. The Bill was adopted on first and second readings on April 4, 2000, and May 3, 2000, respectively. Signed by the Mayor on May 19, 2000, it was assigned Act No. 13-353 and transmitted to both Houses of Congress for its review. D.C. Law 13-155 became effective on September 16, 2000.

Cited in United States ex rel. Modern Elec., Inc. v. Ideal Elec. Sec. Co., 81 F.3d 240 (D.C. Cir. 1996), aff'd, 145 F.3d 395 (D.C. Cir. 1998).

Subchapter II. Procurement Organization.

§ 1-1182.3. Duties of Director.

(a) The Director shall be the chief procurement official of the District.

(b) The Director shall have the following authority and responsibility:

(1) To serve as the central procurement and contracting officer for the District;

(2) To identify gaps, omissions, or inconsistencies in procurement laws, regulations, and policies, or in laws, regulations and policies affecting procurement-related activities, and to recommend changes to regulations, rules, and procedures for adoption pursuant to this chapter;

(3) To develop the MMIS to review all contracts for the acquisition of supplies, services, and construction for compliance with this chapter;

(4) To sell, trade, or otherwise dispose of surplus supplies and services belonging to the District government;

(5) To control the leasing of warehouse space and exercise automated control over all warehouses, storerooms, store supplies, inventories, and equipment belonging to the District government, consistent with the District Government Procurement Regulations;

(6) To establish and maintain programs for the development and use of purchasing specifications and for the inspection, testing, and acceptance of supplies, services, and construction;

(7) To develop guidelines for the recruitment, training, career development, and performance evaluation of procurement personnel;

(8) To staff the Office of Contracting and Procurement with procurement professionals dedicated solely to the formation and administration of contracts on behalf of the entities covered by this chapter; and

(9) To exercise contracting and procurement authority over certain agencies pursuant to § 1-1153.2.

(c) The Director shall prepare reports considered necessary for the proper conduct of the Director's duties, and shall deliver the reports to the Mayor and Council as required.

(d) Repealed. (Feb. 21, 1986, D.C. Law 6-85, § 203, 32 DCR 7396; Apr. 12, 1997, D.C. Law 11-259, § 101(h), 44 DCR 1423; Oct. 4, 2000, D.C. Law 13-169, § 3, 47 DCR 5846.)

Effect of amendments. — D.C. Law 13-169 added (b)(9).

Temporary legislation. — Section 3 of D.C. Law 13-(Act 13-468) added (b)(9).

Section 11(b) of D.C. Law 13-(Act 13-468) provides that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 3 of the Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Emergency Amendment Act of 2000 (D.C. Act 13-415, August 14, 2000, 47 DCR 7296).

Legislative history of Law 13-169. — Law 13-169, the "Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Amendment Act of 2000," was introduced in Council and assigned Bill No. 13-341. The Bill was adopted on first and second readings on April 4, 2000, and June 6, 2000, respectively.

Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-373 and transmitted to both Houses of Congress for its review. D.C. Law 13-169 became effective on October 4, 2000.

§ 1-1182.5. Establishment and effect of District Government Procurement Regulations.

Contract validity.

Under paragraph (d)(1) of this section, the party bringing an action involving a contract with the District must first defer to the expertise of the Director of the Department of Administrative Services, and then the Contract Appeals Board, for determination of validity of contract vis a vis contract procurement provisions. RDP Dev. Corp. v. District of Columbia, App. D.C., 645 A.2d 1078 (1994).

§ 1-1182.8. Creation and duties of Office of the Inspector General.

(a)(1)(A) There is created within the executive branch of the government of the District of Columbia the Office of the Inspector General. The Office shall be headed by an Inspector General appointed pursuant to subparagraph (B) of this subsection, who shall serve for a term of 6 years and shall be subject to removal only for cause by the Mayor (with the approval of the District of Columbia Financial Responsibility and Management Assistance Authority in a control year) or (in the case of a control year) by the Authority. The Inspector General may be reappointed for additional terms.

(B) During a control year, the Inspector General shall be appointed by the Mayor as follows:

(i) Prior to the appointment of the Inspector General, the Authority may submit recommendations for the appointment to the Mayor.

(ii) In consultation with the Authority and the Council, the Mayor shall nominate an individual for appointment and notify the Council of the nomination.

(iii) After the expiration of the 7-day period which begins on the date the Mayor notifies the Council of the nomination under sub-subparagraph (ii) of this subparagraph, the Mayor shall notify the Authority of the nomination.

(iv) The nomination shall be effective subject to approval by a majority vote of the Authority.

(C) During a year which is not a control year, the Inspector General shall be appointed by the Mayor with the advice and consent of the Council. Prior to appointment, the Authority may submit recommendations for the appointment.

(D) The Inspector General shall be appointed without regard to party affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial management analysis, public administration, or investigations.

(E) The Inspector General shall be paid at an annual rate determined by the Mayor, except that such rate may not exceed the rate of basic pay payable for level IV of the Executive Schedule.

(2) The annual budget for the Office shall be adopted as follows:

(A) The Inspector General shall prepare and submit to the Mayor, for inclusion in the annual budget of the District of Columbia under part D of title IV of the District of Columbia Self-Government and Governmental Reorgani-

zation Act for the year, annual estimates of the expenditures and appropriations necessary for the operation of the Office for the year. All such estimates shall be forwarded by the Mayor to the Council of the District of Columbia for its action pursuant to §§ 47-304 and 47-313(c), without revision but subject to recommendations. Notwithstanding any other provision of such Act, the Council may comment or make recommendations concerning such estimates, but shall have no authority to revise such estimates.

(B) Amounts appropriated for the Inspector General shall be available solely for the operation of the Office, and shall be paid to the Inspector General by the Mayor (acting through the Chief Financial Officer of the District of Columbia) in such installments and at such times as the Inspector General requires.

(3) The Inspector General shall:

(A) Conduct independent fiscal and management audits of District government operations;

(B) Receive notification in advance of all external audits conducted by any District government entity, with the exception of the District of Columbia Auditor, and immediately provided with a copy of any federal report issued;

(C) Serve as principal liaison between the District government and the U.S. General Accounting Office;

(D) Independently conduct audits, inspections, assignments, and investigations the Mayor shall request, and any other audits, inspections, and investigations that are necessary or desirable in the Inspector General's judgment;

(E) Annually conduct an operational audit of all procurement activities carried out pursuant to this chapter in accordance with regulations and guidelines prescribed by the Mayor and issued in accordance with § 1-1182.5;

(F)(i) Forward to the appropriate authority any report, as a result of any audit, inspection or investigation conducted by the office, identifying misconduct or unethical behavior; and

(ii) Forward to the Mayor, within a reasonable time of reporting evidence of criminal wrongdoing to the Office of the U.S. Attorney or other law enforcement office, any report regarding the evidence, if appropriate;

(G) Pursuant to a contract described in paragraph (4) of this subsection, provide certifications under § 47-3401.1(b)(5);

(H) Pursuant to a contract described in paragraph (4) of this subsection, audit the complete financial statement and report on the activities of the District government for such fiscal year, for the use of the Mayor under § 47-310(a)(4); and

(I) Not later than 30 days before the beginning of each fiscal year (beginning with fiscal year 1996) and in consultation with the Mayor, the Council, and the Authority, establish an annual plan for audits to be conducted under this paragraph during the fiscal year under which the Inspector General shall report only those variances which are in an amount equal to or greater than $1,000,000 or 1% of the applicable annual budget for the program in which the variance is found (whichever is lesser).

(4) The Inspector General shall enter into a contract with an auditor who is not an officer or employee of the Office to:

(A) Audit the financial statement and report described in paragraph (3)(H) of this subsection for a fiscal year, except that the financial statement

and report may not be audited by the same auditor (or an auditor employed by or affiliated with the same auditor) for more than 5 consecutive fiscal years; and

(B) Audit the certification described in paragraph (3)(G) of this subsection.

(a-1) It is the purpose of the Office of the Inspector General to independently:

(1) Conduct and supervise audits, inspections and investigations relating to the programs and operations of District government departments and agencies, including independent agencies;

(2) Provide leadership and coordinate and recommend policies for activities designed to promote economy, efficiency, and effectiveness and to prevent and detect corruption, mismanagement, waste, fraud, and abuse in District government programs and operations; and

(3) Provide a means for keeping the Mayor, Council, and District government department and agency heads fully and currently informed about problems and deficiencies relating to the administration of these programs and operations and the necessity for and progress of corrective actions.

(b)(1) In determining the procedures to be followed and the extent of the examinations of invoices, documents, and records, the Inspector General shall give due regard to the provisions of this chapter and shall comply with standards established by the U.S. Comptroller General for audits of federal establishments, organizations, programs, activities and functions, and shall comply with standards established by the President's Council on Integrity and Ethics for investigations and inspections, and generally accepted procurement principles, practices, and procedures, including federal and District case law, decisions of the U.S. Comptroller General, and decisions of federal contract appeals boards.

(2) The Inspector General shall give due regard to the activities of the District of Columbia Auditor with a view toward avoiding duplication and insuring effective coordination and cooperation. The Inspector General shall take appropriate steps to assure that work performed by auditors, inspectors and investigators within or for the Office of the Inspector General shall comply with the standards and procedures determined through the application of this subsection.

(b-1) The Inspector General shall not disclose the identity of any person who brings a complaint or provides information to the Inspector General, without the person's consent, unless the Inspector General determines that disclosure is unavoidable or necessary to further the ends of an investigation.

(c)(1) The Inspector General shall have access to the books, accounts, records, reports, findings, and all other papers, items, or property belonging to or in use by all departments, agencies, instrumentalities, and employees of the District government, including agencies which are subordinate to the Mayor, independent agencies, boards, and commissions, but excluding the Council of the District of Columbia, and the District of Columbia Courts, necessary to facilitate an audit, inspection or investigation.

(2)(A) The Inspector General may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence relating to any matter under investigation by the Inspector General.

(B) If a person refuses to obey a subpoena issued under subparagraph (A) of this paragraph, the Inspector General may apply to the Superior Court of the District of Columbia for an order requiring that person to appear before the Inspector General to give testimony, produce evidence, or both, relating to the matter under investigation. Any failure to obey the order of the court may be punished by the Superior Court as civil contempt.

(3) The Inspector General is authorized to administer to or take from any person an oath, affirmation, or affidavit, whenever necessary to perform the Inspector General's duties. The Inspector General is authorized to delegate the power to administer to or take from any person an oath, affirmation, or affidavit, when he or she deems it appropriate.

(d)(1) The Inspector General shall compile for submission to the Authority (or, with respect to a fiscal year which is not a control year, the Mayor and the Council), at least once every fiscal year, a report setting forth the scope of the Inspector General's operational audit, and a summary of all findings and determinations made as a result of the findings.

(2) Included in the report shall be any comments and information necessary to keep the Authority, the Mayor and the Council informed of the adequacy and effectiveness of procurement operations, the integrity of the procurement process, and adherence to the provisions of this chapter.

(3) The report shall contain any recommendations deemed advisable by the Inspector General for improvements to procurement operations and compliance with the provisions of this chapter.

(4) The Inspector General shall make each report submitted under this subsection available to the public, except to the extent that the report contains information determined by the Inspector General to be privileged.

(e) The Inspector General may undertake reviews and investigations, and make determinations or render opinions as requested by the Authority. Any reports generated as a result of the requests shall be automatically transmitted to the Council within 10 days of publication.

(e-1) The Inspector General may conduct an annual inspection and independent fiscal and management audit of the District of Columbia Housing Authority, beginning the first fiscal year of the Authority. In addition, the Inspector General may undertake reviews and investigations of the District of Columbia Housing Authority, and make determinations or render opinions, as requested by the Council.

(f) In carrying out the duties and responsibilities established under this section, the Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal or District criminal law.

(f-1) An employee of the Office of the Inspector General who, as part of his or her official duties, conducts investigations of alleged felony violations, shall possess the following authority while engaged in the performance of official duties:

(1) To carry a firearm within the District of Columbia or a District government facility located outside of the District, provided that the employee has completed a course of training in the safe handling of firearms and the use of deadly force, and is qualified to use a firearm according to the standards applicable to officers of the Metropolitan Police Department. The employee

may not carry a firearm in the course of official duties unless designated by the Inspector General in writing as having the authority to carry a firearm. The Inspector General shall issue written guidelines pertaining to the authority to carry firearms, the appropriate use of firearms, firearms issuance and security, and the use of force;

(2) To make an arrest without a warrant if the employee has probable cause to believe that a felony violation of a federal or District of Columbia statute is being committed in his or her presence, provided that the arrest is made while the employee is engaged in the performance of his or her official duties within the District of Columbia or a District government facility located outside of the District; and

(3) To serve as an affiant for, to apply to an appropriate judicial officer for, and execute a warrant for the search of premises or the seizure of evidence if the warrant is issued under authority of the District of Columbia or of the United States upon probable cause.

(f-2) The Inspector General shall prepare an annual report not later than 30 days after the beginning of the fiscal year, beginning with FY 2001, summarizing the activities of the Office of Inspector General during the preceding fiscal year. Upon its completion, the Inspector General shall transmit the report to the Mayor, the Council, and the appropriate committees or subcommittees of Congress. The Inspector General shall make copies of the report available to the public upon request. The annual report shall include:

(1) A summary of significant audits, investigations and inspections concluded in the prior fiscal year, including cost;

(2) An assessment of the District's risks, problems and abuses relating to the administration of programs and operations;

(3) A description of the strategies for resolving these risks, problems and abuses;

(4) A description of the Office's resources required and available to implement its strategies;

(5) A description of performance measures to evaluate progress;

(6) A description of the recommendations for corrective action made by the Office during the reporting period with respect to significant problems, abuses or deficiencies identified pursuant to paragraph (1) of this subsection;

(7) An identification of each significant recommendation described in previous annual reports on which corrective action has not been completed; and

(8) A quantitative summary of matters referred to prosecutive authorities and the prosecutions and convictions which have resulted.

(f-3) Failure on the part of any District government employee or contractor to cooperate with the Inspector General by not providing requested documents or testimony needed for the performance of his or her duties in conducting an audit, inspection or investigation shall be cause for the Inspector General to recommend appropriate administrative actions to the personnel or procurement authority, and shall be grounds for adverse actions as administered by the personnel or procurement authority, including the loss of employment or the termination of an existing contractual relationship.

(f-4) Anyone who has the authority to take or direct others to take, recommend, or approve any personnel action, shall not, with respect to this

authority, take or threaten to take any action against another as a reprisal for making a complaint or disclosing information to the Inspector General, unless the complaint was made or the information disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

(f-5) A peer review of the Office of the Inspector General's audit, inspection and investigation sections' standards, policies, procedures, operations, and quality controls shall be performed no less than once every 3 years by an entity not affiliated with the Office of the Inspector General. Any final report shall be distributed to the Mayor, the Council and the Financial Responsibility and Management Assistance Authority.

(g) In this section:

(1) The term "Authority" means the District of Columbia Financial Responsibility and Management Assistance Authority established under § 47-391.1(a);

(2) The term "control year" has the meaning given such term under § 47-393(4); and

(3) The term "District government" has the meaning given such term under § 47-393(5). (Feb. 21, 1986, D.C. Law 6-85, § 208, 32 DCR 7396; Mar. 16, 1989, D.C. Law 7-201, § 5, 36 DCR 248; Apr. 17, 1995, 109 Stat. 148-151, Pub. L. 104-8, §§ 303(a)-(d); Apr. 9, 1997, D.C. Law 11-255, § 5, 44 DCR 1271; Aug. 5, 1997, 111 Stat. 777, Pub. L. 105-33, § 11601(b)(3); Oct. 21, 1998, 112 Stat. 2681-148 , Pub. L. 105-277, § 160; Mar. 26, 1999, D.C. Law 12-190, § 2, 45 DCR 7814; _____, 2000, D.C. Law 13- (Act 13-181), § 2, 46 DCR 10403; _____, 2000, D.C. Law 13- (Act 13-254), § 29(a), 47 DCR 1325.)

Effect of amendments. — D.C. Law 13- (Act 13-181) added (a-1); rewrote (a)(3)(B), (a)(3)(D) and (a)(3)(F); rewrote (b); added (b-1); rewrote (c)(1); inserted (c)(3); and inserted (f-2) through (f-5).

D.C. Law 13- (Act 13-254) inserted (e-1).

Emergency legislation. — For temporary amendment of section, see § 28(a) of the District of Columbia Housing Authority Emergency Act of 1999 (D.C. Act 13-259, February 9, 2000, 47 DCR 1129).

For temporary amendment of section, see § 28(a) of the District of Columbia Housing Authority Congressional Review Emergency Act of 2000 (D.C. Act 13-346, June 5, 2000, 47 DCR 4980).

Duty of Inspector General.

Subsection (b) of this section requires the Office of the Inspector General only to "give due regard" to generally accepted accounting and procurement principles; it does not mandate compliance with such principles. Trifax Corp. v. District of Columbia, 53 F. Supp. 2d 20 (D.D.C. 1999).

§ 1-1182.9. Creation of Chief Information Officer position; duties.

Emergency legislation. — For temporary repeal of section, see § 302 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

Subchapter III. Source Selection and Contract Formation.

§ 1-1183.2. Methods of source selection and record-keeping.

(a) Except as otherwise authorized by law, all District government contracts shall be awarded by:

(1) Competitive sealed bidding pursuant to § 1-1183.3;

(2) Competitive sealed proposals pursuant to § 1-1183.4;

(3) Sole source contracts pursuant to § 1-1183.5;

(4) Human care agreements pursuant to § 1-1183.6a;

(5) Small purchase procedures pursuant to § 1-1183.21.

(b) In selecting 1 of the methods authorized by this section for the awarding of contracts, it is the policy of the District government that competitive sealed bidding shall be the preferred method for awarding contracts.

(c) The Director shall maintain a record listing all bids and proposals made under §§ 1-1183.3, 1-1183.4, and 1-1183.5. Each bid or proposal file shall be kept for a minimum of 5 years, and shall contain the following information:

(1) The invitation number;

(2) The bid or proposal opening and closing dates;

(3) A general description of the procurement item;

(4) The names of bidders or proposers contacted and the nature of the contact, as well as the names of all bidders or proposers responding;

(5) The prices bid or proposed; and

(6) Any other information required for bid or proposal evaluation also must be entered into this abstract or record and be available for public inspection upon request.

(d) The CPO shall establish a pre-qualification process to certify the financial and professional responsibility of prospective bidders for District government contracts. The CPO may, under circumstances prescribed by regulation, limit participation in certain procurements to bidders who have been found responsible through the pre-qualification process. The pre-qualification process shall address, but shall not be limited to, the following characteristics of a prospective bidder:

(1) The type of business or organization and its history;

(2) The resumes and professional qualifications of the business or organization's staff, including relevant professional licenses, affiliations, and specialties;

(3) Information attesting to financial capability, including financial statements;

(4) A summary of similar contracts awarded to the bidder, and the bidder's performance of those contracts;

(5) A statement attesting to compliance with wage, hour, workplace safety, and other standards of labor law;

(6) A statement attesting to compliance with federal and District equal employment opportunity law; and

(7) Information about pending lawsuits or investigations, and judgments, indictments, or convictions against the bidder or its proprietors, partners, directors, officers, or managers. (Feb. 21, 1986, D.C. Law 6-85, § 302, 32 DCR 7396; Mar. 26, 1999, D.C. Law 12-175, § 402(b), 45 DCR 7193; Apr. 12, 2000, D.C. Law 13-91, § 119(b), 47 DCR 520; Sept. 16, 2000, D.C. Law 13-155, § 2(b), 47 DCR 5035.)

Effect of amendments. — D.C. Law 13-91 substituted "§ 1-1183.21" for "§ 1-1183.6" in (a)(4).

D.C. Law 13-155 inserted present (a)(4) and redesignated former (a)(4) to be present (a)(5).

Emergency legislation. — For temporary

amendment of section, see § 202(b) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

For temporary amendment of section, see § 2(b) of the Procurement Practices Human Care Agreement Emergency Amendment Act of 2000 (D.C. Act 13-348, June 5, 2000, 47 DCR 5009).

Legislative history of Law 13-91. — Law 13-91, the "Technical Amendments Act of 1999," was introduced in Council and assigned Bill No. 13-435. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

Legislative history of Law 13-155. — See note to § 1-1181.7.

§ 1-1183.3. Competitive sealed bidding.

(a) Contracts exceeding the amount provided by § 1-1183.21 shall be awarded by competitive sealed bidding unless the Director determines in writing that:

(1) Specifications cannot be prepared that permit an award on the basis of either the lowest bid price or lowest evaluated bid price;

(2) There is only 1 available source;

(3) There is an unanticipated emergency which leaves insufficient time to use this method; or

(4) There is some other reason in the best interest of the District government which is so compelling as to use 1 of the other authorized methods.

(b) The invitation for bids shall state whether an award shall be made on the basis of the lowest bid price or the lowest evaluated bid price. If the latter basis is used, the objective measurable criteria to be utilized shall be set forth in the invitation for bids.

(c) The CPO shall provide public notice of the invitation for bids of not less than 30 days for contracts, unless the CPO states in a written determination, under circumstances prescribed by regulation, that it is appropriate to shorten the notice period to a period of not less than 7 days. The CPO shall review the complexity of the procurement, the type of goods or services being purchased, the impact of a shortened notice period on competition, and other relevant factors in determining whether it is appropriate to shorten the bid notice period to less than 30 days. One year after April 20, 1999, the CPO shall report to the Mayor and Council on the impact of the shortened bid notice period, including the frequency of its use, the types of goods and services for which a shortened bid notice period was used, and the impact of the shortened bid notice period on competition for procurements and on opportunities to bid for local, small and disadvantaged businesses.

(c-1) Public notice of an invitation for bids shall include publication in a newspaper of general circulation, and in trade publications considered to be appropriate by the CPO to give adequate public notice. The CPO shall also maintain an Internet site that provides vendors with notice of opportunities to bid and notice of contract awards, and other relevant information about District procurements.

(d) Bids shall be opened publicly at the time and place designated in the invitation for bids. Each bid, with the name of the bidder, shall be recorded and be open to public inspection.

(e) The contract shall be awarded with reasonable promptness by written notice to the responsive and responsible bidder whose bid will be most advantageous to the District, considering price and other factors.

(f) Correction or withdrawal of bids may be allowed only to the extent permitted by rules issued by the Mayor. (Feb. 21, 1986, D.C. Law 6-85, § 303, 32 DCR 7396; Apr. 20, 1999, D.C. Law 12-243, § 2, 46 DCR 962; Apr. 12, 2000, D.C. Law 13-91, § 119(c), 47 DCR 520.)

Effect of amendments. — D.C. Law 13-91 substituted "§ 1-1183.21" for "§ 1-1183.6" in the introductory language of (a).

Legislative history of Law 13-91. — See note to § 1-1183.2.

Applicability.

Lease/purchase agreement between developer and District was subject to emergency law mandating compliance with competitive bidding requirements of the District's procurement laws, since emergency law was in force both when Mayor approved agreement and when he signed the actual contract. RDP Dev. Corp. v. District of Columbia, App. D.C., 645 A.2d 1078 (1994).

§ 1-1183.4. Competitive sealed proposals.

(a) When it is determined in writing, pursuant to rules issued by the Mayor, that the use of competitive sealed bidding is not practical, but that there is more than 1 available source for the subject of the contract, the contract may be awarded by competitive sealed proposal.

(b) Proposals shall be solicited from the maximum number of qualified sources and in a manner consistent with the nature of, and the need for, the supplies, services, or construction being acquired, with adequate public notice of the intended procurement pursuant to § 1-1183.3(c).

(c) The request for proposals shall indicate the relative importance of each evaluation factor, including price.

(d) Every request for proposal shall include a statement of work or other description of the District's specific needs which shall be used as a basis for the evaluation of proposals.

(e) Any written or oral negotiations shall be conducted with all responsible offerors in a competitive range. These negotiations may not disclose any information derived from proposals submitted by competing offerors. If the request for proposals so notifies all offerors, negotiations need not be conducted:

(1) With respect to prices fixed by law or regulation, except that consideration shall be given to competitive terms and conditions;

(2) If time of delivery or performance will not permit negotiations; or

(3) If it can be demonstrated clearly from the existence of adequate competition or accurate prior cost experience with the particular supply, service, or construction item that acceptance of an initial offer without negotiation would result in a fair and reasonable price.

(f) After all approvals required by law or rules and regulations have been obtained, the award of the contract shall be made to the responsible offeror whose proposal is determined to be the most advantageous to the District government, considering price and the evaluation factors set forth in the request for proposals.

(g) The Mayor shall issue rules on the procurement of architectural, engineering, and real property appraisal services in accordance with this section, and for human care services in accordance with § 1-1183.6a. The rules and procedures for architectural and engineering services shall be consistent with the requirements set forth in title IX of the Federal Property and

Administrative Services Act of 1949. (86 Stat. 1278; 40 U.S.C. §§ 541-544). (Feb. 21, 1986, D.C. Law 6-85, § 304, 32 DCR 7396; Apr. 12, 1997, D.C. Law 11-259, § 101(l), 44 DCR 1423; Apr. 12, 2000, D.C. Law 13-91, § 119(d), 47 DCR 520; Sept. 16, 2000, D.C. Law 13-155, § 2(c), 47 DCR 5035.)

Effect of amendments. — D.C. Law 13-91 validated a previously made technical correction in (b).

D.C. Law 13-155 rewrote (g).

Emergency legislation. — For temporary amendment of section, see § 2(c) of the Procurement Practices Human Care Agreement Emergency Amendment Act of 2000 (D.C. Act 13-348, June 5, 2000, 47 DCR 5009).

Legislative history of Law 13-91. — See note to § 1-1183.2.

Legislative history of Law 13-155. — See note to § 1-1181.7.

Applicability.

Lease/purchase agreement between developer and District was subject to emergency law mandating compliance with competitive bidding requirements of the District's procurement laws, since emergency law was in force both when Mayor approved agreement and when he signed the actual contract. RDP Dev. Corp. v. District of Columbia, App. D.C., 645 A.2d 1078 (1994).

§ 1-1183.6a. Award of human care procurements.

(a) Notwithstanding any other provision of this subchapter, the CPO may award a human care agreement if:

(1) The procurement is for education or special education, health, human care, or social services to be provided directly to the disabled, disadvantaged, displaced, elderly, indigent, mentally ill, physically ill, unemployed, or minors in the custody of the District of Columbia;

(2) The services being procured are negotiated on a fee for service or unit-rate basis using benchmarks and quantifiable measurements that shall be uniformly applied to providers of the same service, or purchased at rates adopted by regulation; and

(3) The procurement is for one or more services that an agency typically purchases as needs arise, but for which the quantity, rate of utilization, delivery areas, or specific beneficiaries of the services cannot be accurately estimated at the outset of the procurement process.

(b) The CPO shall publish, when a human care agreement is to be awarded, and at least annually after the initial awarding of the agreement, in accordance with § 1-1183.3(c) and (c-1), a request for qualifications that:

(1) States the general requirements for the human care or service; and

(2) Following the procedures set forth in § 1-1183.2(d), requests interested service providers to respond in writing with a statement of their qualifications to perform the required services on a form prescribed by the CPO.

(c) The CPO shall retain statements of qualifications submitted by providers for a period of 3 years.

(d) The CPO may conduct negotiations with any responsible service provider who has submitted a statement of qualifications, without any additional public notice or solicitation required, to satisfy all or part of the District's anticipated requirements for a particular human care service.

(e) The CPO shall make a written determination that the service provider is a responsible provider, based on the criteria set forth in § 1-1183.2(d), prior to conducting negotiations with a service provider for a human care agreement.

(f) The CPO may award a human care agreement if he or she finds that the agreement is in the best interest of the District, based on an analysis of the

District's statement of requirements, the service provider's qualifications, and a judgment that the fee or unit-cost for services is reasonable.

(g) The CPO may authorize the use of vouchers to authorize the delivery of service provided by providers who enter into human care agreements.

(h) The CPO shall provide public notice of the award of a human care agreement pursuant to this section on the Internet site maintained by the OCP.

(i) The human care agreement shall identify the services to be rendered during the term of the agreement and shall set forth the terms and conditions of any purchases issued pursuant to the agreement. The contracting officer shall include in each human care agreement the following information:

(1) A statement that the human care agreement is not a commitment to purchase any quantity of a particular good or service covered under the agreement; and

(2) A statement that the District is obligated only to the extent that authorized purchases are made pursuant to the human care agreement.

(j)(1) One year after the effective date of the Procurement Human Care Agreement Emergency Amendment Act of 2000, the CPO shall report to the Mayor and Council on the implementation of human care agreements, including:

(A) The number of agreements that the CPO has authorized;

(B) The number of suppliers included in the agreements;

(C) The types of human care services subject to human care agreements; and

(D) The extent to which nonprofit service providers are included in the human care agreements and are able to compete for procurements executed pursuant to human care agreements.

(2) The CPO may satisfy the reporting requirements by including this information in an annual performance report submitted to the Mayor and the Council pursuant to Subchapter XV-A of Chapter 6 of Title 1. (Feb. 21, 1986, D.C. Law 6-85, § 306a as added Sept. 16, 2000, D.C. Law 13-155, § 2(d), 47 DCR 5035.)

Emergency legislation. — For temporary addition of section, see § 2(d) of the Procurement Practices Human Care Agreement Emergency Amendment Act of 2000 (D.C. Act 13-348, June 5, 2000, 47 DCR 5009).

Legislative history of Law 13-155. — Law 13-155, the "Procurement Practices Human Care Agreement Amendment Act of 2000," was introduced in Council and assigned Bill No. 13-353. The Bill was adopted on first and second readings on April 4, 2000, and May 3, 2000, respectively. Signed by the Mayor on May 19, 2000, it was assigned Act No. 13-353 and transmitted to both Houses of Congress for its review. D.C. Law 13-155 became effective on September 16, 2000.

§ 1-1183.20. Exemptions.

(a) Nothing in this chapter shall affect the operations, jurisdiction, functions, or authority of the Redevelopment Land Agency relating to real property or interests in real property.

(b) Nothing in this chapter shall affect the operations, jurisdiction, functions, or authority of the Administrator of the Homestead Program Administration under Chapter 27 of Title 45, as they relate to the disposal or transfer of real property under that act.

(c) Nothing in this chapter shall affect the authority of the Mayor to sell real property in the District of Columbia for nonpayment of taxes or assessments of any kind pursuant to § 47-847.

(d) Nothing in this chapter shall affect the authority of the Mayor and the Council pursuant to subchapter I of Chapter 10 of Title 7.

(e) Nothing in this chapter shall affect the authority of the Convention Center Board of Directors pursuant to Chapter 6 of Title 9.

(f) Nothing in this chapter shall affect the authority of the Sports Commission pursuant to Chapter 40 of Title 2.

(g) Nothing in this chapter shall affect the authority, jurisdiction, functions, or operations of the District of Columbia Housing Finance Agency.

(h) Nothing in this chapter shall affect the authority of the District of Columbia Retirement Board pursuant to Chapter 7 of Title 1.

(i) Nothing in this chapter shall affect the Metropolitan Police Department's authority to make procurements not in excess of $500,000 as provided in the District of Columbia Appropriations Act, Pub. Law 104-134.

(j) Nothing in this chapter shall affect the District of Columbia Water and Sewer Authority's powers to establish and operate its procurement system and to execute contracts pursuant to subchapter 1 of Chapter 16B of Title 43.

(k) Nothing in this chapter shall affect the operations of the District of Columbia Health and Hospitals Public Benefit Corporation pursuant to subchapter 1 of Chapter 2A of Title 32.

(l) Nothing in this chapter shall affect the authority of the District of Columbia Public Service Commission pursuant to Chapter 4 of Title 43.

(m) Nothing in this chapter shall affect the authority of the District of Columbia Housing Authority, except that subchapter IX of this chapter shall apply to contract protests, appeals, and claims arising from procurements of the Housing Authority. (Feb. 21, 1986, D.C. Law 6-85, § 320, 32 DCR 7396, as added Apr. 12, 1997, D.C. Law 11-259, § 101(q), 44 DCR 1423; Feb. 27, 1998, D.C. Law 12-50, § 2(a), 44 DCR 6222; Mar. 24, 1998, D.C. Law 12-82, § 2(c), 45 DCR 772; Apr. 20, 1999, D.C. Law 12-263, § 13(b), 46 DCR 2111; Apr. 20, 1999, D.C. Law 12-264, § 9, 46 DCR 2118; _____, 2000, D.C. Law 13-(Act 13-254), § 29(b), 47 DCR 1325.)

Effect of amendments. — D.C. Law 13-(Act 13-254) added (m).

Temporary legislation. — Section 3 of D.C. Law 13-17 added (n).

Section 7(b) of D.C. Law 13-17 provides that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 3 of the Chief Technology Officer Year 2000 Remediation Procurement Authority Emergency Amendment Act of 1999 (D.C. Act 13-38, March 22, 1999, 46 DCR 3015), and § 3 of the Chief Technology Officer Year 2000 Remediation Procurement Authority Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-106, July 9, 1999, 46 DCR 6028).

For temporary amendment of section, see § 2 of the Public Service Commission Independent Procurement Authority Emergency Amendment Act of 1999 (D.C. Act 13-52, April 6, 1999, 46 DCR 3638).

For temporary amendment of section, see § 2 of the Contract No. GF98102 (University Bookstore Operation and Management) Emergency Exemption Amendment Act of 1999 (D.C. Act 13-103, July 9, 1999, 46 DCR 6020).

For temporary amendment of section, see § 4 of the Southeast Tennis and Learning Center Construction Emergency Act of 1999 (D.C. Act 13-183, November 2, 1999, 46 DCR 9742).

For temporary provisions authorizing the Mayor to enter into a sole source contract to ensure the expeditions construction of a tennis and learning center at Oxon Run Park and to establish the Southeast Tennis and Learning Center Advisory Board, see §§ 2 and 3 of the Southeast Tennis and Learning Center Construction Emergency Act of 1999 (D.C. Act 13-183, November 2, 1999, 46 DCR 9742).

For temporary amendment of section, see

§ 28(b) of the District of Columbia Housing Authority Emergency Act of 1999 (D.C. Act 13-259, February 9, 2000, 47 DCR 1129).

For temporary amendment of section, see § 28(b) of the District of Columbia Housing Authority Congressional Review Emergency Act of 2000 (D.C. Act 13-346, June 5, 2000, 47 DCR 4980).

Legislative history of Law 13-17. — Law 13-17, the "Chief Technology Officer Year 2000 Remediation Procurement Authority Temporary Amendment Act of 1999," was introduced in Council and assigned Bill No. 13-130. The Bill was adopted on first and second readings on March 2, 1999, and April 13, 1999, respectively. Signed by the Mayor on May 3, 1999, it was assigned Act No. 13-66 and transmitted to both Houses of Congress for its review. D.C. Law 13-17 became effective on July 17, 1999.

§ 1-1183.22. Fire and Emergency Medical Services Department small purchase authority.

Emergency legislation. — For temporary addition of section, see § 1202 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

Subchapter V. Bonds and Construction Procurement.

§ 1-1185.1. Bonds.

(a) The District Government Procurement Regulations shall set forth the conditions and procedures for bid bonds, performance bonds, and payment bonds for all contracts estimated to exceed $100,000, which shall include the mandatory provisions for construction contracts set forth in this subchapter.

(b) The procurement regulations may waive bid, performance, and payment bonds for contracts estimated not to exceed $100,000 unless the bonds are required by federal law, rule or regulation, or as a condition of federal assistance.

(c) Nothing in this subchapter shall be construed to limit the authority of the Director to require a performance bond or other security in addition to those, or in circumstances other than those, specified in this section.

(d) Notwithstanding other provisions of this chapter, the Director may reduce the level or change the types of bonding normally required, or accept alternative forms of security to the extent reasonably necessary to encourage procurement from businesses certified by the District of Columbia Local Business Opportunity Commission, women-owned businesses, and small District-based businesses. (Feb. 21, 1986, D.C. Law 6-85, § 501, 32 DCR 7396; Apr. 12, 1997, D.C. Law 11-259, § 101(r), 44 DCR 1423; Apr. 12, 2000, D.C. Law 13-91, § 119(e), 47 DCR 520.)

Effect of amendments. — D.C. Law 13-91 substituted "District of Columbia Local Business Opportunity Commission" for "Minority Business Opportunity Commission" in (d).

Legislative history of Law 13-91. — Law 13-91, the "Technical Amendments Act of 1999," was introduced in Council and assigned Bill No. 13-435. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

Subchapter VIII. Administrative and Civil Remedies.

Subpart A. General Provisions.

§ 1-1188.1. Sovereign immunity defense not available.

Garnishment.

Although the procurement provisions do not speak to whether immunity exists when a claimant seeks to execute on a judgment, it is a well—established principle that the District is exempt from garnishment unless a statute expressly allows it. Grunley Constr. Co. v. District of Columbia, App. D.C., 704 A.2d 288 (1997).

§ 1-1188.3. Claims by District government against contractor.

Contract disputes.

The procurement practices provisions obliterated the distinction between disputes "arising under" and "relating to" a contract and made both the subject of an informal hearing and decision by the director of the Department of Administrative Services, whose decision may be appealed by the contractor to the Contract Appeals Board. Fry & Welch Assocs., P.C. v. District of Columbia Contract Appeals Bd., App. D.C., 664 A.2d 1230 (1995).

§ 1-1188.4. Authority to debar or suspend.

(a)(1) After reasonable notice to a person or a business, and reasonable opportunity to be heard.

(A) The CPO shall debar a person or business from consideration for award of contracts or subcontracts for any conviction under subsection (b)(1) through (3) of this section, or for a judicial determination of a violation under subsection (b)(4) of this section, unless the CPO makes a finding in writing that it would be contrary to the best interests of the District of Columbia to do so;

(B) The CPO may debar a person or business from consideration for award of contracts or subcontracts if one or more of the causes listed in subsection (b) of this section exist.

(2) The debarment shall not be for a period of more than 3 years.

(3)(A) The CPO shall suspend a person or business from consideration for award of contracts or subcontracts for any conviction listed in subsection (b)(1) through (3) of this section, or for a judicial determination of a violation under subsection (b)(4) of this section, unless the CPO makes a finding in writing that it would be contrary to the best interests of the District of Columbia to do so.

(B) The CPO may suspend a person or business from consideration for award of contracts or subcontracts if the person or business is charged with the commission of any offense described in subsection (b) of this section and if the CPO makes a finding in writing that such suspension would be in the best interests of the District of Columbia.

(4) The suspension shall be exercised in accordance with rules issued by the Mayor.

(b) Causes for debarment of suspension include, but are not limited to, the following:

(1) Conviction for commission of a criminal offense incident to obtaining or attempting to obtain a public or private contract, or subcontract, or in the performance of the conract or subcontract;

(2) Conviction under this chapter or under any other District, federal, or state statute, for fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity which currently affects the contractor's responsibility as a District government contractor.

(3) Conviction under District, federal, or state antitrust statutes arising out of the submission of bids or proposals;

(4) A violation under § 1-1188.14(a), or a false assertion of local, small, or disadvantaged business status, or eligibility, under the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Act of 1992, effective March 17, 1993 (D.C. Law 9-217; D.C. Code § 1-1152 et seq.);

(A) Wilful failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract;

(B) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms or conditions of 1 or more contracts; failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be bases for debarment; or

(C) A false assertion of minority status as defined in subchapter II of Chapter 11 of this title; or

(4A) Violation of contract provisions, as set forth below, of a character which is regarded by the CPO to be sufficiently serious to justify debarment action:

(A) Wilful failure, without good cause, to perform in accordance with the specifications or within the time limit provided in the contract; or

(B) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms or conditions of one or more contracts; failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be bases for debarment; or

(5) Any other cause the CPO determines to be sufficiently serious and compelling to affect responsibility as a District government contractor, including debarment by another governmental entity for any cause listed in rules and regulations.

(b-1)(1) After reasonable notice to a person or business and reasonable opportunity to be heard, the CPO shall debar such person or business from consideration for award of any contract or subcontract if the CPO receives written notification from the Chairman of the Council or the chairperson of a Council committee that the person or business has willfully failed to cooperate in a Council or Council committee investigation conducted pursuant to § 1-234.

(2) The debarment shall be for a period of 2 years, unless the CPO receives written notification during the 2-year period from the Chairman of the Council or the Chairperson of a Council Committee that the debarred business has cooperated in the investigation referred to in paragraph (1) of this subsection.

(3) For purposes of this subsection, the term "willfully failed to cooperate" means:

(A) Intentional failure to attend and give testimony at a public hearing convened in accordance with the Rules of Organization and Procedure for the Council; and

(B) Intentional failure to provide documents, books, papers, or other information upon request of the Council or a Council Committee.

(c) The CPO shall issue a written decision to debar or suspend. The decision shall:

(1) State the reasons for the action taken; and

(2) Inform the debarred or suspended business involved of its rights to judicial or administrative review as provided in this chapter.

(d) A copy of the decision pursuant to subsection (c) of this section shall be final and conclusive unless fraudulent, or unless the debarred or suspended business appeals to the Contract Appeals Board within 60 days of receipt of the CPO's decision by the business.

(e) The filing of an action pursuant to subsection (d) of this section shall not stay the CPO's decision.

(f) Unless otherwise indicated in the debarment or suspension decision, the debarment or suspension of any person or business shall constitute a debarment or suspension of any affiliate of that person or business. For purposes of this section, the term "business" means any company, corporation, partnership, sole proprietorship, association, or other profit or non-profit legal entity; and the term "affiliate" means any business in which a suspended or debarred person is an officer or has a substantial financial interest (as defined by regulations), and any business that has a substantial direct or indirect ownership interest (as defined by regulations) in the suspended or debarred business, or in which the suspended or debarred business has a substantial direct or indirect ownership interest. The debarment or suspension shall be effective for all District government agencies unless otherwise stated in the decision.

(g) If a person or business is charged with or convicted of committing any offense listed in subsection (b)(1) through (4) of this section, the Corporation Counsel or the United States Attorney, whoever is responsible for prosecuting the charge, shall immediately notify the CPO of such charge or conviction and shall provide such information to the CPO as may otherwise be permitted by law in order to enable the CPO to take any action authorized by this section. The CPO, in turn, shall immediately notify both the Corporation Counsel and the United States Attorney of any action taken or finding made under this section. (Feb. 21, 1986, D.C. Law 6-85, § 804, 32 DCR 7396; Mar. 8, 1991, D.C. Law 8-258, § 2(c), 38 DCR 974; Apr. 12, 1997, D.C. Law 11-259, § 101(x), 44 DCR 1423; Mar. 24, 1998, D.C. Law 12-81, § 3, 45 DCR 745; May 8, 1998, D.C. Law 12-104, § 2(e), 45 DCR 1687; Apr. 20, 1999, D.C. Law 12-264, § 57, 46 DCR 2118; Apr. 12, 2000, D.C. Law 13-91, § 119(f), 47 DCR 520.)

Effect of amendments. — D.C. Law 13-91 substituted "§ 1-1188.14(a)" for "§ 1-1188.8(a)" in (b)(4).

Legislative history of Law 13-91. — Law 13-91, the "Technical Amendments Act of 1999," was introduced in Council and assigned Bill No. 13-435. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

§ 1-1188.6. Interest.

Cited in District of Columbia v. Organization for Envtl. Growth, Inc., App. D.C., 700 A.2d 185 (1997).

Subpart C. Procurement Related Claims.

§ 1-1188.19. Civil investigative demands.

(a)(1) Whenever the Corporation Counsel has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation, the Corporation Counsel may, in order to determine whether to commence a civil proceeding pursuant to this chapter, issue in writing and cause to be served upon such person a civil investigative demand requiring that such person do the following:

(A) Produce documentary material relevant to the false claims law investigation for inspection and copying;

(B) Answer in writing written interrogatories with respect to any documentary material or information relevant to the false claims law investigation;

(C) Provide oral testimony concerning any documentary material or information relevant to the false claims law investigation; or

(D) Furnish any combination of such material, answers, or testimony.

(2) The Corporation Counsel may delegate to the Principal Deputy Corporation Counsel the authority, in his or her absence, to issue civil investigative demands pursuant to paragraph (1) of this subsection. The Corporation Counsel may not issue a civil investigative demand in order to conduct, or assist in the conducting of, a criminal investigation.

(b)(1) Each civil investigative demand issued pursuant to subsection (a)(1) of this section shall state the nature of the conduct constituting the alleged violation of a false claims law which is under investigation, and the applicable provision of law alleged to have been violated.

(2) If such demand is for the production of documentary material, the demand shall do the following:

(A) Describe each class of documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified;

(B) Prescribe a return date for each such class that will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying; and

(C) Identify the false claims law investigator to whom such material shall be made available.

(3) If such demand is for answers to written interrogatories, the demand shall do the following:

(A) Set forth with specificity the written interrogatories to be answered;

(B) Prescribe dates at which time answers to written interrogatories shall be submitted; and

(C) Identify the false claims law investigator to whom such answers shall be submitted.

(4) If such demand is for the giving of oral testimony, the demand shall do the following:

(A) Prescribe the date, time, and place at which oral testimony shall commence;

(B) Identify a false claims law investigator who shall conduct the examination and the custodian to whom the transcript of such examination shall be submitted;

(C) Specify that such attendance and testimony are necessary to conduct the investigation;

(D) Notify the person receiving the demand of the right to be accompanied by an attorney and any other representative; and

(E) Describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry, which will be taken pursuant to the demand.

(5) The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand shall be a date that is not less than 7 days after the date on which the demand is received, unless the Corporation Counsel determines that exceptional circumstances are present that warrant the commencement of such testimony within a shorter period of time.

(6) The Corporation Counsel shall not authorize, pursuant to subsection (a)(1) of this section, issuance of more than one civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the Corporation Counsel, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary.

(c) A civil investigative demand may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under:

(1) The standards applicable to subpoenas or subpoenas duces tecum issued by a court of the District of Columbia to aid in a grand jury investigation; or

(2) The standards applicable to discovery requests pursuant to the Superior Court Civil Rules to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this section.

(d)(1) Any civil investigative demand issued pursuant to subsection (a) of this section may be served by a false claims law investigator or his or her agent, or by a United States marshal or a deputy marshal, at any place within the territorial jurisdiction of any court of the United States; provided, that the Superior Court of the District of Columbia could exercise jurisdiction over the recipient of the demand consistent with the due process clause of the Constitution of the United States.

(2) Any such demand or any petition filed pursuant to subsection (a) of this section may be served upon any person who is not found within the territorial jurisdiction of any court of the United States in such manner as the Superior Court Civil Rules prescribe for service in a foreign country; provided, that the Superior Court of the District of Columbia could exercise jurisdiction over the recipient of the demand consistent with the due process clause of the Constitution of the United States.

(e)(1) Service of any civil investigative demand issued pursuant to subsection (a) of this section, or of any petition filed pursuant to subsection (a) of this section, may be made upon a partnership, corporation, association, or other legal entity by the following methods:

(A) Delivering an executed copy of such demand or petition to any partner, executive officer, managing agent, or general agent of the partnership, corporation, association, or entity, or to any agent authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

(B) Delivering an executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or entity; or

(C) Depositing an executed copy of such demand or petition in the United States mail by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business.

(2) Service of any such demand or petition may be made upon any natural person by the following methods:

(A) Delivering an executed copy of such demand or petition to the person; or

(B) Depositing an executed copy of such demand or petition in the United States mail by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

(f) A verified return by the individual serving any civil investigative demand or any petition filed pursuant to subsection (a) of this section setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(g)(1) The production of documentary material in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the following:

(A) In the case of a natural person, by the person to whom the demand is directed; or

(B) In the case of a person other than a natural person, by a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person.

(2) The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the false claims law investigator identified in the demand.

(3) Any person upon whom any civil investigative demand for the production of documentary material has been served shall make such material available for inspection and copying to the false claims law investigator identified in such demand at the principal place of business of such person, or at such other place as the false claims law investigator and the person thereafter may agree and prescribe in writing, or as the court may direct pursuant to subsection (j)(1) of this section. Such material shall be made so available on the return date specified in such demand, or on such later date as the false claims law investigator may prescribe in writing. Such person may, upon written agreement between the person and the false claims law investigator, substitute copies for originals of all or any part of such material.

(h)(1) Each interrogatory in a civil investigative demand shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the demand designates, as follows:

(A) In the case of a natural person, by the person to whom the demand is directed, or

(B) In the case of a person other than a natural person, by the person or persons responsible for answering each interrogatory.

(2) If any interrogatory is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

(i)(1) The examination of any person, pursuant to a civil investigative demand for oral testimony, shall be conducted before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The officer before whom the testimony is taken shall put the witness under oath or affirmation and shall, personally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken by any means authorized by, and in a manner consistent with, the Superior Court Civil Rules, and shall be transcribed.

(2) The false claims law investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney or other representative of the person giving the testimony, the attorney for the District government, any person who may be agreed upon by the attorney for the District government and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

(3) The oral testimony of any person taken pursuant to a civil investigative demand shall be taken in the judicial district of the United States within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the false claims law investigator conducting the examination and such person.

(4) When the testimony is fully transcribed, the false claims law investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by an attorney, a reasonable opportunity to examine and read the transcript, unless such examination and reading are waived by the witness. Any changes in form or substance that the witness desires shall be entered and identified upon the transcript by the officer or the false claims law investigator, with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days after being afforded a reasonable opportunity to examine it, the officer or the false claims law investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reasons, if any, given therefor.

(5) The officer before whom the testimony is taken shall certify on the transcript that the witness was sworn by the officer and that the transcript is a true record of the testimony given by the witness. The officer or false claims law investigator shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the custodian.

(6) Upon payment of reasonable charges therefor, the false claims law investigator shall furnish a copy of the transcript to the witness only, except that the Corporation Counsel may, for good cause, limit such witness to inspection of the official transcript of the witness's testimony.

(7) Any person compelled to appear for oral testimony pursuant to a civil investigative demand may be accompanied, represented, and advised by an attorney. The attorney may advise such person, in confidence, with respect to any question asked of such person. Such person or attorney may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record only when it is claimed that such person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person may not otherwise object to or refuse to answer any question, and may not, directly or through the person's attorney, otherwise interrupt the oral examination. If such person refuses to answer any question, a petition may be filed in the Superior Court of the District of Columbia pursuant to subsection (d)(1) of this section for an order compelling such person to answer the question.

(8) Any person appearing for oral testimony pursuant to a civil investigative demand shall be entitled to the same fees and allowances that are paid to witnesses in the Superior Court of the District of Columbia.

(j)(1) The Corporation Counsel shall designate a false claims law investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received pursuant to this section, and shall designate such additional false claims law investigators as the Corporation Counsel determines from time to time to be necessary to serve as deputies to the custodian.

(2)(A) A false claims law investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony pursuant to this section shall transmit them to the custodian. The custodian shall take physical possession of such material, answers, or transcripts and shall be responsible for the use made of them and for the return of documentary material pursuant to paragraph (4) of this subsection.

(B) The custodian may cause the preparation of such copies of such documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any false claims law investigator, or any other officer or employee of the Office of the Corporation Counsel who is authorized for such use by the Corporation Counsel. Such material, answers, and transcripts may be used by any authorized false claims law investigator or other officer or employee in connection with the taking of oral testimony pursuant to this section.

(C) Except as otherwise provided in this subsection, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall be available for

examination by any individual other than a false claims law investigator or officer or employee of the Office of the Corporation Counsel authorized pursuant to subparagraph (B) of this paragraph. The prohibition in the preceding sentence on the availability of material, answers, or transcripts shall not apply if consent is given by the person who produced such material, answers, or transcripts. Nothing in this subparagraph is intended to prevent disclosure to the District of Columbia Council, including any committee of the Council, to the United States Attorney's Office, or to any other agency of the United States for use by such agency in furtherance of its statutory responsibilities. Disclosure of information to any agency other than the Council or the United States Attorney's Office shall be allowed only upon application, made by the Corporation Counsel to the Superior Court of the District of Columbia, showing substantial need for the use of the information by such agency in furtherance of its statutory responsibilities and after giving the individuals who provided the information an opportunity to be heard on the release of the information.

(D) While in the possession of the custodian and under such reasonable terms and conditions as the Corporation Counsel shall prescribe, the following shall apply:

(i) Documentary material and answers to interrogatories shall be available for examination by the person who produced such material or answers, or by a representative of that person authorized by that person to examine such material and answers; and

(ii) Transcripts of oral testimony shall be available for examination by the person who produced such testimony, or by a representative of that person authorized by that person to examine such transcripts.

(3) Whenever any attorney of the Office of the Corporation Counsel is conducting any official investigation or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony received pursuant to this section may deliver to such attorney such material, answers, or transcripts for official use in connection with any such investigation or proceeding as such attorney determines to be required. Upon the completion of any such investigation or proceeding, such attorney shall return to the custodian any such material, answers, or transcripts so delivered that have not passed into the control of any court or agency through introduction into the record of any case or proceeding.

(4) If any documentary material has been produced by any person in the course of any false claims law investigation pursuant to a civil investigative demand, and any case or proceeding before a court arising out of such investigation, or any proceeding before any District government agency involving such material, has been completed, or no case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigation, the custodian shall, upon written request of the person who produced such material, return to such person any such material (other than copies furnished to the false claims law investigator pursuant to subsection (g)(2) of this section or made for the Office of the Corporation Counsel pursuant to paragraph (2)(B) of this subsection), which has not passed into the control of any court or agency through introduction into the record of such case or proceeding.

(5)(A) In the event of the death, disability, or separation from service in the Office of the Corporation Counsel of the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced pursuant to a civil investigative demand issued pursuant to this section, or in the event of the official relief of such custodian from responsibility for the custody and control of such material, answers, or transcripts, the Corporation Counsel shall promptly do the following:

(i) Designate another false claims law investigator to serve as custodian of such material, answers, or transcripts; and

(ii) Transmit in writing to the person who produced such material, answers, or testimony notice of the identity and address of the successor so designated.

(B) Any person who is designated to be a successor pursuant to this paragraph shall have, with regard to such material, answers, or transcripts, the same duties and responsibilities as were imposed by this section upon that person's predecessor in office, except that the successor shall not be held responsible for any default or dereliction that occurred before that designation.

(k)(1) Whenever any person fails to comply with any civil investigative demand, or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the Corporation Counsel may file in the Superior Court of the District of Columbia and serve upon such person a petition for an order of such court for the enforcement of the civil investigative demand.

(2)(A) Any person who receives a civil investigative demand may file in the Superior Court of the District of Columbia and serve upon the false claims law investigator identified in such demand a petition for an order of the court to modify or set aside such demand. Any petition issued pursuant to this subparagraph must be filed:

(i) Within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier; or

(ii) Within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

(B) The petition shall specify each ground upon which the petitioner relies in seeking relief pursuant to subparagraph (A) of this paragraph, and may be based upon any failure of the demand, or any particular portion thereof, to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part, except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

(3) At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories produced, or transcripts of oral testimony given, by any person in compliance with any civil investigative demand, such person may file in the Superior Court of the District of Columbia and serve upon such custodian, a petition for an order of such court to require the performance by the custodian of any duty imposed upon the custodian by this section.

(4) Whenever any petition is filed in the Superior Court of the District of Columbia, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry out the provisions of this section. Any final order so entered shall be subject to appeal. Any disobedience of any final order entered pursuant to this section by any court shall be punished as contempt of court.

(5) The Superior Court Civil Rules shall apply to any petition issued pursuant to this subsection, to the extent that such rules are not inconsistent with the provisions of this section.

(l) Any documentary material, answers to written interrogatories, or oral testimony provided pursuant to any civil investigative demand issued pursuant to subsection (a) of this section shall be exempt from disclosure pursuant to subchapter 2 of Chapter 15 of this title.

(m) For purposes of this section, the term:

(1) "Custodian" means the custodian, or any deputy custodian, designated by the Corporation Counsel pursuant to subsection (j)(1) of this section.

(2) "Documentary material" includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product of discovery.

(3) "False claims law" means §§ 1-1181.3 and 1-1188.13 through 1-1188.21.

(4) "False claims law investigation" means any inquiry conducted by any false claims law investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of a false claims law;

(5) "False claims law investigator" means any attorney or investigator employed by the Office of the Corporation Counsel who is charged with the duty of enforcing or carrying into effect any false claims law, or any officer or employee of the District government acting under the direction and supervision of such attorney or investigator in connection with a false claims law investigation;

(6) "Person" means any natural person, partnership, corporation, association, or other legal entity, including any state or political subdivision of a state. (Feb. 21, 1986, D.C. Act 6-85, § 819, 32 DCR 7396, as added May 8, 1998, D.C. Law 12-104, § 2(g), 45 DCR 1687; Apr. 20, 1999, D.C. Law 12-264, § 10(e), 46 DCR 2118; Apr. 12, 2000, D.C. Law 13-91, § 122, 47 DCR 520.)

Effect of amendments. — D.C. Law 13-91, in (j)(4), substituted "subsection (g)(2) of this section" for "subsection (e)(2) of this section" and substituted "paragraph (2)(B) of this subsection), which" for "paragraph (2)(B) of this subsection, which."

Legislative history of Law 13-91. — See note to § 1-1188.4.

Subchapter IX. Contract Appeals Board.

§ 1-1189.1. Creation of Contract Appeals Board.

(a)(1) There is established in the executive branch of the District government a Contract Appeals Board ("Board") to be composed of a chairperson and 4 other members.

(2) The members shall be appointed as administrative judges in the Career Service and shall not be removed except for cause.

(3) The chairperson and members of the Board shall be appointed by the Mayor with the advice and consent of the Council, and shall serve full-time.

(b) The Board shall adopt operational procedures, not inconsistent with this chapter, necessary to execute the Board's functions. The chairperson's authority may be delegated to the Board's members and employees, but only members of the Board may hear appeals and issue decisions on the appeals. The attendance of at least 2 members of the Board shall constitute a quorum.

(c)(1) The Office of the Corporation Counsel may provide for the Board those supplies, materials, and administrative services the chairperson requests, on a basis, reimbursable or otherwise, agreed upon between the Corporation Counsel and the chairperson.

(2) All costs of hearings before the Board, including witness fees and costs of transcripts, will be borne by the agency from which the appeal originated, through direct billing.

(3) The Board shall use any fees received pursuant to § 1-1189.3(b) at the discretion of the Chairperson to improve the Boards services and programs, including the option to provide incentive awards to Board personnel consistent with Subchapter XX of Chapter 6 of Title 1. (Feb. 21, 1986, D.C. Law 6-85, § 901, 32 DCR 7396; Apr. 12, 1997, D.C. Law 11-259, § 101(aa), 44 DCR 1423; Oct. 19, 2000, D.C. Law 13-172, § 1702(a), 47 DCR 6308.)

Effect of amendments. — D.C. Law 13-172 added (c)(3).

Emergency legislation. — For temporary amendment of section, see § 1702(a) of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary amendment of section, see § 1702(a) of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — See note to § 1-1181.4.

Editor's notes. — Section 1701 of D.C. Law 13-172 provides that Title XVII of the act may be cited as the "Contract Appeals Board Interagency Agreement Authorization Amendment Act of 2000."

§ 1-1189.3. Jurisdiction of Board.

(a) The Board shall be the exclusive hearing tribunal for, and shall have jurisdiction to review and determine de novo:

(1) Any protest of a solicitation or award of a contract addressed to the Board by any actual or prospective bidder or offeror, or a contractor who is aggrieved in connection with the solicitation or award of a contract;

(2) Any appeal by a contractor from a final decision by the contracting officer on a claim by a contractor, when such claim arises under or relates to a contract; and

(3) Any claim by the District against a contractor, when such claim arises under or relates to a contract.

(b) Jurisdiction of the Board shall be consistent with the coverage of this chapter as defined in §§ 1-1181.4 and 1-1183.20, except that the Board shall have the authority to enter into fee-for-service agreements with agencies, departments, boards, commissions, and instrumentalities of the District or other public entities that are not subject to the Board's jurisdiction. The agreements shall provide for the Board to resolve contract disputes, including

appeals and protests of those agencies, departments, boards, commissions, and instrumentalities. (Feb. 21, 1986, D.C. Law 6-85, § 903, 32 DCR 7396; Apr. 12, 1997, D.C. Law 11-259, § 101(cc), 44 DCR 1423; Oct. 19, 2000, D.C. Law 13-172, § 1702(b), 47 DCR 6308.)

Effect of amendments. — D.C. Law 13-172 rewrote (b).

Emergency legislation. — For temporary amendment of section, see § 1702(b) of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary amendment of section, see § 1702(b) of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — See note to § 1-1181.4.

Editor's notes. — Section 1701 of D.C. Law 13-172 provides that Title XVII of the act may be cited as the "Contract Appeals Board Interagency Agreement Authorization Amendment Act of 2000."

Award protests.

Cited in District of Columbia v. Kora & Williams Corp., App. D.C., 743 A.2d 682 (1999).

§ 1-1189.4. Contractor's right of appeal to Board.

Contract disputes.

The procurement practices provisions obliterated the distinction between disputes "arising under" and "relating to" a contract and made both the subject of an informal hearing and decision by the director of the Department of Administrative Services, whose decision may be appealed by the contractor to the Contract Appeals Board. Fry & Welch Assocs., P.C. v. District of Columbia Contract Appeals Bd., App. D.C., 664 A.2d 1230 (1995).

Cited in Dano Resource Recovery, Inc. v. District of Columbia, 923 F. Supp. 249 (D.D.C. 1996).

§ 1-1189.5. Appeal of Board decisions.

Bid protests.

The legislative history of the procurement practices provisions makes clear, if plain statutory words do not, that the Council has chosen to limit the authority in the procurement area of the Mayor, the Corporation Counsel, or any other District official by granting the Department of Administrative Services the exclusive right to file bid protests on behalf of the District, whatever the forum. Francis v. Recycling Solutions, Inc., App. D.C., 695 A.2d 63 (1997).

Jurisdiction.

Because bid protests are not contested cases and thus cannot be appealed directly to the Court of Appeals, the trial court erred in holding that it lacked subject matter jurisdiction to hear the case. Francis v. Recycling Solutions, Inc., App. D.C., 695 A.2d 63 (1997).

Cited in Dano Resource Recovery, Inc. v. District of Columbia, 923 F. Supp. 249 (D.D.C. 1996).

CHAPTER 11B. OFFICE OF THE CHIEF TECHNOLOGY OFFICER.

§ 1-1195.1. Establishment of Office of the Chief Technology Officer.

Emergency legislation. — For temporary addition of section, see § 1412 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

§ 1-1195.2. Purpose.

Emergency legislation. — For temporary addition of section, see § 1413 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

§ 1-1195.3. Functions.

The functions assigned to the Office shall be to:

(1) Issue regulations governing the acquisition, use, and management of information technology and telecommunications systems and resources throughout the District government, including hardware, software, and contract services in the areas of data and word processing, telecommunications, printing and copying;

(2) Review and approve all agency proposals, purchase orders, and contracts for the acquisition of information technology and telecommunications systems, resources, and services, and recommend approval or disapproval to the Chief Procurement Officer;

(3) Review and approve the information technology and telecommunications budgets for District government department and agencies;

(4) Coordinate the development of information management plans, standards, systems, and procedures throughout the District government, including the development of an information technology strategic plan for the District;

(5) Assess new or emerging technologies and advise District department and agencies on the potential applications of these technologies to their programs and services;

(6) Implement information technology solutions and systems throughout the District government;

(7) Promote the compatibility of information technology and telecommunications systems throughout the District government;

(8) Serve as a resource and provide advice to District departments and agencies about how to use information technology and telecommunications systems to improve services, including assistance to departments and agencies in developing information technology strategic plans; and

(9) Maintain and oversee all District data centers, including, but not limited to, the SHARE, Department of Human Services, Department of Employment Services, University of the District of Columbia, Metropolitan Police Department, Public Benefits Corporation, Saint Elizabeths, Department of Health, and District of Columbia Public Schools data centers. (Mar. 26, 1999, D.C. Law 12-175, § 1814, 45 DCR 7193; Oct. 19, 2000, D.C. Law 13-172, § 2103(a), 47 DCR 6308.)

Effect of amendments. — D.C. Law 13-172 added (9).

Temporary legislation. — Section 4 of D.C. Law 13-17 added (9).

Section 7(b) of D.C. Law 13-17 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 4 of the Chief Technology Officer Year 2000 Remediation Procurement Authority Emergency Amendment Act of 1999 (D.C. Act 13-38, March 22, 1999, 46 DCR 3015), and § 4 of the Chief Technology Officer Year 2000 Remediation Procurement Authority Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-106, July 9, 1999, 46 DCR 6028).

For temporary addition of section, see § 1414 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

For temporary amendment of section, see

§ 2103(a) of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

Section 2104 of D.C. Act 13-376 provides that the act shall apply as of October 1, 2000.

For temporary amendment of section, see § 2103(a) of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Section 2104 of D.C. Act 13-438 provides that the act shall apply as of October 1, 2000.

Legislative history of Law 13-17. — Law 13-17, the "Chief Technology Officer Year 2000 Remediation Procurement Authority Temporary Amendment Act of 1999," was introduced in Council and assigned Bill No. 13-130. The Bill was adopted on first and second readings on March 2, 1999, and April 13, 1999, respectively. Signed by the Mayor on May 3, 1999, it was assigned Act No. 13-66 and transmitted to both Houses of Congress for its review. D.C. Law 13-17 became effective on July 17, 1999.

Legislative history of Law 13-172. — Law 13-172, the "Fiscal Year 2001 Budget Support Act of 2000," was introduced in Council and assigned Bill No. 13-679. The Bill was adopted on first and second readings on May 19, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-375 and transmitted to both Houses of Congress for its review. D.C. Law 13-172 became effective on October 19, 2000.

Editor's notes. — Section 2101 of D.C. Law 13-172 provides that Title XXI of the act, which amended this section, may be cited as the "SHARE Data Center Reorganization Act of 2000."

Section 2104 of D.C. Law 13-172 provides that Title XXI of the act shall apply as of October 1, 2000.

§ 1-1195.4. Transfers.

Emergency legislation. — For temporary addition of section, see § 1415 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

§ 1-1195.5. Organization.

(a) There are hereby established 3 primary organizational functions in the Office as follows:

(1) The Office of the Chief Technology Officer, which will include the staff and organizational units needed to carry out the overall plans and directions for the District's information technology, telecommunications policies, and data centers.

(2) Agency Support Services, which will provide direct assistance and support to the user agencies throughout the District government. Agency Support Services will also provide procurement and contract oversight and assistance for information technology and telecommunications, maintain standard technology-related contracts that all District departments and agencies may use, and manage projects that introduce new technologies and systems throughout the District government; and

(3) Technical Services, which will provide support for desktop computers, servers, phones, and network equipment, and identify cost savings, operational efficiencies, and ways to improve public services by introducing tested technologies such as electronic service delivery, document imaging, and Internet systems.

(b) The Chief Technology Officer, in the performance of his or her duties and functions, is authorized to restructure the organizational components of the Office as he or she deems necessary to improve the quality of services. (Mar. 26, 1999, D.C. Law 12-175, § 1816, 45 DCR 7193; Oct. 19, 2000, D.C. Law 13-172, § 2103(b), 47 DCR 6308.)

Effect of amendments. — D.C. Law 13-172 substituted "technology, telecommunications policies, and data centers" for "technology and telecommunications policies" in (a)(1).

Emergency legislation. — For temporary addition of section, see § 1416 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

For temporary amendment of section, see § 2103(b) of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

Section 2104 of D.C. Act 13-376 provides that the act shall apply as of October 1, 2000.

For temporary amendment of section, see § 2103(b) of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Section 2104 of D.C. Act 13-438 provides that the act shall apply as of October 1, 2000.

Legislative history of Law 13-172. — See note to § 1-1195.3.

Editor's notes. — Section 2101 of D.C. Law 13-172 provides that Title XXI of the act, which amended this section, may be cited as the "SHARE Data Center Reorganization Act of 2000."

Section 2104 of D.C. Law 13-172 provides that Title XXI of the act shall apply as of October 1, 2000.

CHAPTER 12. CLAIMS AGAINST DISTRICT.

Subchapter I. General Provisions.

§ 1-1202. Settlement of claims and suits against District.

Emergency legislation. — For temporary amendment of section, see § 4302 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8737).

Subchapter II. Non-Liability of District Employees.

§ 1-1211. Definitions.

Emergency vehicle.

In an action arising from a motor vehicle accident involving an ambulance, the trial court did not err in refusing to submit to the jury the question of whether an ambulance was on an emergency run where a paramedic who was in the ambulance testified that, although the injuries sustained by the patient in the ambulance were not severe, she was transported as an emergency run (with siren and flashing lights) because it was fire department policy and procedure to so treat all transports of injured persons resulting from 911 calls. Browner v. District of Columbia, App. D.C., 756 A.2d 927 (2000).

Cited in District of Columbia v. Banks, App. D.C., 646 A.2d 972 (1994).

§ 1-1212. Governmental immunity for negligent operation of vehicles by District employees.

Emergency vehicles.

Plaintiffs failed to demonstrate that police acted with gross negligence, as required by this section, where officer crossed intersection on a legitimate emergency at only five to ten miles per hour above the speed limit, with his emergency lights blinking and sirens and high-beam headlights on, and although the officer applied his brake as he entered the intersection, he was unable to avoid a crash. District of Columbia v. Henderson, App. D.C., 710 A.2d 874 (1998).

This section's provision that in a case arising out of the operation of an emergency vehicle the city is liable only for gross negligence is best read as nothing more than a qualification to the general waiver of governmental immunity. Hetzel v. United States, 43 F.3d 1500 (D.C. Cir. 1995).

Police cruiser in high speed chase was "an emergency vehicle on an emergency run," and thus it was error for judge to instruct jury that District could be liable for negligent supervision of chase based on ordinary as opposed to gross negligence. District of Columbia v. Banks, App. D.C., 646 A.2d 972 (1994).

Gross negligence.

Limitations on waivers of immunity, such as the gross negligence provision in this section, are to be read broadly. District of Columbia v. Walker, App. D.C., 689 A.2d 40 (1997).

"Gross negligence" requires such an extreme

deviation from the ordinary standard of care as to support a finding of wanton, willful and reckless disregard or conscious indifference for the rights and safety of others. District of Columbia v. Walker, App. D.C., 689 A.2d 40 (1997).

Where the police were faced with a driver proceeding down a divided limited access highway at a very high rate of speed, where vehicular traffic was light, where there were no pedestrians and the conditions were dry and clear, and even though the officers knew when they chased the car that the driver was probably inexperienced, it could not be said that the risk of injury or death was so obvious and so great as to support a finding that the officers acted with wanton, willful and reckless disregard or conscious indifference for the rights and safety of others. District of Columbia v. Walker, App. D.C., 689 A.2d 40 (1997).

Where there is no evidence of subjective bad faith on the part of the actor, the extreme nature of conduct required to establish gross negligence may be shown by demonstrating that the action was taken in disregard of a risk so obvious that the actor must have been aware of it and so great as to make it highly probable that harm would follow. District of Columbia v. Walker, App. D.C., 689 A.2d 40 (1997).

Negligent training.

A claim for negligent training cannot properly be based on an ordinary negligence standard, but requires a showing of gross negligence. District of Columbia v. Walker, App. D.C., 689 A.2d 40 (1997).

The court refused to interpret this section in such a way that the District would be held liable for grossly negligent training of officers with regard to pursuit procedures, even though the officers involved in the pursuit at issue were either merely negligent or not negligent at all. District of Columbia v. Walker, App. D.C., 689 A.2d 40 (1997).

Subchapter III. Unjust Imprisonment.

§ 1-1222. Proof required.

Procedure.

Where the defendant's sentence was corrected rather than reversed or set aside, and where defendant entered a guilty plea, thus falling outside the protection of the Unjust Imprisonment Act, summary judgment on that issue was proper. McAllister v. District of Columbia, App. D.C., 653 A.2d 849 (1995).

§ 1-1225. Same — Entry of guilty plea.

Procedure.

Where the defendant's sentence was corrected rather than reversed or set aside, and where defendant entered a guilty plea, thus falling outside the protection of the Unjust Imprisonment Act, summary judgment on that issue was proper. McAllister v. District of Columbia, App. D.C., 653 A.2d 849 (1995).

CHAPTER 13. ELECTIONS.

Subchapter I. General Provisions.

Subchapter I. General Provisions.

§ 1-1302. Definitions.

For the purposes of this subchapter:

(1) The term "District" means the District of Columbia.

(2) Except as provided in paragraph (7) of this section, the term "qualified elector" means a citizen of the United States:

(A) Who resides or is domiciled in the District, has maintained his or her residence in the District for at least 30 days preceding the next election, and who does not claim voting residence or right to vote in any state or territory;

(B) Who is, or will be on the day of the next election, 18 years old; and

(C) Who is not mentally incompetent as adjudged by a court of competent jurisdiction.

(3) The term "Board" means the District of Columbia Board of Elections and Ethics provided for by § 1-1303.

(4) The term "ward" means an election ward established by the Council.

(5) The term "Board of Education" means the Board of Education of the District.

(6) The term "Delegate" means the Delegate to the House of Representatives from the District of Columbia.

(7)(A) Any person in the District of Columbia who has been convicted of a crime in the United States which is a felony in the District of Columbia, may be a qualified elector, if otherwise qualified, at the end of his incarceration.

(B) For the purposes of this paragraph, the term "felony" shall include any crime committed in the District of Columbia referred to in § 1-1318 or § 1-1457 or § 1-1471.

(C) Nothing in this paragraph shall be construed to grant a pardon or amnesty to any person.

(8) The term "Council" or "Council of the District of Columbia" means the Council of the District of Columbia established pursuant to the District of Columbia Self-Government and Governmental Reorganization Act.

(9) The term "Mayor" means the Office of Mayor of the District of Columbia established pursuant to the District of Columbia Self-Government and Governmental Reorganization Act.

(10) The term "initiative" means the process by which the electors of the District of Columbia may propose laws (except laws appropriating funds) and present such proposed laws directly to the registered qualified electors of the District of Columbia for their approval or disapproval.

(11) The term "referendum" means the process by which the registered qualified electors of the District of Columbia may suspend acts, or some part or parts of acts, of the Council of the District of Columbia (except emergency acts, acts levying taxes, or acts appropriating funds for the general operating budget) until such acts or part or parts of acts have been presented to the registered qualified electors of the District of Columbia for their approval or rejection.

(12) The term "recall" means the process by which the registered qualified electors of the District of Columbia may call for the holding of an election to remove or retain an elected official of the District of Columbia (except the Delegate to Congress for the District of Columbia) prior to the expiration of his or her term.

(13) The term "elected official" means the Mayor, the Chairman and members of the Council, the President and members of the Board of Education, the Delegate to Congress for the District of Columbia, United States Senator

and Representative, and advisory neighborhood commissioners of the District of Columbia.

(14) The term "printed" shall include any document produced by letterpress, offset press, photo reproduction, multilith, or other mass reproduction means.

(15) The term "proposer" means one or more of the registered qualified electors of the District of Columbia, including any entity, the primary purpose of which is the success or defeat of a political party or principle, or any question submitted to vote at a public election by means of an initiative, referendum or recall as authorized in amendments numbered 1 and 2 to Title IV of the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code, §§ 1-281 to 1-295). Such entities shall be treated as a political committee as defined in § 1-1401(5), for the purposes of this act.

(16)(A) The term "residence", for purposes of voting, means the principal or primary home or place of abode of a person. Principal or primary home or place of abode is that home or place in which the person's habitation is fixed and to which a person, whenever he or she is absent, has the present intention of returning after a departure or absence therefrom, regardless of the duration of the absence.

(B) In determining what is a principal or primary place of abode of a person the following circumstances relating to the person may be taken into account:

(i) Business pursuits;
(ii) Employment;
(iii) Income sources;
(iv) Residence for income or other tax purposes;
(v) Residence of parents, spouse, and children;
(vi) Leaseholds;
(vii) Situs of personal and real property; and
(viii) Motor vehicle registration.

(C) A qualified elector who has left his or her home and gone into another state or territory for a temporary purpose only shall not be considered to have lost his or her residence in the District.

(D) If a qualified elector moves to another state or territory with the intention of making it his or her permanent home, he or she shall notify the Board, in writing, and shall be considered to have lost residence in the District.

(E) No person shall be deemed to have gained or lost a residence by reason of absence while employed in the service of the District or the United States governments, while a student at any institution of learning, while kept at any institution at public expense, or while absent from the District with the intent to have the District remain his or her residence. If a person is absent from the District, but intends to maintain residence in the District for voting purposes, he or she shall not register to vote in any other state or territory during his or her absence.

(17) The term "voter registration agency" means an office designated under § 1-1311(d)(1) and the National Voter Registration Act of 1993 to perform voter registration activities.

(18) The term "application distribution agency" means an agency designated under § 1-1311(d)(14) in whose office or offices mail voter registration applications are made available for general distribution to the public.

(19) The term "duly registered voter" means a registered voter who resides at the address listed on the Board's records.

(20) The term "registered qualified elector" means a registered voter who resides at the address listed on the Board's records.

(21) The term "qualified registered elector" means a registered voter who resides at the address listed on the Board's records. (Aug. 12, 1955, 69 Stat. 699, ch. 862, § 2; Oct. 4, 1961, 75 Stat. 820, Pub. L. 87-389, § 1(26); Apr. 22, 1968, 82 Stat. 103, Pub. L. 90-292, § 4(2); Sept. 22, 1970, 84 Stat. 849, Pub. L. 91-405, title II, §§ 203(a), 205(a); Dec. 23, 1971, 85 Stat. 788, Pub. L. 92-220, § 1(2)-(4); 1973 Ed., § 1-1102; Aug. 14, 1973, 87 Stat. 311, Pub. L. 93-92, § 1(1); Dec. 24, 1973, 87 Stat. 832, Pub. L. 93-198, title VII, § 751(2); Aug. 14, 1974, 88 Stat. 458, Pub. L. 93-376, title III, § 306(a); Sept. 2, 1976, D.C. Law 1-79, title I, § 102(1), title VI, § 602, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title III, § 301(a), (b), 24 DCR 2372; June 7, 1979, D.C. Law 3-1, § 2(a), 25 DCR 9454; Mar. 16, 1982, D.C. Law 4-88, § 2(b), 29 DCR 458; Aug. 2, 1983, D.C. Law 5-17, § 5(a), 30 DCR 3196; Sept. 22, 1994, D.C. Law 10-173, § 2(a), 41 DCR 5154; July 25, 1995, D.C. Law 11-30, § 2(a), 42 DCR 1547; Apr. 12, 2000, D.C. Law 13-91, § 123(a), 47 DCR 520.)

Effect of amendments. — D.C. Law 13-91 inserted "United States Senator and Representative" in (13).

Legislative history of Law 13-91. — Law 13-91, the "Technical Amendments Act of 1999," was introduced in Council and assigned Bill No. 13-435. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

Registration.

—Presumption of validity.

Because of the presumption that any registrant who signs the voter registration form is a valid District resident, a voter does not necessarily have to counter proffered evidence that raises a question of residence sufficient to place a burden of explanation on the voter with objective indicia of local residence, but may offer credible sworn testimony verifying the facts in the signed registration form. Scolaro v. District of Columbia Bd. of Elections & Ethics, App. D.C., 691 A.2d 77 (1997).

—Students.

There is no statutory duty that would compel the Elections Board to give students a closer look than anyone else when they attempt to register to vote. Scolaro v. District of Columbia Bd. of Elections & Ethics, App. D.C., 691 A.2d 77 (1997).

Residency requirements.

A voter registration form which stated that voters must be D.C. residents and not "claim the right to vote anywhere outside D.C." in order to vote could not reasonably be interpreted to mean that prospective voters need only "live in" the District without having a permanent, principal residence there. Scolaro v. District of Columbia Bd. of Elections & Ethics, App. D.C., 691 A.2d 77 (1997).

Cited in Stevenson v. District of Columbia Bd. of Elections & Ethics, App. D.C., 683 A.2d 1371 (1996); Scolaro v. District of Columbia Bd. of Elections & Ethics, 946 F. Supp. 80 (D.D.C. 1996).

§ 1-1306. Same — Duties.

(a) The Board shall:

(1) Maintain a registry, keeping it accurate and current;

(2) Take whatever action is necessary and appropriate to actively locate, identify, and register qualified voters;

(3) Conduct elections;

(4) Provide for recording and counting votes by means of ballots or machines or both;

(5) Publish in the District of Columbia Register no later than 45 days before each election held under this subchapter, a fictitious name sample

design and layout of the ballot to be used in the election. This requirement shall not apply to any special election to fill a vacancy in an Advisory Neighborhood Commission single-member district;

(6) Publish in 1 or more newspapers of general circulation in the District, a sample copy of the official ballot to be used in any such election, provided, however, nothing contained herein shall require the publication of a sample copy of the official ballots to be used in the advisory neighborhood commissions' elections;

(7) Publish in the District of Columbia Register on the 3rd Friday of every month, the total number of qualified electors registered to vote in the District as of the last day of the month preceding publication. Such notice shall be broken down by ward and political party affiliation, where applicable, and shall list the total number of new registrants, party changes, cancellations, changes of names, and/or addresses processed under each category;

(8) Divide the District into appropriate voting precincts, each of which shall contain at least 350 registered persons; draw precinct lines within election wards created by the Council, subject to the approval of the Council, in whole or in part, by resolution;

(9) Operate polling places;

(10) Develop and administer procedures for absentee registration and voting in any election held under this subchapter by any person included within the categories referred to in paragraph (1), (2), or (3) of § 101 of the Federal Voting Assistance Act of 1955 (69 Stat. 584);

(11) Certify nominees and the results of elections;

(12) Take all reasonable steps to inform all residents and voters of elections and means of casting votes therein;

(13) Take all reasonable steps to register overseas citizen voters as provided by the Overseas Citizens Voting Rights Act of 1975 (89 Stat. 1143);

(14) Issue such regulations and expressly delegate authority to officials and employees of the Board (such delegations of authority only to be effective upon publication in the District of Columbia Register) as are necessary to carry out the purposes of this subchapter, Chapter 14 of this title, and related acts requiring implementation by the Board. The regulations authorized by this paragraph include those necessary to: Determine that candidates meet the statutory qualifications for office; define the form of petitions; establish rules for the circulation and filing of petitions; establish criteria to determine the validity of signatures on petitions; and provide for the registration of any political party seeking to nominate directly candidates in any general or special election;

(15) Take reasonable steps to facilitate voting by blind, physically handicapped, and developmentally disabled persons, qualified to vote under this chapter, and to authorize such persons to cast a ballot with the assistance of a person of their own choosing; and

(16) Perform such other duties as are imposed upon it by this subchapter.

(b)(1) The Board shall, on the 1st Tuesday in May of each presidential election year, conduct a presidential preference primary election within the District of Columbia in which the registered qualified voters therein may express their preference for candidates of each political party of the District of Columbia for nomination for President.

(2) No person shall be listed on the ballot as a candidate for nomination for President in such primary unless there shall have been filed with the Board no later than 60 days before the date of such presidential primary election a petition on behalf of his or her candidacy signed by at least 1,000, or 1%, whichever is less, of the qualified electors of the District of Columbia who are registered under § 1-1311, and of the same political party as the nominee.

(3)(A) Candidates for delegate and alternates where permitted by political party rules to a particular political party national convention convened to nominate that party's candidate for President shall be listed on the ballot of the presidential preference primary held under this chapter as:

(i) Full slates of candidates for delegates supporting a candidate for nomination for President if there shall have been filed with the Board, no later than 60 days before the date of such presidential primary, a petition on behalf of such slate's candidacy signed by the candidates on the slate, and by at least 1,000, or 1%, whichever is less, of the qualified electors of the District of Columbia who are registered under § 1-1311 and are of the same political party as the candidates on such slate;

(ii) Full slates of candidates for delegates not committed to support any named candidate for nomination for President if there shall have been filed with the Board, no later than 60 days before the date of such presidential primary, a petition on behalf of such slate's candidacy, signed by the candidates on the slate and by at least 1,000, or 1%, whichever is less, of the qualified electors of the District of Columbia who have registered under § 1-1311 and are of the same political party as the candidates on such slate;

(iii) An individual candidate for delegate supporting a candidate for nomination for President if there shall have been filed with the Board, no later than 60 days before the date of such presidential primary, a petition on behalf of such candidate, signed by the candidate and by at least 1,000, or 1%, whichever is less, of the qualified electors of the District of Columbia who have registered under § 1-1311 and are of the same political party as the candidate; or

(iv) An individual not committed to support any named candidate for nomination for President if there shall have been filed with the Board, no later than 60 days before the date of such presidential primary, a petition on behalf of such candidate, signed by the candidate and by at least 1,000, or 1%, whichever is less, of the qualified electors of the District of Columbia who have registered under § 1-1311 and are of the same political party as the candidate.

(B) No candidate for delegate or alternate may be listed on the ballot unless such candidate was properly selected according to the rules of his political party relating to the nomination of candidates for delegate or alternate.

(C) The governing body of each eligible party shall file with the Board, no later than 180 days prior to the presidential preference primary election:

(i) Notification of that party's intent to conduct a presidential preference primary; and

(ii) A plan for the election detailing the procedures to be followed in the selection of individual delegates and alternates to the convention of that party, including procedures for the selection of committed and uncommitted delegates.

(4) The Board shall:

(A) Arrange the ballot for the presidential preference primary so as to enable each voter to indicate his or her choice for presidential nominee and for the slate of delegates and alternates pledged to support that prospective nominee with 1 mark, and provide an alternative to vote for individual delegates or uncommitted slates of delegates; and

(B) Clearly indicate on the ballot the candidate for nomination for President which a slate or candidate for delegate supports, or name of the person who shall manage an uncommitted slate of delegates.

(5) The delegates and alternates, of each political party in the District of Columbia to the national convention of that party convened for the nomination of that party for President, elected in accordance with this subchapter, shall only be obliged to vote for the candidate whom he or she has been selected to represent in accordance with properly promulgated rules of the political party, on the 1st ballot cast at the convention for nominees for President, or until such time as such candidate to whom the delegate is committed withdraws his candidacy, whichever 1st occurs.

(c) Each member of the Board and persons authorized by the Board may administer oaths to persons executing affidavits pursuant to § 1-1312. It may provide for the administering of such other oaths as it considers appropriate to require in the performance of its functions.

(d) The Board may permit either persons temporarily absent from the District or persons physically unable to appear personally at an official registration place to register for the purpose of voting in any election held under this subchapter.

(e)(1) The Board shall select, employ, and fix the compensation for an Executive Director and such staff the Board deems necessary, subject to the pay limitations of § 1-612.16. The Executive Director shall serve at the pleasure of the Board. The Board, at the request of the Director of Campaign Finance, shall provide employees, subject to the compensation provisions of this paragraph, as requested to carry out the powers and duties of the Director. Employees assigned to the Director shall, while so assigned, be under the direction and control of the Director and may not be reassigned without the concurrence of the Director.

(2) No provision of this subchapter shall be construed as permitting the Board to appoint any personnel who are not full-time paid employees of the Board to preliminarily determine alleged violations of the law affecting elections, conflicts of interest, or lobbying.

(3) The Board may appoint a General Counsel to serve at the pleasure of the Board. The General Counsel shall be entitled to receive compensation at the same rate as the Executive Director of the Board and shall be responsible solely to the Board. The General Counsel shall perform such duties as may be delegated or assigned to him or her by rule or order of the Board.

(f)(1) The Board shall prescribe such regulations as may be necessary to ensure that all persons responsible for the proper administration of this subchapter maintain a position of strict impartiality and refrain from any activity which would imply support or opposition to:

(A) A candidate or group of candidates for office in the District of Columbia; or

(B) Any political party or political committee.

(2) As used in this subsection, the terms "office", "political party", and "political committee" shall have the same meaning as that prescribed in § 1-1401.

(g) Notwithstanding provisions of the District of Columbia Administrative Procedure Act (D.C. Code, § 1-1501 et seq.), the Board may hear any case brought before it under this subchapter or under Chapter 14 of this title by 1 member panels. An appeal from a decision of any such 1 member panel may be taken to either the full Board or to the District of Columbia Court of Appeals, at the option of any adversely affected party. If appeal is taken directly to the District of Columbia Court of Appeals, the decision of a 1 member panel shall be, for purposes of such appeal, considered to be a final decision of the Board. If an appeal is taken from a decision of a 1 member panel to the full Board, the decision of the 1 member panel shall be stayed pending a final decision of the Board. The Board may, upon a vote of the majority of its members, hear de novo all issues of fact or law relating to an appeal of a decision of a 1 member panel, except the Board may decide to consider only the record made before such 1 member panel. A final decision of the full Board, relating to an appeal brought to it from a 1 member panel, shall be appealable to the District of Columbia Court of Appeals in the same manner and to the same extent as all other final decisions of the Board.

(h)(1) The Board, pursuant to regulations of general applicability, shall have the power to:

(A) Require by subpoena the attendance and testimony of witnesses and the production of documents relating to the execution of the Board's duties; and

(B) Order that testimony in any proceeding or investigation be taken by deposition before any person who is designated by the Board, and has the power to administer oaths and, in these instances, to compel the attendance and testimony of witnesses and the production of documents by subpoena.

(2) The Board may petition the Superior Court of the District of Columbia to enforce the subpoena or order, in the case of a refusal to obey a subpoena or order of the Board issued pursuant to this subsection. Any person failing to obey the Court's order may be held in contempt of court. (Aug. 12, 1955, 69 Stat. 700, ch. 862, § 5; Oct. 4, 1961, 75 Stat. 817, Pub. L. 87-389, § 1(3), (4), (5), (6); Apr. 22, 1968, 82 Stat. 103, Pub. L. 90-292, § 4(3); Dec. 23, 1971, 85 Stat. 789, Pub. L. 92-220, § 1(5)-(7), (28), (29); 1973 Ed., § 1-1105; Aug. 14, 1973, 87 Stat. 311, Pub. L. 93-92, § 1(2)-(7); Jan. 3, 1975, 88 Stat. 2177, Pub. L. 93-635, § 13; Dec. 16, 1975, D.C. Law 1-37, § 2(1), (2), 22 DCR 3426; Dec. 16, 1975, D.C. Law 1-38, § 4, 22 DCR 3433; Feb. 17, 1976, D.C. Law 1-45, § 2, 22 DCR 4678; Sept. 2, 1976, D.C. Law 1-79, title I, § 102(5), (6), title V, §§ 502, 503, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title I, § 103(b), title III, § 301(c)-(f), title IV, § 402, 24 DCR 2372; June 28, 1977, D.C. Law 2-12, § 6(j), 24 DCR 1442; Aug. 18, 1978, D.C. Law 2-101, § 2, 25 DCR 257; Mar. 3, 1979, D.C. Law 2-139, § 3205(v), 25 DCR 5740; Oct. 8, 1981, D.C. Law 4-35, § 3, 28 DCR 3376; Mar. 16, 1982, D.C. Law 4-88, § 2(d), (p), (q), 29 DCR 458; July 1, 1982, D.C. Law 4-120, § 2(a), 29 DCR 2064; Aug. 2, 1983, D.C. Law 5-17, § 5(b), 30 DCR 3196; Oct. 9, 1987, D.C. Law 7-36, § 3, 34 DCR 5321; Mar. 16, 1988, D.C. Law 7-92, § 3(a)-(c), 35 DCR 716; Mar. 11, 1992, D.C. Law 9-75, § 2(a), 39 DCR 310; Oct. 20, 1999, D.C. Law 13-40, § 2, 46 DCR 6550.)

Effect of amendments. — D.C. Law 13-40 added (h).

Legislative history of Law 13-40. — Law 13-40, the "Board of Elections and Ethics Subpoena Authority Amendment Act of 1999," was introduced in Council and assigned Bill No. 13-146. The Bill was adopted on first and second readings on June 8, 1999, and July 6, 1999, respectively. Signed by the Mayor on July 19, 1999, it was assigned Act No. 13-113 and transmitted to both Houses of Congress for its review. D.C. Law 13-40 became effective on October 20, 1999.

Protection from undue persuasion.

This section allows the Board of Elections & Ethics to take steps related to protecting potential voters from being improperly dissuaded from exercising their franchise. Scolaro v. District of Columbia Bd. of Elections & Ethics, 946 F. Supp. 80 (D.D.C. 1996).

§ 1-1311. Voter.

(a) No person shall be registered to vote in the District of Columbia unless:

(1) He or she meets the qualifications as a qualified elector as defined in § 1-1302(2);

(2) He or she executes an application to register to vote by signature or mark (unless prevented by physical disability) on a form approved pursuant to subsection (b) of this section or by the Federal Election Commission attesting that he or she meets the requirements as a qualified elector, and if he or she desires to vote in party election, this form shall indicate his or her political party affiliation; and

(3) The Board approves his or her registration application as provided in subsection (e) of this section.

(b) In administering the provisions of subsection (a)(2) of this section:

(1) The Board shall prepare and use a registration application form that meets the requirements of the National Voter Registration Act of 1993 and of the Federal Election Commission, and in which each request for information is readily understandable and can be satisfied by a concise answer or mark.

(2) Mail-in voter registration application forms approved by the Board shall be designed to provide an easily understood method of registering to vote by mail and shall be mailed to the Board with postage prepaid. These forms shall have printed on them, in bold face type, the penalties for fraudulently attempting to register to vote pursuant to § 1-1318(a) and the National Voter Registation Act of 1993.

(3) The Board shall accept any application form that has been preapproved by the Board for the purpose of voter registration and meets the requirements of this subsection or has been approved for use by federal legislation or regulation.

(c)(1)(A) Each Bureau of Motor Vehicle Services application (including any renewal application) shall automatically serve as an application to register to vote in the District of Columbia, unless the applicant fails to sign the voter registration portion of the application.

(B) The Bureau of Motor Vehicle Services and the Board shall jointly develop an application form that shall allow an applicant who wishes to register to vote to do so by the use of a single form that contains the necessary information for voter registration and information required for the issuance, renewal, or correction of the applicant's driver's permit or nondriver's identification card in any motor vehicle services office.

(C) The application for voter registration submitted pursuant to this subsection shall be considered as an update to any previous voter registration.

(D) Any application submitted for the purpose of a change of address or name accepted by the Bureau of Motor Vehicle Services, pursuant to this subsection, shall be considered notification to the Board of the change of address or name unless the applicant states on the combined portion of the form that the change of address or name is not for voter registration purposes.

(E) The combined portion of the application shall be designed so that the applicant can:

(i) Clearly state whether the change of address or name is for voter registration purposes;

(ii) Provide a mailing address, if mail is not received at the residence address; and

(iii) State whether he or she is a citizen of the United States.

(F) On a separate and distinct portion of the form, to be used for voter registration purposes, the applicant shall:

(i) Indicate a choice of party affiliation (if any);

(ii) Indicate the last address of voter registration (if known); and

(iii) Sign, under penalty of perjury, an attestation, which sets forth the requirements for voter registration, and states that he or she meets each of those requirements.

(G) The instructions for completing the form shall also include a statement that:

(i) If an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes; and

(ii) If an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

(H) The deadline for transmission of the voter registration application to the Board shall be not later than 10 days after the date of acceptance by the Bureau of Motor Vehicle Services, except that if a voter registration application is accepted within 5 days before the last day for registration to vote in an election, the application shall be transmitted to the Board not later than 5 days after the date of its acceptance.

(I) An application to register to vote or for change of address, party, or name shall be considered received by the Board pursuant to § 1-1311(e) on the date it was accepted by the Bureau of Motor Vehicle Services.

(J) Any form issued by mail for the purposes of correcting or updating a driver's permit or nondriver's identification card shall be designed so that the individual may state whether the change of address or name is for voter registration purposes and provide a mailing address, if mail is not received at the residence address.

(2) The registration application form shall be designed by the Board to provide an easily understood method of registering to vote by mail and shall be mailable to the Board postage prepaid. Such forms shall have printed on them in bold face type the penalties for fraudulently attempting to register to vote.

(d)(1)(A) Any agency of the District of Columbia government that provides public assistance or that operates or funds programs primarily engaged in providing services to persons with disabilities shall be designated as a voter registration agency.

(B) In addition to the agencies named in subparagraph (A) of this paragraph, the Senior Citizens Branch of the Department of Recreation and Parks and the Office on Aging shall be designated as voter registration agencies.

(C) The Mayor may designate any other executive branch agency of the District of Columbia government as a voter registration agency by filing written notice of the designation with the Board.

(D) The District shall cooperate with the Secretary of Defense to develop and implement procedures for persons to apply to register to vote at Armed Forces recruitment offices.

(2) The agencies named in paragraphs (1)(A), (B), and (C) of this subsection shall:

(A) Distribute with each application for service or assistance, and with each recertification, renewal, or change of address form relating to the service or assistance, a voter registration application, unless the applicant, in writing, declines to register to vote;

(B) Provide assistance to applicants in completing voter registration application forms, unless the applicant refuses assistance;

(C) Provide the services described in this paragraph at the person's home, if a voter registration agency provides services to a person with a disability at the person's home; and

(D) Accept completed forms and forward these forms to the Board as prescribed in this section.

(3) Each voter registration agency shall, on its own application, document, or on a separate form, provide to each applicant for service or assistance, recertification or renewal, or change of address the following information:

(A) The question, "If you are not registered to vote where you live now, would you like to apply to register to vote here today?";

(B) Boxes for the applicant to check to indicate whether the applicant would like to register or decline to register to vote (failure to check either box being deemed to constitute a declination to register for purposes of subparagraph (C) of this paragraph, together with the statement (in close proximity to the boxes and in prominent type), "IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME.";

(C) The statement, "If you would like help completing the voter registration application form, we will help you. The decision whether to seek or accept help is yours. You may complete the application form in private.";

(D) The statement, "If you believe that someone has interfered with your right to register or decline to register to vote, your right to privacy in deciding whether to register or in applying to register to vote, or your right to choose your own political party or other political preference, you may file a complaint with the chief administrative officer of the Board of Elections and Ethics."; the name, title, address, and telephone number of the chief administrative officer shall be included on the form; and

(E) If the voter registration agency provides public assistance, the statement, "Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency.".

(4) No person who provides a voter registration service at a District of Columbia government agency shall:

(A) Seek to influence an applicant's political preference or party registration;

(B) Display any political preference or party allegiance;

(C) Make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

(D) Make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

(5) Each agency that has been designated a voter registration agency in paragraph (1) of this subsection shall provide to each applicant who does not decline to register the same degree of assistance with regard to the completion of the registration application form as provided by the office with regard to the completion of its own forms, unless the applicant refuses assistance.

(6) No information that relates to a declination to register to vote in connection with an application made at an office described in this subsection may be used for any purpose other than voter registration.

(7) No voter registration agency shall reveal whether a particular individual completed an application to register to vote except when ordered by the officer designated in paragraph (12)(A) of this subsection when a complaint has been filed pursuant to paragraph (11) of this subsection or pursuant to § 11 of the National Voter Registration Act of 1993.

(8) A completed voter registration application or change of address or name accepted at a voter registration agency shall be transmitted by the agency to the Board by not later than 10 days after its acceptance by the agency, except that if a voter registration application is accepted at a voter registration agency office within 5 days before the deadline for voter registration in any election, the application shall be transmitted by the agency to the Board not later than 5 days after the date of acceptance.

(9) An application accepted at a voter registration agency shall be considered to have been received by the Board pursuant to subsection (e) of this section as of the date of acceptance by the voter registration agency.

(10) Notwithstanding any other provision of law, the Board shall ensure that the identity of the voter registration agency through which any particular individual is registered to vote is not disclosed to the public.

(11) An allegation of violation of the National Voter Registration Act of 1993 or of this subchapter may be made in writing, filed with the chief administrative officer of the Board and detail concisely the alleged violation.

(12)(A) The Board shall designate its chief administrative officer as the official responsible for the coordination of the District of Columbia's responsibilities under the National Voter Registration Act of 1993 and as the official responsible for the coordination of this subchapter.

(B) The chief administrative officer designated under subparagraph (A) of this paragraph and the Board shall have the authority:

(i) To request any voter registration agency to submit in writing any reports and to answer any questions as the chief administrative officer or the Board may prescribe that relate to the administration and enforcement of the National Voter Registration Act of 1993 and of this subchapter; and

(ii) To bring a civil action in the Superior Court of the District of Columbia for declaratory or injunctive relief with respect to the failure of any voter registration agency to comply with the requirements of this subchapter.

(13) The Board may adopt regulations with respect to the coordination and administration of the National Voter Registration Act Conforming Amendment Act of 1994 and the National Voter Registration Act of 1993.

(14)(A) Agencies, other than voter registration agencies, may be designated as application distribution agencies. These agencies shall include the District of Columbia Public Library, the District of Columbia Fire Department, the Metropolitan Police Department, and any other executive agency the Mayor designates in writing.

(B) Each application distribution agency shall request, and the Board shall provide, sufficient quantities of mail-in voter registration applications for distribution to the public.

(C) These mail-in voter registration applications shall be placed in each office or substation of the agency in an accessible location and in clear view so that citizens may easily obtain a mail-in voter registration application.

(D) Nothing in this subsection shall be deemed to require or permit employees of a mail-in voter registration application distribution agency to accept completed forms for delivery to the Board or to provide assistance in completing an application.

(e)(1) Within 19 calendar days after the receipt of a registration application form from any applicant, the Board shall mail a non-forwardable voter registration notification to the applicant advising the applicant of the acceptance or rejection of the registration application by its chief voter registration official.

(2) If the application is accepted, the notification shall include the applicant's name, address, date of birth, party affiliation (if any), ward, precinct and Advisory Neighborhood Commission single-member district ("SMD"), the address of the applicant's polling place and the hours during which the polls will be open. The Board may include along with the registration notification any voter education materials it deems appropriate. Registration of the applicant shall be effective on the date the Board determines that the applicant is a qualified elector and eligible to register to vote in the District of Columbia.

(3) If the application is rejected, the notification shall include the reason or reasons for the rejection and shall inform the voter of his or her right to appeal the rejection pursuant to subsection (f) of this section.

(4) If the voter registration notification is returned to the Board as undeliverable, the Board shall mail the notice provided in subsection (j)(1)(B) of this section.

(5)(A) Any duly registered voter may file with the Board objections to the registration of any person whom he or she has reason to believe is fictitious, deceased, a disqualified person, or otherwise ineligible to vote (except with respect to a change of residence), or file a request for the addition of any person whose name he or she has reason to believe has been erroneously omitted or cancelled from the voter roll. Application for the correction of the voter roll or the challenge of the right to vote of any person named on the voter roll shall be in writing and include any evidence in support of the challenge that the registrant is not qualified to be a registered voter. The challenge or application shall be filed with the Board not later than 90 days before the date of any election held under this subchapter.

(B) The Board shall send notice to any person whose registration has been challenged along with a copy of any evidence filed in support of the challenge. The notice shall be sent to the address listed on the Board's records. The notice shall state that the registrant must respond to the challenge not later than 30 days from the date of the mailing of the notice or be cancelled from the voter roll.

(C) The Board's chief voter registration official shall make a determination with respect to the challenge within 10 days of receipt of the challenged registrant's response. The determination shall be sent by first class mail to the challenged registrant and the person who filed the challenge. Within 14 days of mailing the notice, any aggrieved party may appeal, in writing, the chief voter registration official's determination to the Board. The Board shall conduct a hearing and issue a decision within 30 days of receipt of the written notice of appeal.

(D) With respect to a request for the addition of a person to the voter roll, if the Board's records do not evidence that the individual named has been erroneously omitted or cancelled, the Board shall send notice to the individual named in the request and to the person who filed the request. The notice shall state that the named individual must file a completed voter registration application in order to become a registered voter in the District.

(6) An individual whose registration has been cancelled under this section shall not be eligible to vote except by re-registration as provided in this section.

(f) In the case where a voter registration application is rejected pursuant to subsection (e) of this section, the Board shall immediately notify the individual of the rejection by first class mail. The individual may request a hearing before the Board on the rejection within 14 days after the notification is mailed. Upon the request for a hearing, the Board shall hold the hearing within 30 days after receipt of the request. At the hearing, the applicant and any interested party, may appear and give testimony on the issue. The Board shall determine the issue within 2 days after the hearing. Any aggrieved party may appeal the decision of the Board to the Superior Court of the District of Columbia within 3 days after the Board's decision. The decision of the Court shall be final and not appealable. If any part of the process is pending on the date of any election held under this subchapter, the person whose registration is in question shall be permitted to cast a ballot in such election which is designated "challenged". The ballot shall be counted in the election if the applicant is ultimately deemed to be a qualified registered elector.

(f-1) Repealed.

(g)(1) The registry shall be open during reasonable business hours, except that:

(A) The registry shall not be open during the 30-day period that immediately precedes any primary, general, or District-wide special election.

(B) The registry for a ward or Advisory Neighborhood Commission SMD shall not be open during the 30-day period that immediately precedes a special election for that ward or SMD.

(2) The Board shall process mailed voter registration applications and registration, update notifications received postmarked by not later than the thirtieth day preceding any election and timely completed non-postmarked voter registration applications and registration update notifications mailed

and received not later than the twenty-third day preceding any election. All other voter registration applications and update notifications received during the 30 days immediately preceding the date of any election shall be held and processed after the registry reopens.

(3) The Board may close the registry on Saturdays, Sundays, and holidays except that, if the deadline for voter registration in any election shall fall on a Saturday, Sunday or holiday, the deadline for voter registration shall extend to the next business day.

(4) The close of the registry shall not apply for purposes of change of address on election day by registrants pursuant to subsection (i)(4) of this section.

(h)(1) No later than 45 days preceding any election held under this subchapter, the Board shall cause a District-wide alphabetical list of qualified electors registered to vote in the District to be placed in the main public library and shall cause an alphabetical ward list of qualified registered electors for each ward to be placed in each branch library located within the respective ward. Such lists shall be current as of the 60th day preceding such elections.

(2) The Board shall cause a copy of the list of qualified electors registered to vote as of the date the voter registry closed to be placed in public buildings of the District of Columbia for a period of not less than 14 days preceding each election held under this subchapter as follows:

(A) A District-wide list shall be placed in the main public library; and

(B) A ward list for the ward shall be placed in every branch library located within the respective ward.

(3) The provisions of this subsection shall not apply when a special election is held to fill a vacancy in an Advisory Neighborhood Commission single-member district.

(i)(1) A person shall be entitled to vote in an election in the District of Columbia if he or she is a duly registered voter. A qualified elector shall be considered duly registered in the District if he or she has met the requirements for voter registration and, on the day of the election, either resides at the address listed on the Board's records or files an election day change of address pursuant to this subsection.

(2) Each registered voter who changes his or her place of residence from that listed on the Board's records shall notify the Board, in writing, of the new residence address. A change of address shall be effective on the date the notification was mailed as shown by the United States Postal Service postmark. If not postmarked, the notification shall be effective on the date of receipt by the Board. Change of address notifications from registrants shall be accepted pursuant to subsection (g) of this section, except that any registrant who has not notified the Board of his or her current residence address by the deadline established by subsection (g) of this section may be permitted to vote at the polling place that serves the current residence address by filing an election day change of address notice pursuant to paragraph (4) of this subsection.

(3) Each registered voter who votes at a polling place on election day shall affirm his or her residence address as it appears on the official registration roll for the precinct. The act of signing a copy of the official registration roll for the precinct shall be deemed affirmation of the voter's address as it appears on the Board's registration records.

(4)(A) A registered voter who has moved within the District but has not notified the Board in writing of his or her current address by the deadline established pursuant to subsection (g) of this section, or who is designated inactive pursuant to subsection (j) of this section, shall, prior to being permitted to vote, file notification of a change of address on a form provided by the Board, at the polling place serving the current residence address.

(B) A registered voter who files an election day change of address at the precinct of current residence in accordance with this paragraph shall, by written affirmation, establish identity and current residence within the precinct at the time of voting.

(C) The ballot of each person who files a change of address at a polling place shall be stamped "special" and placed in a sealed envelope. The outside of the special ballot envelope shall contain the affirmation signed by the voter attesting to his or her qualifications to vote in the election, the date of birth of the voter, and any other information as the Board deems necessary for its chief registration official to determine that the individual is qualified to have the ballot counted. The official in charge of the polling place shall provide the voter with written notification of the means by which the voter can determine from the Board whether the ballot will be counted and of the voter's right of appeal pursuant to § 1-1313(e) should the chief registration official determine that the voter is not qualified to vote in the election.

(5)(A) As soon as practicable after the election, the Board shall mail each registered voter who filed a change of address at the polls on election day a nonforwardable address confirmation notice to the address provided in the written affirmation.

(B) Where the United States Postal Service returns the address confirmation notification as undeliverable or indicating that the registrant does not live at the address provided in the written affirmation, the Board shall notify the Corporation Counsel of the District of Columbia.

(j)(1) The Board shall develop a systematic program to maintain the voter roll and keep it current. This program shall include the following:

(A) In January of each odd-numbered year, the Board shall confirm the address of each registered voter who did not confirm his or her address through the voting process or file a change of address at the polls in the preceding general election by mailing a first class nonforwardable postcard to the address listed on the Board's records.

(B)(i) If the United States Postal Service returns the notice and provides a new address for the registrant within the District of Columbia, the Board shall change the address on its records and mail to both the old and new addresses of the registrant a forwardable notification that the address has been changed to reflect the information obtained from the United States Postal Service.

(ii) If the United States Postal Service returns the notice and provides a new address outside the District of Columbia, the Board shall mail a forwardable notice to both the old and new address informing the registrant how to register to vote in the new jurisdiction or correct the address information obtained from the United States Postal Service.

(iii) If the United States Postal Service returns the notice to the Board as undeliverable, the Board shall mail to the registrant at his or her last

known address the notice prescribed in sub-subparagraph (ii) of this subparagraph.

(C) The notices prescribed in subparagraphs (A) and (B) of this paragraph shall include a pre-addressed and postage paid return notification postcard to enable the registrant to correct any address information obtained from the United States Postal Service. In addition, the notices shall include the following information:

"If you did not change your residence, or changed residence but remained in the District, you should return the card not later than the deadline for mail registration for the next federal election (the 30th day before the election). If the card is not returned, affirmation of your address may be required before you are permitted to vote in any election during the period beginning on the date of the notice and ending on the day after the date of the second general election for federal office that occurs after the date of the notice, and if you do not vote in an election during that period, your name will be removed from the list of eligible voters.".

(D) The Board may, in addition, utilize information obtained from the United States Postal Service, the National Change of Address System ("NCOA"), the Bureau of Motor Vehicle Services (subject to the provisions of subsection (c)(1)(D) of this section, which identifies registrants who have moved from the addresses listed on the Board's records. In these cases the Board shall issue the notices prescribed in subparagraph (B) of this paragraph.

(2)(A) Upon mailing of the notice required in paragraph (1)(B) of this subsection, the registrant's voter registration status shall be designated as inactive on the voter roll.

(B) Where a registered voter is designated as inactive on the voter roll pursuant to subparagraph (A) of this paragraph and the registrant provides the Board with a current residence address, or votes in any election in accordance with subsection (i) of this section by the date established in subparagraph (C) of this paragraph, the inactive designation shall be removed from the registrant's record.

(C) Where the Board mails the notice required in paragraph (1)(B) of this subsection, and the registrant fails to respond to the notice and fails to vote during the period beginning on the date the notice was mailed and ending on the day after the second general election for federal office, the registrant's name shall be removed from the voter roll.

(3) As part of its systematic voter roll maintenance program, the Board may, by regulation, develop additional procedures to identify and remove from the voter roll registrants who are deceased and no notification was received from the Bureau of Vital Statistics, who have moved from the District and no notification was received from the registrant or the United States Postal Service, or who otherwise no longer meets the qualifications as duly registered voters.

(4) Any systematic program conducted by the Board to identify individuals who do not reside at the address listed on the Board's records shall be completed not less than the 90th day immediately preceding any primary, general, or District-wide special election.

(5) The voter registrations of individuals whose registrations are designated as inactive on the voter roll, pursuant to paragraph (2) of this subsection:

(A) Shall not be utilized in the calculation of the number of signatures required for qualification of candidate, initiative, referendum, and recall petitions;

(B) Shall not be counted as valid in the verification of signatures pursuant to §§ 1-1312(o), 1-1320(o), and 1-1321(k);

(C) Shall not be included where the Board is required:

(i) To provide lists of registered voters at the polls on election day or for public inspection;

(ii) To calculate or report the number of registered voters for an administrative purpose; or

(iii) For the issuance of information mailings; and

(D) Their names shall not be sold by the Board either in hard copy form or electronic media, except upon specific request of the purchaser and the fact that the registrations are designated as inactive is made known to the purchaser.

(k)(1) The Board shall cancel a voter registration upon receipt of a signed request from the registrant, upon notification of the death of a registrant, upon notification of a registrant's incarceration for conviction of a felony, upon notification that the registrant has registered to vote in another jurisdiction, or for any other reason specifically authorized in this subchapter.

(2) The Board shall request at least monthly, and the Mayor shall furnish, the name, address, and date of birth, if known, of each District resident 18 years of age and over reported deceased within the District, together with the name and address of each District resident who has been reported deceased by other jurisdictions since the date of the previous report.

(3) The Board shall request at least monthly, and the Superior Court of the District of Columbia shall furnish, the name and address of each person incarcerated as a result of a felony conviction since the date of the previous report, and the former and present names and address of each person whose name has been changed by decree or order of the Court since the date of the previous report.

(4) The Board shall request from the United States District Court for the District of Columbia, at least monthly, the name and address of each person incarcerated as a result of a felony conviction since the date of the previous report.

(5) Any individual whose registration has been cancelled shall not be permitted to vote except by re-registration as provided in this section. (Aug. 12, 1955, 69 Stat. 700, ch. 862, § 7; Oct. 4, 1961, 75 Stat. 817, Pub. L. 87-389, § 1 (8, 9, 10, 11); July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; Apr. 22, 1968, 82 Stat. 103, Pub. L. 90-292, § 4(4); July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Dec. 23, 1971, 85 Stat. 790, Pub. L. 92-220, § 1(8), (30), (31); 1973 Ed., § 1-1107; Dec. 16, 1975, D.C. Law 1-37, § 2(3)-(5), 22 DCR 3426; Apr. 23, 1977, D.C. Law 1-126, title III, § 301(g)-(i), title IV, § 402, 24 DCR 2372; Aug. 18, 1978, D.C. Law 2-101, § 2, 25 DCR 257; Mar. 16, 1982, D.C. Law 4-88, § 2(e), (n), (p), (q), 29 DCR 458; July 1, 1982, D.C. Law 4-120, § 2(b), 29 DCR 2064; Aug. 2, 1983, D.C. Law 5-17, § 5(c), 30 DCR 3196; Mar. 16, 1988, D.C. Law 7-92, § 3(d)-(g), 35 DCR 716; Aug. 17, 1991, D.C. Law 9-32, § 2, 38 DCR 4220; Mar. 11, 1992, D.C. Law 9-75, § 2(b), 39 DCR 310; Feb. 5, 1994, D.C. Law 10-68, § 7(a), 40 DCR 6311; Sept. 22, 1994, D.C. Law 10-173, § 2(b), 41 DCR

5154; July 25, 1995, D.C. Law 11-30, § 2(b), 42 DCR 1547; Apr. 18, 1996, D.C. Law 11-110, § 5(a), 43 DCR 530; Apr. 12, 2000, D.C. Law 13-91, § 123(b), 47 DCR 520.)

Effect of amendments. — D.C. Law 13-91 validated a previously made technical correction in (j)(2).

Legislative history of Law 13-91. — See note to § 1-1302.

Elections appeals.

Superior Court judges are authorized to hear elections appeals when registered voters have been stricken from the rolls and wish to contest the Election Board's ruling. Scolaro v. District of Columbia Bd. of Elections & Ethics, App. D.C., 691 A.2d 77 (1997).

Registration.

—Challenge at polls.

Failure to challenge all voters who have been registered more than 90 days before the election does not foreclose a challenge to the same voters later at the polls, when time may have yielded additional information useful to the challenge. Scolaro v. District of Columbia Bd. of Elections & Ethics, App. D.C., 691 A.2d 77 (1997).

—Students.

There is no statutory duty that would compel the Elections Board to give students a closer look than anyone else when they attempt to register to vote. Scolaro v. District of Columbia Bd. of Elections & Ethics, App. D.C., 691 A.2d 77 (1997).

§ 1-1312. Qualifications of candidates and electors; nomination and election of Delegate, Mayor, Chairman, members of Council, and members of Board of Education; petition requirements; arrangement of ballot.

(a)(1) Each candidate for election to the office of national committeeman or alternate, or national committeewoman or alternate, and for election as a member or official designated for election at large under paragraph (4) of § 1-1301, shall be a qualified elector registered under § 1-1311 who has been nominated for such office, or for election as such member or official, by a nominating petition:

(A) Signed by not less than 500, or 1%, whichever is less, of the qualified electors registered under such § 1-1311, who are of the same political party as the candidate; and

(B) Filed with the Board not later than the 69th day before the date of the election held for such office, member, or official.

(2) In the case of a nominating petition for a candidate for election as a member or official designated for election from a ward under paragraph (4) of § 1-1301, such petition shall be prepared and filed in the same manner as a petition prepared and filed by a candidate under paragraph (1) of this subsection and signed by 100, or 1%, whichever is less, of the qualified electors residing in such ward, registered under § 1-1311, who are of the same political party as the candidate.

(b)(1)(A) No person shall hold elected office pursuant to this section unless he or she has been a bona fide resident of the District of Columbia continuously since the beginning of the 90-day period ending on the date of the next election, and is a qualified elector registered under § 1-1311.

(B) No person shall hold elected office pursuant to this section if he or she, in the case of the Mayor, Council Chairman, Council members, Board of Education members, and any other non-judicial office existing or to be created

except those of Advisory Neighborhood Commissioner, Delegate from the District of Columbia, Shadow Representative, and Shadow Senator, has held that same office for 2 consecutive terms.

(C) For purposes of this paragraph:

(i) Any terms served previous to the adoption of the Term Limits Initiative of 1995 will not count in determining length of service; and

(ii) Service of more than 1/2 of a term shall count as a full term.

(2) Only registered, qualified electors of the District of Columbia are authorized to circulate nominating petitions of candidates for elected office pursuant to this subchapter. The Board shall consider invalid the signatures on any petition sheet which was circulated by a person who, at the time of circulation, was not a registered, qualified elector of the District of Columbia.

(3) Any circulator who willfully violates any provision of this section shall, upon conviction thereof, be subject to a fine of not more than $10,000 or to imprisonment of not more than 6 months, or both. Each occurrence of a violation of this section shall constitute a separate offense. Violation of this section shall be prosecuted in the name of the District of Columbia by the Corporation Counsel of the District of Columbia.

(c)(1) In such election of officials referred to in paragraph (1) of § 1-1301, and in each election of officials designated for election at large pursuant to paragraph (4) of § 1-1301, the Board shall arrange the ballot of each party to enable the registered voters of such party to vote separately or by slate for each official duly qualified and nominated for election to such office.

(2) In each election of officials designated, pursuant to paragraph (4) of § 1-1301, for election from a ward, the Board shall arrange the ballot of each party to enable the registered voters of such party, residing in such ward, to vote separately or by slate for each official duly qualified and nominated from such ward for election to such office from such ward.

(d) Each political party which had in the next preceding election year at least 7,500 votes cast in the general election for a candidate of the party to the office of Delegate, Mayor, Chairman of the Council, or member of the Council, shall be entitled to elect candidates for presidential electors, provided that the party has met all deadlines set out in this subchapter or by regulation for the submission of a party plan for the election. The executive committee of the organization recognized by the national committee of each such party as the official organization of that party in the District of Columbia shall nominate by appropriate means the presidential electors for that party. Nominations shall be made by message to the Board on or before September 1st next preceding a presidential election.

(e) The names of the candidates of each political party for President and Vice President shall be placed on the ballot under the title and device, if any, of that party as designated by the duly authorized committee of the organization recognized by the national committee of that party as the official organization of that party in the District. The form of the ballot shall be determined by that Board. The position on the ballot of names of candidates for President and Vice President shall be determined by lot. The names of persons nominated as candidates for electors of President and Vice President shall not appear on the ballot.

(f) A political party which does not qualify under subsection (d) of this section may have the names of its candidates for President and Vice President

of the United States printed on the general election ballot provided a petition nominating the appropriate number of candidates for presidential electors signed by at least 1 per centum of registered qualified electors of the District of Columbia, as of July 1st of the year in which the election is to be held is presented to the Board on or before the third Tuesday in August preceding the date of the presidential election.

(g) No person may be elected to the office of elector of President and Vice President pursuant to this subchapter unless: (1) He or she is a registered voter in the District; and (2) he or she has been a bona fide resident of the District for a period of 3 years immediately preceding the date of the presidential election. Each person elected as elector of President and Vice President shall, in the presence of the Board, take an oath or solemnly affirm that he or she will vote for the candidates of the party he or she has been nominated to represent, and it shall be his or her duty to vote in such manner in the electoral college.

(h)(1)(A) The Delegate, Mayor, Chairman of the Council of the District of Columbia and the 4 at-large members of the Council shall be elected by the registered qualified electors of the District of Columbia in a general election. Each candidate for the office of Delegate, Mayor, Chairman of the Council of the District of Columbia, and at-large members of the Council in any general election shall, except as otherwise provided in subsection (j) of this section and § 1-1314(d), have been elected by the registered qualified electors of the District as such candidate by the next preceding primary election.

(B)(i) A member of the office of Council (other than the Chairman and any member elected at large) shall be elected in a general election by the registered qualified electors of the respective ward of the District from which the individual seeking such office was elected as a candidate for such office as provided in sub-subparagraph (ii) of this subparagraph.

(ii) Each candidate for the office of member of the Council (other than Chairman and at-large members) shall, except as otherwise provided in subsection (j) of this section and § 1-1314(d), have been elected as such a candidate, by the registered qualified electors of the ward of the District from which such individual was nominated, at the next preceding primary election to fill such office within that ward.

(2) The nomination and election of any individual to the office of Delegate, Mayor, Chairman of the Council and member of the Council shall be governed by the provisions of this subchapter. No political party shall be qualified to hold a primary election to select candidates for election to any such office in a general election unless, in the next preceding election year, at least 7,500 votes were cast in the general election for a candidate of such party for any such office or for its candidates for electors of President and Vice President.

(i)(1) Each individual in a primary election for candidate for the office of Delegate, Mayor, Chairman of the Council, or at-large member of the Council shall be nominated for any such office by a petition:

(A) Filed with the Board not later than 69 days before the date of such primary election; and

(B) Signed by at least 2,000 registered qualified electors of the same political party as the nominee, or by 1 per centum of the duly registered members of such political party, whichever is less, as shown by the records of the Board as of the 123rd day before the date of such election.

(2) Each individual in a primary election for candidate for the office of member of the Council (other than Chairman and at-large members) shall be nominated for such office by a petition filed with the Board not later than 69 days before the date of such primary election, and signed by at least 250 persons, or by 1 per centum of persons (whichever is less, in the ward from which such individual seeks election) who are duly registered in such ward under § 1-1311 and who are of the same political party as the nominee.

(3) For the purpose of computing nominating petition signature requirements, the Board shall by noon on the 123rd day preceding the election post and make available the exact number of qualified registered electors in the District by party, ward, and precinct, as provided in this subsection. The Board shall make available for public inspection, in the office of the Board, the entire list of registered electors upon which such count was based. Such list shall be retained by the Board until the period for circulating, filing, and challenging petitions has ended.

(4) A nominating petition for a candidate in a primary election for any such office may not be circulated for signature before the 123rd day preceding the date of such election and may not be filed with the Board before the 94th day preceding such date. The Board may prescribe rules with respect to the preparation and presentation of nominating petitions. The Board shall arrange the ballot of each political party in each such primary election as to enable a voter of such party to vote for nominated candidates of that party.

(j)(1) A duly qualified candidate for the office of Delegate, Mayor, Chairman of the Council, or member of the Council, may, subject to the provisions of this subsection, be nominated directly as such a candidate for election for such office (including any such election to be held to fill a vacancy). Such person shall be nominated by petition: (A) Filed with the Board not less than 69 days before the date of such general election; and (B) in the case of a person who is a candidate for the office of member of the Council (other than the Chairman or an at-large member), signed by 500 voters who are duly registered under § 1-1311 in the ward from which the candidate seeks election; and in the case of a person who is a candidate for the office of Delegate, Mayor, Chairman of the Council, or at-large member of the Council, signed by duly registered voters equal in number to 1½ per centum of the total number of registered voters in the District, as shown by the records of the Board as of 123 days before the date of such election, or by 3,000 persons duly registered under § 1-1311, whichever is less. No signatures on such a petition may be counted which have been made on such petition more than 123 days before the date of such election.

(2) Nominations under this subsection for candidates for election in a general election to any office referred to in paragraph (1) of this subsection shall be of no force and effect with respect to any person whose name has appeared on the ballot of a primary election for that office held within 8 months before the date of such general election.

(3) No person shall be nominated directly as a candidate in any general election for the office of Delegate, Mayor, Chairman of the Council, member of the Council, United States Senator, or United States Representative who is registered to vote as affiliated with a party qualified to conduct a primary election.

(k)(1) In each general election for the office of member of the Council (other than the office of the Chairman or an at-large member), the Board shall arrange the ballots in each ward to enable a voter registered in that ward to vote for any 1 candidate who:

(A) Has been duly elected by any political party in the next preceding primary election for such office from such ward;

(B) Has been duly nominated to fill a vacancy in such office in such ward pursuant to § 1-1314(d); or

(C) Has been nominated directly as a candidate for such office in such ward under subsection (j) of this section.

(2) In each general election for the office of Chairman and member of the Council at large, the Board shall arrange the ballots to enable a registered qualified elector to vote for as many candidates for election as members at large as there are members at large to be elected in such election, including the Chairman. Such candidates shall be only those persons who:

(A) Have been duly elected by any political party in the next preceding primary election for such office;

(B) Have been duly nominated to fill vacancies in such office pursuant to § 1-1314(d); or

(C) Have been nominated directly as a candidate under subsection (j) of this section.

(3) In each general election for the office of Delegate and Mayor, the Board shall arrange the ballots to enable a registered qualified elector to vote for any 1 of the candidates for any such office who:

(A) Has been duly elected by any political party in the next preceding primary election for such office;

(B) Has been duly nominated to fill a vacancy in such office pursuant to § 1-1314(d); or

(C) Has been nominated directly as a candidate under subsection (j) of this section.

(l)(1) Designation of offices of local party committees to be filled by election pursuant to paragraph (4) of § 1-1301 shall be effected, in accordance with the provision of this subsection, by written communication signed by the chairman of such committee and filed with the Board not later than 180 days before the date of such election.

(2) The notification shall specify separately:

(A) A comprehensive plan for the scheduled election;

(B) The titles of the offices and the total number of members to be elected at large, if any;

(C) The title of the offices and the total number of members to be elected by ward, if any; and

(D) The procedures to be followed in nominating and electing these members.

(3) Repealed.

(m)(1) Except in the case of the 3 members of the Board of Education elected at large, the members of the Board of Education shall be elected by the duly registered voters of the respective wards of the District from which the members have been nominated.

(2) In the case of the 3 members of the Board of Education elected at large, each such member shall be elected by the duly registered voters of the District.

(n) Each candidate in a general or special election for member of the Board of Education shall be nominated for such office by a nominating petition: (A) Filed with the Board not later than the 69th calendar day before the date of such general or special election; and (B) signed by at least 200 qualified electors who are duly registered under § 1-1311, who reside in the ward from which the candidate seeks election, or in the case of a candidate running at large, signed by at least 1,000 of the qualified electors in the District of Columbia registered under such § 1-1311. A nominating petition for a candidate in a general or special election for member of the Board of Education may not be circulated for signatures before the 123rd day preceding the date of such election and may not be filed with the Board before the 94th day preceding such date. In a general or special election for members of the Board of Education, the Board shall arrange the ballot for each ward to enable a voter registered in that ward to vote for any 1 candidate duly nominated to be elected to such office from such ward, and to vote for as many candidates duly nominated for election at large to such office as there are Board of Education members to be elected at large in such election.

(o)(1) The Board is authorized to accept any nominating petition for a candidate for any office as bona fide with respect to the qualifications of the signatures thereto if the original or facsimile thereof has been posted in a suitable public place for a 10-day period beginning on the third day after the filing deadline for nominating petitions for the office. Any registered qualified elector may within the 10-day period challenge the validity of any petition by written statement signed by the challenger and filed with the Board and specifying concisely the alleged defects in the petition. A copy of the challenge shall be sent by the Board promptly to the person designated for the purpose in the nominating petition. In a special election to fill a vacancy in an Advisory Neighborhood Commission single-member district, the period prescribed in this paragraph for posting and challenge shall be 5 days, excluding weekends and holidays.

(2) The Board shall receive evidence in support of and in opposition to the challenge and shall determine the validity of the challenged nominating petition not more than 15 days after the challenge has been filed. Within 3 days after announcement of the determination of the Board with respect to the validity of the nominating petition, either the challenger or any person named in the challenged petition as a nominee may apply to the District of Columbia Court of Appeals for a review of the reasonableness of such determination. The Court shall expedite consideration of the matter and the decision of such Court shall be final and not appealable.

(2a) Repealed.

(3) For the purpose of verifying a signature on any petition filed pursuant to this section, the Board shall first determine that the address on the petition is the same as the residence shown on the signer's voter registration record. If the address is different, the signature shall not be counted as valid unless the Board's records show that the person was registered to vote from the address listed on the petition at the time the person signed the petition.

(p) In any election, the order in which the names of the candidates for office appear on the ballot shall be determined by lot, upon a date or dates and under regulations prescribed by the Board.

(q) Any petition required to be filed under this subchapter by a particular date must be filed no later than 5:00 p.m. on such date.

(r)(1) In any primary, general, or special election held in the District of Columbia to nominate or elect candidates to public office, a voter may cast a write-in vote for a candidate other than those who have qualified to appear on the ballot.

(2) To be eligible to receive the nomination of a political party for public office, a write-in candidate shall be a duly registered member of the party nominated and shall meet all the other qualifications required for election to the office and shall declare his or her candidacy not later than 4:45 p.m. on the third day immediately following the date of the election on a form or forms prescribed by the Board.

(3) To be eligible for election to public office, a write-in candidate shall be a duly registered elector and shall meet all of the other qualifications required for election to the office and shall declare his or her candidacy not later than 4:45 p.m. on the seventh day immediately following the date of the election in which he or she was a candidate on a form or forms prescribed by the Board.

(4) In party office elections, write-in voting provisions may also be subject to the party rules.

(s) The Board shall submit to the Mayor and Council a feasibility study of mail-ballot voting procedures, within 6 months after October 21, 2000. The study shall outline the advantages and disadvantages of mail-ballot procedures and recommend whether mail-ballot procedures should be implemented in District of Columbia elections. The study shall include an analysis of the following issues, and other topics that the Board deems appropriate:

(1) Administration and logistics;

(2) Ballot integrity and electoral fairness;

(3) Voter turnout;

(4) Cost;

(5) Applicability to special elections and regularly scheduled elections; and

(6) The experiences of other jurisdictions that have used mail-ballot procedures. (Aug. 12, 1955, 69 Stat. 701, ch. 682, § 8; Oct. 4, 1961, 75 Stat. 818, Pub. L. 87-389, § 1 (12, 13); Apr. 22, 1968, 82 Stat. 103, Pub. L. 90-292, § 4(5); Sept. 22, 1970, 84 Stat. 849, Pub. L. 91-405, title II, §§ 203(b), 205(b), (e)(2), (f); Dec. 23, 1971, 85 Stat. 203(b), 205(b), (e)(2), (f); Dec. 23, 1971, 85 Stat. 790, Pub. L. 92-220, § 1(9)-(16), (32)-(34); 1973 Ed., § 1-1108; Aug. 14, 1973, 87 Stat. 312, Pub. L. 93-92, § 1(8)-(14); Dec. 24, 1973, 87 Stat. 833, Pub. L. 93-198, title VII, § 751(3); Aug. 14, 1974, 88 Stat. 458, Pub. L. 93-376, title III, § 306(a); Sept. 2, 1976, D.C. Law 1-79, title I, § 102(7)-(12), 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title III, § 301(j), title IV, § 402, 24 DCR 2372; Mar. 16, 1982, D.C. Law 4-88, § 2(f), (o)-(s), 29 DCR 458; July 1, 1982, D.C. Law 4-120, § 2(c), 29 DCR 2064; Aug. 2, 1983, D.C. Law 5-17, § 5(d), 30 DCR 3196; Mar. 16, 1988, D.C. Law 7-92, § 3(h)-(k), 35 DCR 716; Dec. 10, 1991, D.C. Law 9-49, § 2(a), 38 DCR 6572; Mar. 11, 1992, D.C. Law 9-75, § 2(c), 39 DCR 310; Sept. 22, 1994, D.C. Law 10-173, § 2(c), 41 DCR 5154; Mar. 23, 1995, D.C. Law 10-254, § 3, 42 DCR 758; _____, 2000, D.C. Law 13- (Act 13-196), § 2, 46 DCR 10440; Oct. 21, 2000, D.C. Law 13-177, § 2, 47 DCR 6842.)

Effect of amendments. — D.C. Law 13-(Act 13-196) rewrote the first sentence in (d).

D.C. Law 13-177 added (s).

Temporary legislation. — Section 2 of D.C. Law 13-181 inserted subsections (n-1) and (n-2) to read as follows:

"(n-1) Notwithstanding subsection (n) of this section, each candidate in a general or special election for member of the Board of Education during calendar year 2000 shall be nominated for such office by a nominating petition: (A) Filed with the Board not later than September 1, 2000; and (B) signed by at least 200 qualified electors who are duly registered under § 1-1311, who reside in the ward from which the candidate seeks election, or in the case of a candidate running at large, signed by at least 1,000 of the qualified electors in the District of Columbia registered under § 1-1311. A nominating petition for a candidate in a general or special election for member of the Board of Education may not be circulated for signatures before July 10, 2000 and may not be filed with the Board before August 7, 2000 and not later than September 1, 2000. In a general or special election for members of the Board of Education, the Board shall arrange the ballot for each ward to enable a voter registered in that ward to vote for any one candidate duly nominated to be elected to such office from such ward, and to vote for as many candidates duly nominated for election at large to such office as there are Board of Education members to be elected at large in such election.

"(n-2)(1) Notwithstanding subsection (n) of this section, each candidate in a general or special election for member of the Board of Education during calendar year 2000 shall be nominated for such office by a nominating petition: (A) Filed with the Board not later than September 1, 2000; and (B) signed by at least 200 qualified electors who are duly registered under § 1-1311, who reside in the district from which the candidate seeks election, or in the case of a candidate running for President, signed by at least 1,000 of the qualified electors in the District of Columbia registered under § 1-1311. A nominating petition for a candidate in a general or special election for member of the Board of Education may not be circulated for signatures before July 10, 2000 and may not be filed with the Board before August 7, 2000 and not later than September 1, 2000. In a general or special election for members of the Board of Education, the Board shall arrange the ballot for each special school district to enable a voter registered in that special school district to vote for one candidate duly nominated to be elected to such office from such special school district, and to vote for one candidate duly nominated to be elected to the office of President of the Board of Education.

"(2) This subsection shall apply upon the effective date of the School Governance Charter Amendment Act of 2000."

Section 5(b) of D.C. Law 13-181 provides that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 2 of the Extension of the Nominating Petition Time Emergency Amendment Act of 2000 (D.C. Act 13-377, July 10, 2000, 47 DCR 5853).

For temporary amendment of section, see § 2 of the Extension of the Nominating Petition Time Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-452, November 7, 2000, 47 DCR 9403).

Legislative history of Law 13-177. — Law 13-177, the "Mail Ballot Feasibility Study Amendment Act of 2000," was introduced in Council and assigned Bill No. 13-489. The Bill was adopted on first and second readings on June 26, 2000, and July 11, 2000, respectively. Signed by the Mayor on July 26, 2000, it was assigned Act No. 13-388 and transmitted to both Houses of Congress for its review. D.C. Law 13-177 became effective on October 21, 2000.

Legislative history of Law 13-181. — Law 13-181, the "Extension of the Nominating Petition Time Temporary Amendment Act of 2000," was introduced in Council and assigned Bill No. 13-732. The Bill was adopted on first and second readings on June 6, 2000, and July 11, 2000, respectively. Signed by the Mayor on July 26, 2000, it was assigned Act No. 13-392 and transmitted to both Houses of Congress for its review. D.C. Law 13-181 became effective on October 21, 2000.

Criminal penalties.

Appellant's violation of paragraph (j)(1) of this section, in submitting a petition that contained signatures not written by persons whose signatures they purported to be, could not be penalized as a crime under paragraph (b)(3) of this section, since such a violation is not made a crime by the statute. Mitchell v. District of Columbia, App. D.C., 741 A.2d 1049 (1999).

Timely filing.

Challenges to nominating petitions were timely filed where challenger (or his representative) was personally within Board's offices by 4:45 p.m. on final day for filing and possessed challenge documents; fact that processing of those documents could result in their actual receipt (as evidenced by a time stamp) after 5:00 p.m. did not make filing untimely. Pree v. District of Columbia Bd. of Elections & Ethics, App. D.C., 645 A.2d 603 (1994).

Cited in Price v. District of Columbia Bd. of Elections & Ethics, App. D.C., 645 A.2d 594 (1994).

§ 1-1313. Secrecy required; place of voting; watchers; challenged ballots; assistance in marking ballot or operating voting machine; more than 1 vote prohibited; unopposed candidates; availability of regulations at polling place; deposit, inspection, and destruction of ballots.

Elections appeals.

Superior Court judges are authorized to hear elections appeals when registered voters have been stricken from the rolls and wish to contest the Election Board's ruling. Scolaro v. District of Columbia Bd. of Elections & Ethics, App. D.C., 691 A.2d 77 (1997).

A challenger may await Election Board certification of the election and then seek timely review of the election, at which time the reviewing court will then refer the matter for an evidentiary hearing either to the Superior Court or to the Election Board itself. Scolaro v. District of Columbia Bd. of Elections & Ethics, App. D.C., 691 A.2d 77 (1997).

Registration.

—Challenge at polls.

Failure to challenge all voters who have been registered more than 90 days before the election does not foreclose a challenge to the same voters later at the polls, when time may have yielded additional information useful to the challenge. Scolaro v. District of Columbia Bd. of Elections & Ethics, App. D.C., 691 A.2d 77 (1997).

§ 1-1315. Recount; judicial review of election.

Certification of results.

Where an objective review of the record demonstrated that the petitioners had fallen short of proving that any of the challenged voters made a willful and knowing misrepresentation to the Board of Elections with intent to deceive the Board and induce it to permit them to vote unlawfully, the decision of the Board certifying the result of the election was affirmed. Allen v. District of Columbia Bd. of Elections & Ethics, App. D.C., 663 A.2d 489 (1995).

Evidentiary hearing.

When a challenger loses a voter registration challenge before the precinct captain and wants a review of that decision, that challenger must be afforded an evidentiary hearing unless the issues raised can be disposed of directly by the court as a matter of law. Scolaro v. District of Columbia Bd. of Elections & Ethics, App. D.C., 691 A.2d 77 (1997).

A challenger may await election board certification of the election and then seek timely review of the election, at which time the reviewing court will then refer the matter for an evidentiary hearing either to the Superior Court or to the Election Board itself. Scolaro v. District of Columbia Bd. of Elections & Ethics, App. D.C., 691 A.2d 77 (1997).

Harmless error.

Any error on part of special master, in failing to expressly address challenges to special ballots, was harmless in light of uncontroverted evidence that outcome of election in petitioner's single member district would be unaffected. Scolaro v. District of Columbia Bd. of Elections & Ethics, App. D.C., 717 A.2d 891 (1998).

Jurisdiction.

The court's jurisdiction to review an election is independent of its general jurisdiction to review orders and decisions of public agencies, and thus is not subject to the usual limitation on review of "contested cases." Scolaro v. District of Columbia Bd. of Elections & Ethics, App. D.C., 691 A.2d 77 (1997).

Presumptive eligibility.

Evidence was insufficient to overcome student voters' presumptive eligibility to vote, where probative value of student directory listings concerning students' permanent residences was slight, and neither list of first-year students' residences in university housing nor out-of-state driver's licenses was sufficiently probative of students' domiciliary intent. Scolaro v. District of Columbia Bd. of Elections & Ethics, App. D.C., 717 A.2d 891 (1998).

§ 1-1318. Corrupt election practices.

Cited in Scolaro v. District of Columbia Bd. of Elections & Ethics, 946 F. Supp. 80 (D.D.C. 1996).

§ 1-1320. Initiative and referendum process.

(a)(1) Any registered qualified elector, or electors of the District of Columbia, who desire to submit a proposed initiative measure to the electors of the District of Columbia, or who desire to order that a referendum be held on any act, or on some part or parts of an act, that has completed the course of the legislative process within the District of Columbia government in accordance with § 1-227(e), shall file with the Board 5 printed or typewritten copies of the full text of the measure, a summary statement of not more than 100 words, and a short title of the measure to be proposed in an initiative, or of the act or part thereof on which a referendum is desired.

(2) The proposed initiative measure, or the act or part thereof, on which a referendum is desired shall be accompanied by:

(A) The name and address of the proposer; and

(B) An affidavit that the proposer is a registered qualified elector of the District of Columbia.

(b)(1) Upon receipt of each proposed initiative or referendum measure, the Board shall refuse to accept the measure if the Board finds that it is not a proper subject of initiative or referendum, whichever is applicable, under the terms of title IV of the District of Columbia Self-Government and Governmental Reorganization Act, or upon any of the following grounds:

(A) The verified statement of contributions has not been filed pursuant to §§ 1-1414 and 1-1416;

(B) The petition is not in the proper form established in subsection (a) of this section;

(C) The measure authorizes, or would have the effect of authorizing, discrimination prohibited under Chapter 25 of this title; or

(D) The measure presented would negate or limit an act of the Council of the District of Columbia pursuant to § 47-304.

(2) In the case of refusal to accept a measure, the Board shall endorse on the measure the words "received but not accepted" and the date, and retain the measure pending appeal. If none of the grounds for refusal exists, the Board shall accept the measure.

(3) If the Board refuses to accept any initiative or referendum measure submitted to it, the person or persons submitting such measure may apply, within 10 days after the Board's refusal to accept such measure, to the Superior Court of the District of Columbia for a writ in the nature of mandamus to compel the Board to accept such measure. The Superior Court of the District of Columbia shall expedite consideration of the matter. If the Superior Court of the District of Columbia determines that the issue presented by the measure is a proper subject of initiative or referendum, whichever is applicable, under the terms of title IV of the District of Columbia Self-Government and Governmental Reorganization Act, and that the measure is legal in form, does not authorize discrimination as prescribed in paragraph (1)(C) of this subsection, and would not negate or limit an act of the Council of the District of Columbia as prescribed in paragraph (1)(D) of this subsection, it shall issue an order requiring the Board to accept the measure. Should the Superior Court of the District of Columbia hold in favor of the proposer, it may award court costs and reasonable attorneys' fees to the proposer.

(4) After subject determination has been made the Board shall assign a serial number to each initiative and referendum measure, using separate series of numbers for initiative and separate series of numbers for referendum measures. Thereafter, a measure shall be known and designated on all petitions, ballots and proceedings as "Initiative Measure No. ....." or "Referendum Measure No. .....".

(c) Within 20 calendar days, of the date on which the Board accepts an initiative or referendum measure, the Board shall:

(1) Prepare a true and impartial summary statement, not to exceed 100 words, bearing the serial number of the measure, and expressing the purpose of the measure. Such statement shall not intentionally create prejudice for or against the measure;

(2) Prepare a short title for the measure consisting of not more than 15 words to permit the voters to identify readily the initiative or referendum measure and to distinguish it from other measures which may appear on the ballot; and

(3) Prepare, in the proper legislative form, the proposed initiative or referendum measure, where applicable, which shall conform to the legislative drafting format of acts of the Council of the District of Columbia. The Board may consult experts in the field of legislative drafting, including, but not limited to, Corporation Counsel of the District of Columbia and officers of the Council of the District of Columbia for the purpose of preparing the measure in its proper legislative form.

(d) After preparation, the Board shall adopt the summary statement, short title, and legislative form at a public meeting and shall within 5 days, notify the proposer of the measure of the exact language. In addition, the Board, within 5 days of adoption, shall submit the summary statement, short title, and legislative form to the District of Columbia Register for publication.

(e)(1)(A) If any registered qualified elector of the District of Columbia objects to the summary statement, short title, or legislative form of the initiative measure formulated by the Board pursuant to subsections (c) and (d) of this section, that person may seek review in the Superior Court of the District of Columbia within 10 calendar days from the date the Board publishes the summary statement, short title, and legislative form in the District of Columbia Register stating objections and requesting appropriate changes. The Superior Court of the District of Columbia shall expedite the consideration of this matter.

(B) If any registered qualified elector of the District of Columbia objects to the summary statement, short title, or legislative form of the referendum measure formulated by the Board pursuant to subsection (c) of this section, that person may seek review in the Superior Court of the District of Columbia within 10 calendar days from the date the Board publishes the summary statement, short title, and legislative form in at least one newspaper of general circulation stating objections and requesting appropriate changes. The Superior Court of the District of Columbia shall expedite the consideration of this matter.

(2) Should no review in the Superior Court of the District of Columbia be sought as provided in paragraph (1) of this subsection, the proposed summary statement, short title and legislative form shall be deemed to be accepted.

(3) Should the Superior Court of the District of Columbia hold in favor of the proposer, it may award court costs and reasonable attorney's fees to the proposer.

(f) When the summary statement, short title, and legislative form of an initiative or referendum measure has been established pursuant to subsection (e) of this section, the Board shall certify such and transmit a copy thereof by certified mail to the proposer. Thereafter, such short title shall be the title of the measure in all petitions, ballots, and other proceedings relating thereto. The Board shall, upon the request of any person, make single copies of the approved short title, summary statement, and full legislative text available at no charge. Additional copies shall be made available at a nominal cost.

(g) Upon final establishment of the summary statement, short title, and legislative form of an initiative or referendum proposal, the Board shall prepare and provide to the proposer at a public meeting an original petition form which the proposer shall formally adopt as his or her own form. The proposer shall print from the original blank petition sheets on white paper of good writing quality of the same size as the original. Each initiative or referendum petition sheet shall consist of one double-sided sheet providing numbered lines for 20 printed names and signatures with residence addresses (street numbers) and ward numbers, and shall have printed on it, in a manner prescribed by the Board, the following:

(1) A warning statement that declares that only duly registered voters of the District of Columbia may sign the petition;

(2) A statement that requests that the Board hold an election on the initiative or referendum measure that states the measure's serial number and short title; and

(3) The text of the official summary and short title of the measure printed on the front of the petition sheet.

(h) Each petition sheet for an initiative or referendum measure shall contain an affidavit, made under penalty of perjury, in a form determined by the Board and signed by the circulator of that petition sheet which contains the following:

(1) The printed name of the circulator;

(2) The residence address of the circulator, giving the street number;

(3) That the circulator of the petition sheet was in the presence of each person when the appended signature was written;

(4) That according to the best information available to the circulator, each signature is the genuine signature of the person it purports to be;

(5) That the circulator of the initiative or referendum petition sheet is a resident of the District of Columbia and at least 18 years of age; and

(6) The dates between which the signatures to the petition were obtained.

(i) In order for any initiative or referendum measure to qualify for the ballot for consideration by the electors of the District of Columbia, the proposer of such an initiative or referendum measure shall secure the valid signatures of registered qualified electors upon the initiative or referendum measure equal in number to 5 percent of the registered electors in the District of Columbia: Provided, that the total signatures submitted include 5 percent of the registered electors in each of 5 or more of the 8 wards. The number of registered electors which is used for computing these requirements shall be consistent

with the latest official count of registered electors made by the Board 30 days prior to the initial submission to the Board of the initiative or referendum measure, pursuant to subsection (a) of this section.

(j)(1) A proposer of an initiative measure shall have 180 calendar days, beginning on the 1st calendar day immediately following the date upon which the Board certifies, according to subsection (h) of this section, that the petition form of such initiative measure is in its final form to secure the proper number of valid signatures needed on the initiative petition to qualify such a measure for the ballot, pursuant to subsection (i) of this section and to file such petition with the Board.

(2) A proposer of a referendum measure shall secure the proper number of valid signatures needed on the referendum petition to qualify such a measure for the ballot pursuant to subsection (i) of this section, and shall file such petition with the Board before the act, or part thereof, which is the subject of the referendum has become law according to the provisions of §§ 1-227 and 1-233(c). No act is subject to referendum if it has taken effect according to the provisions of § 1-233(c).

(3) The proposer may not begin circulating an initiative or referendum petition until the Board has certified pursuant to subsection (h) of this section that such petition is in its final form.

(k)(1) Upon submission of an initiative or referendum petition by the proposer to the Board, the Board shall refuse to accept the petition upon any of the following grounds:

(A) The petition is not in the proper form established in subsection (g) of this section;

(B) The time limitation established in subsection (j) of this section within which the petition may be circulated and submitted to the Board has expired;

(C) The petition on its face clearly bears an insufficient number of signatures;

(D) The petition sheets do not have attached to them the statements of the circulators as provided in subsection (h) of this section; or

(E) The petition was circulated by persons who were not residents of the District of Columbia and at least 18 years of age at the time of circulation.

(2) In the case of refusal to accept a petition, the Board shall endorse on the petition the words "submitted but not accepted" and the date, and retain the petition pending appeal. If none of the grounds for refusal exists, the Board shall accept the petition.

(l) If the Board refuses to accept an initiative or referendum petition when submitted to it, the person or persons submitting such petition may apply, within 10 days after the Board's refusal to accept such petition, to the Superior Court of the District of Columbia for a writ in the nature of mandamus to compel the Board to accept such petition. The Superior Court of the District of Columbia shall expedite the consideration of the matter. If the Superior Court of the District of Columbia determines that the petition is legal in form and apparently meets the requirement for signatures, both as to number and as to ward distribution, prescribed in subsection (i) of this section, and was submitted within the time limitations established in subsection (j) of this section, and has attached to the petition the proper statements of the circulators prescribed

in subsection (h) of this section, it shall issue an order requiring the Board to accept the petition as of the date of submission for filing. Should the Superior Court of the District of Columbia hold in favor of the proposer, it may award court costs and reasonable attorneys' fees to the proposer.

(m) Upon submission of a referendum petition to the Board, the Board shall notify the appropriate custodian of the act of the Council of the District of Columbia which is the subject of the referendum (either the President of the Senate and the Speaker of the House of Representatives) as provided in §§ 1-227 and 47-304 and the President of the Senate and the Speaker of the House of Representatives shall, as appropriate, return such act or part or parts of such act to the Chairman of the Council of the District of Columbia. No further action may be taken upon such act until after a referendum election is held. If, however, after the counting and validation procedure for signatures, which takes place pursuant to subsection (o) of this section, the referendum measure fails to meet the percentage and distribution requirements for signatures established in subsection (i) of this section, the act which was the subject of the referendum shall be again transmitted to the Congress for review as provided in § 1-233(c).

(n) When the Board accepts an initiative or referendum petition, whether in the normal course or at the direction of a court, the Board may detach, in the presence of the person submitting the petition or his or her designated representative, if he or she desires to be present, the sheets containing the signatures, and cause all of them to be firmly attached to 1 or more printed copies of the proposed initiative or referendum measure in such books or volumes as will be most convenient for counting, canvassing, and validating names and signatures.

(o)(1) After acceptance of an initiative or referendum petition, the Board shall certify, within 30 calendar days after such petition has been accepted, whether or not the number of valid signatures on the initiative or referendum petition meets the qualifying percentage and ward distribution requirements established in subsection (i) of this section, and whether or not the necessary number of names and signatures of registered qualified electors of the District of Columbia, properly distributed by wards, appear on the initiative or referendum petition. This certification may be by a bona fide random and statistical sampling method. If the Board finds that the same person has signed a petition for the same initiative or referendum measure more than once, it shall count only 1 signature of such person. If a person who signs a petition is found to be a qualified registered elector in a ward other than that which was indicated on the petition sheet, such person shall be counted from the correct ward in determining whether or not an initiative or referendum measure qualifies for the ballot. Two persons representing the proposer(s) may be present during the counting and validation procedures. Should a political committee or committees exist in opposition to a particular proposed initiative or referendum measure, 2 persons representing such committee or committees may be present during the counting and validation procedures. The Board shall post, by making available for public inspection, petitions for initiatives or referenda, or facsimiles thereof, in the office of the Board, for 10 days, including Saturdays, Sundays, and holidays, beginning on the 3rd day after the petitions are filed. Any qualified elector may, within such 10-day period, challenge the

validity of any petition, by a written statement duly signed by the challenger and filed with the Board, specifying concisely the alleged defects in such petition. The provisions of § 1-1312(o)(2) shall be applicable to such challenge. The Board may issue supplemental rules concerning the challenge of such petitions.

(2) For the purpose of verifying a signature on any petition filed pursuant to this section, the Board shall first determine that the address on the petition is the same as the residence shown on the signer's voter registration record. If the address is different, the signature shall not be counted as valid unless the Board's records show that the person was registered to vote from the address listed on the petition at the time the person signed the petition.

(p)(1) After determining that the number and validity of signatures on the initiative or referendum petition meet the qualification standards established under this section, the Board shall certify the sufficiency of the initiative or referendum petition and shall certify that the initiative or referendum measure will appear on the ballot. The Board shall conduct an election on an initiative measure at the next primary, general, or city-wide special election held at least 90 days after the date on which the measure has been certified as qualified to appear on the ballot. The Board shall conduct an election on a referendum measure within 114 days after the date the measure has been certified as qualified to appear on the ballot. In the case of a referendum measure, if a previously scheduled general, primary, or special election will occur between 54 and 114 days after the date the measure has been certified as qualified to appear on the ballot, the Board may present the referendum measure at that election.

(2) The Board shall publish the established legislative text of an initiative or referendum measure in no less than 2 newspapers of general circulation in the District of Columbia within 30 calendar days after the date upon which the Board certifies, pursuant to paragraph (1) of this subsection, that the measure has qualified for appearance on an election ballot.

(q)(1) Upon qualification of an initiative measure, the Board shall place on the ballot the serial number of the initiative and its short title and summary statement in substantially the following form:

INITIATIVE MEASURE No.
(SHORT TITLE)
(SUMMARY STATEMENT)
FOR Initiative Measure No.
AGAINST Initiative Measure No.

(2) Upon qualification of a referendum measure, the Board shall place on the ballot the serial number of the referendum measure and its short title and summary statement in substantially the following form:

REFERENDUM MEASURE No.
(SHORT TITLE)
(SUMMARY STATEMENT)

(A) If the referendum concerns whether the registered voters of the District of Columbia approve or reject the act, then the ballot shall state:

Shall the registered voters of the District of Columbia approve or reject Act (insert Act number)?

YES, to approve

NO, to reject.

(B) If the referendum concerns part or parts of an act, then the ballot shall state:

Shall the registered voters of the District of Columbia approve or reject sections (insert section(s) that is the subject of the referendum measure) of Act (insert Act number)?

YES, to approve

NO, to reject.

(r)(1) An initiative measure which has been ratified by a majority of the registered qualified electors voting on the measure shall not take effect until the end of the 30-day congressional review period (excluding Saturdays, Sundays and holidays, and any day on which neither House is in session because of an adjournment sine die, a recess of more than 3 days or an adjournment of more than 3 days) beginning on the day such measure is transmitted to the Speaker of the House of Representatives and the President of the Senate, and then only if during such 30-day period both Houses of Congress do not adopt a concurrent resolution disapproving such initiated act. Upon certification by the Board that the initiative measure has been ratified, the Chairman of the Council shall forthwith transmit the measure to the Speaker of the House of Representatives and to the President of the Senate.

(2) If a majority of the registered qualified electors voting in a referendum on an act or part or parts thereof vote to disapprove the act or part or parts thereof, then such action shall be deemed a rejection of the act or part or parts thereof, and no action by the Council of the District of Columbia may be taken on such act or part thereof for 365 days following the date when the Board certifies the vote concerning the referendum.

(s) If provisions of 2 or more initiative or referendum measures which have been approved by the registered qualified electors at the same election conflict, the provisions of the measure receiving the highest number of affirmative votes shall prevail over the conflicting provision of the other measure. (Aug. 12, 1955, 69 Stat. 704, ch. 862, § 16, as added June 7, 1979, D.C. Law 3-1, § 2(c), 25 DCR 9454; 1973 Ed., § 1-1116; Mar. 16, 1982, D.C. Law 4-88, § 2(k), (o), (q), (s), 29 DCR 458; Mar. 16, 1988, D.C. Law 7-92, § 3(n), 35 DCR 716, May 10, 1989, D.C. Law 7-231, § 5, 36 DCR 492; Mar. 11, 1992, D.C. Law 9-75, § 2(e), 39 DCR 310; Feb. 5, 1994, D.C. Law 10-68, § 7(c), 40 DCR 6311; Sept. 22, 1994, D.C. Law 10-173, § 2(g), 41 DCR 5154; July 25, 1995, D.C. Law 11-30, § 2(e), 42 DCR 1547; _____, 2000, D.C. Law 13- (Act 13-165), § 2, 46 DCR 9219.)

Effect of amendments. — D.C. Law 13-(Act 13-165), in (h)(5), deleted "such" preceding "initiative", substituted "is a resident" for "is a qualified registered elector", and added "and at least 18 years of age;" to the end; in (k)(1)(E), substituted "not residents" for "not qualified registered electors", and substituted "and at least 18 years of age at the time of circulation" for "pursuant to subsection (h) of this section" at the end.

Temporary legislation. — Section 2 of D.C. Law 13-14 rewrote (h)(5) and (k)(1)(E).

Section 4(b) of D.C. Law 13-14 provides that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 2 of the Petition Circulation Requirements Emergency Amendment Act of 1999 (D.C. Act 13-51, April 6, 1999, 46 DCR 3636).

For temporary amendment of section, see § 2 of the Petition Circulation Requirements Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-284, March 7, 2000, 47 DCR 2031).

Legislative history of Law 13-14. — Law 13-14, the "Petition Circulation Requirements Temporary Amendment Act of 1999," was introduced in Council and assigned Bill No. 13-129. The Bill was adopted on first and second readings on February 2, 1999, and April 13, 1999, respectively. Signed by the Mayor on April 27, 1999, it was assigned Act No. 13-59 and transmitted to both Houses of Congress for its review. D.C. Law 13-14 became effective on July 17, 1999.

Constitutionality.

Because a proposed prayer initiative raised constitutional issues on its face, the trial court did not abuse its discretion in identifying the initiative as one of the few cases suitable for a pre-election constitutional review. Committee for Voluntary Prayer v. Wimberly, App. D.C., 704 A.2d 1199 (1997).

Absent proposer.

This chapter did not require the Board of Elections to begin an initiative process over again when a qualified elector was available to substitute for proposer who moved away. Stevenson v. District of Columbia Bd. of Elections & Ethics, App. D.C., 683 A.2d 1371 (1996).

Proper subject.

Ballot initiative that would prohibit impoundment of motor vehicles as a fine-collection measure, and also require periodic amnesty from penalties for late payment of traffic fines, was not a proper subject of initiative under governing law, since initiative would negate Budget Request Act and would affect the budget process of the District; the initiative thus constituted a "law appropriating funds" prohibited by statute. Dorsey v. District of Columbia Bd. of Elections & Ethics, App. D.C., 648 A.2d 675 (1994).

Required signatures.

Board of Elections and Ethics erred in determining that initiative petition contained requisite number of valid elector signatures required to qualify initiative measure for ballot; number of registered electors was to be determined in accordance with requirements of § 1-282 (a), rather than subsection (i) of this section. Price v. District of Columbia Bd. of Elections & Ethics, App. D.C., 645 A.2d 594 (1994).

§ 1-1321. Recall process.

(a) The provisions of this section shall govern the recall of all elected officers of the District of Columbia except the Delegate to the Congress from the District of Columbia.

(b)(1) Any registered qualified elector or electors desiring to initiate the recall of an elected officer shall file a notice of intention to recall that officer with the Board, which contains the following information:

(A) The name and title of the elected officer sought to be recalled;

(B) A statement not to exceed 200 words in length, giving the reasons for the proposed recall;

(C) The name and address of the proposer of the recall; and

(D) An affidavit that each proposer is:

(i) A registered qualified elector in the election ward of the elected officer whose recall is sought, if that officer was elected to represent a ward;

(ii) A registered qualified elector in the District of Columbia, if the officer whose recall is sought was elected at-large; or

(iii) A registered qualified elector in the single-member district of an Advisory Neighborhood Commissioner whose recall is sought.

(2) A separate notice of intention shall be filed for each officer sought to be recalled.

(c)(1) No recall proceedings shall be initiated for an elected officer during the 1st 365 days nor during the last 365 days of his term of office.

(2) The recall process for an elected officer may not be initiated within 365 days after a recall election has been determined in his or her favor.

(3) In the case of an Advisory Neighborhood Commissioner, no recall proceedings shall be initiated during the first 6 months or the last 6 months of

the Commissioner's term of office, nor within 6 months after a recall election has been decided in favor of the Commissioner.

(d)(1) The Board shall serve, in person or by certified mail, the notice of intention to recall to the elected officer sought to be recalled within 5 calendar days.

(2) The elected officer sought to be recalled may file with the Board, within 10 calendar days after the filing of the notice of intention to recall, a response of not more than 200 words, to the statement of the proposer of recall. If an answer is filed, the Board shall serve immediately a copy of that response to the proposer named in the notice of intention to recall.

(3) The statement contained in the notice of intention to recall and the elected officer's response are intended solely for the information of the voters. No insufficiency in form or substance of such statement shall affect the validity of the election proceedings.

(e) Upon filing with the Board the notice of intention of recall and the elected officer's response, the Board shall prepare and provide to the proponent an original petition form which the proposer shall formally adopt as his or her own form. The proponent shall print from the original blank petition sheets on white paper of good writing quality of the same size as the original. Each recall petition sheet shall be double sided and consist of numbered lines for 20 names and signatures with residence address (street numbers), and, where applicable, the ward numbers, and shall have printed on it the following:

(1) A warning statement that declares that only duly registered electors of the District of Columbia may sign the petition;

(2) The name of the elected officer sought to be recalled and the office which he or she holds;

(3) A statement that requests that the Board hold a recall election in a manner prescribed in §§ 1-291 to 1-295;

(4) The name and address of the proposer or proposers of the recall; and

(5) The statement of grounds for the recall and the response of the officer sought to be recalled, if any. If the officer sought to be recalled has not responded, the petition shall so state.

(f) Each petition sheet or sheets for recall shall have attached to it, at the time of submission to the Board, a statement made under penalties of perjury, in a form determined by the Board signed by the circulator of that petition which contains the following:

(1) The printed name of the circulator;

(2) The residence address of the circulator giving the street and number;

(3) That the circulator of the petition form was in the presence of each person when the appended signature was written;

(4) That according to the best information available to the circulator, each signature is the genuine signature of the person whose name it purports to be;

(5) That the circulator of the recall petition is a registered elector of the electoral jurisdiction of the officer sought to be recalled; and

(6) The dates between which all the signatures to the petition were obtained.

(g) The proposer of a recall shall have 180 days, or, in the case of a proposed recall of an Advisory Neighborhood Commissioner, 60 days, beginning on the date when the elected officer has filed with the Board his or her response to the

proposer's notice of intention to recall pursuant to subsection (d)(2) of this section, to circulate the recall petition and file such petition with the Board. If the elected officer sought to be recalled files no response to the notice of intention to recall, the time limitation shall begin on the deadline date for a response established in subsection (d)(2) of this section.

(h)(1) A recall petition for an elected officer from a ward shall include the valid signatures of 10 percent of the registered qualified electors of the ward from which the officer was elected. The 10 percent shall be computed from the total number of the qualified registered electors from such ward according to the latest official count of the registered qualified electors made by the Board 30 days prior to the date of initial submission to the Board of the notice of intention to recall.

(2) A recall petition for an at-large elected official shall contain the signatures of registered qualified electors in number equal to 10 percent of the registered qualified electors in the District of Columbia: Provided, that the total signatures submitted include 10 percent of the registered electors in each of 5 or more of the 8 wards. The 10 percent shall be computed from the total number of registered qualified electors from the District of Columbia according to the same procedures established in paragraph (1) of this subsection.

(3) A recall petition for an elected officer from a single-member district shall include the valid signatures of 10% of the registered qualified electors of the single-member district from which the officer was elected, except when the elected officer has missed all regularly scheduled meetings of the Advisory Neighborhood Commission of which the single-member district is a part for at least a three-month period, in which case the recall petition must only include the valid signatures of 5% of the registered qualified electors of the single-member district from which the officer was elected. The 5% or 10% shall be computed from the total number of registered qualified electors from the single-member district in accordance with the same procedures established in paragraph (1) of this subsection.

(i) Upon the submission of a recall petition by the proposer to the Board, the Board shall refuse to accept the petition upon any of the following grounds:

(1) Except in the case of a recall petition for an Advisory Neighborhood Commissioner, the financial disclosure statement of the proposer has not been filed pursuant to §§ 1-1414 and 1-1416;

(2) The petition is not the proper form established in subsection (e) of this section;

(3) The restrictions for initiating the recall process established in subsection (c) of this section were not observed;

(4) The time limitation established in subsection (g) of this section within which the recall petition may be circulated and submitted to the Board has expired;

(5) The petition clearly bears on its face an insufficient number of signatures to qualify for the ballot; or

(6) The petition was circulated by persons who, if the officer sought to be recalled was elected at-large, were not qualified registered electors of the District of Columbia or if the officer sought to be recalled was elected from a ward, qualified registered electors of that ward, or if the officer sought to be recalled was elected from an Advisory Neighborhood Commission SMD, qualified registered electors of that SMD.

(j)(1) If the Board refuses to accept the recall petition when submitted to it, the proposer submitting such petition to the Board may appeal, within 10 days after the Board's refusal, to the Superior Court of the District of Columbia for a writ in the nature of mandamus to compel the Board to accept such recall petition. The Superior Court of the District of Columbia shall expedite the consideration of the matter. If the Superior Court of the District of Columbia determines that the petition is legal in form and apparently meets the requirements established under this section, it shall issue an order requiring the Board to accept the petition as of the date of submission.

(2) Should the Superior Court of the District of Columbia hold in favor of the proposer, it may award court costs and reasonable attorney's fees to the proposer.

(k)(1) After the acceptance of a recall petition, the Board shall certify, within 30 calendar days after such petition has been filed, whether or not the number of valid signatures on the recall petition meets the qualifying percentage and ward distribution requirements established in subsection (h) of this section and whether or not the necessary number of signatures of registered qualified electors of the District of Columbia, properly distributed by wards, appears on the petition. This certification may be made by a bona fide random and statistical sampling method. In a case in which an officer elected from a ward is sought to be recalled, if a person who signs a recall petition for that elected officer is found not to be a registered qualified elector in the ward indicated on the petition, that name and signature shall not be counted toward determining whether or not the recall measure qualifies. In a case in which an officer elected at-large is sought to be recalled, if a person who signs a recall petition for that elected officer is found to be a registered qualified elector in a ward other than what was indicated on the petition sheet, such person shall be counted from the correct ward in determining whether or not a recall measure for an at-large elected officer qualified. In a case in which an Advisory Neighborhood Commissioner is sought to be recalled, if a person who signs a petition to recall that Advisory Neighborhood Commissioner is found not to be a registered qualified elector in the single-member district indicated on the petition, the person's name and signature shall not be counted toward determining whether or not the recall measure qualifies. If the Board finds that the same person has signed a petition for the same recall measure more than once, it shall count only 1 signature of such person. Two persons representing the petitioner(s) seeking the recall and 2 persons representing the elected officer sought to be recalled may be present to observe during the counting and validating procedure.

(2) The Board shall post, within 3 calendar days after the acceptance of a recall petition, whether in the normal course or at the direction of a court, by making available for public inspection in the office of the Board, the petition for the recall measure or facsimile. Any registered qualified elector, during a 10-day period (including Saturdays, Sundays, and holidays, except that with respect to a petition to recall a member of an Advisory Neighborhood Commission SMD, the 10-day period shall not include Saturdays, Sundays, and holidays), beginning on the day the recall petition was posted by the Board, may challenge the validity of such petition by a written statement duly signed by the challenger and filed with the Board, specifying concisely the alleged defects in the petition. The provisions of § 1-1312(o)(2) shall be applicable to a

challenge and the Board may establish any necessary rules and regulations consistent that concerns the process of the challenge.

(3) For the purpose of verifying a signature on any petition filed pursuant to this section, the Board shall first determine that the address on the petition is the same as the residence shown on the signer's voter registration record. If the address is different, the signature shall not be counted as valid unless the Board's records show that the person was registered to vote from the address listed on the petition at the time the person signed the petition.

(l) After determining that the number and validity of signatures in the recall petition meet the requirements established in this section, the Board shall certify the sufficiency of such recall petition and shall fix the date of a special election to determine whether the elected officer who is the subject of the recall shall be removed from his or her office. The Board shall conduct an election for this purpose within 114 days after the date the petition to recall has been certified as to its sufficiency. If a previously scheduled general, primary, or special election will occur between 54 and 114 days after the date the petition to recall has been certified as to its sufficiency, the Board may present the recall measure at that election. In the case of a proposed recall of an officer elected to represent a particular ward, the recall election shall be conducted only in that ward. In the case of a proposed recall of an Advisory Neighborhood Commissioner, the recall election shall be conducted in one of the following manners unless conducted in accordance with a previously scheduled general, primary, or special election pursuant to this subsection:

(1)(A) In the single-member district represented by the Advisory Neighborhood Commissioner at the voting precinct containing the majority of the registered qualified electors; or

(B) If the voting precinct is unavailable, at an appropriate alternative site within the single-member district;

(2) By postal ballot by mailing by 1st class mail no later than 7 days prior to the date of the election an official ballot issued by the Board. The ballots shall be mailed to each qualified registered elector in the single-member district at the address at which the elector is registered, except for those persons who have made arrangements with the Board for absentee voting pursuant to § 1-1313(b)(2). The Board shall, pursuant to § 1-1306(a)(14), issue rules to implement the provisions of this paragraph. The ballots shall be printed with prepaid 1st class postage and shall be postmarked no later than midnight of the day of the election.

(3) A special election called to consider the recall of an Advisory Neighborhood Commissioner shall not be considered an election for the purposes of § 1-1320(p).

(m) The Board shall place the recall measure on the ballot in substantially the following form:

FOR the recall of (insert the name of the elected officer and the office held) .....

AGAINST the recall of (insert the name of the elected officer and the office held) .....

(n) Based on the results of the special election held to decide the outcome of the recall measure, the elected officer sought to be recalled shall be removed from that office: Provided, that a majority of the qualified electors voting in the

recall election vote to remove him or her. The vacancy, as created by the removal, shall be filled in the same manner as other vacancies, as provided in §§ 1-221(b)(3) and (d), 1-241(c)(2), 1-257(d), and 1-1314. (Aug. 12, 1955, 69 Stat. 704, ch. 862, § 17, as added June 7, 1979, D.C. Law 3-1, § 2(d), 25 DCR 9454; 1973 Ed., § 1-1117; Mar. 16, 1982, D.C. Law 4-88, § 2(l), (n)-(q), (s), 29 DCR 458; Mar. 16, 1988, D.C. Law 7-92, § 3(o), 35 DCR 716; Mar. 6, 1991, D.C. Law 8-203, § 2, 37 DCR 8420; Mar. 11, 1992, D.C. Law 9-75, § 2(f), 39 DCR 310; Sept. 22, 1994, D.C. Law 10-173, § 2(h), (i), 41 DCR 5154; Apr. 18, 1996, D.C. Law 11-110, § 5(b), 43 DCR 530; Apr. 9, 1997, D.C. Law 11-255, § 6(b), 44 DCR 1271; June 27, 2000, D.C. Law 13-135, § 6, 47 DCR 2741.)

Effect of amendments. — D.C. Law 13-135, in (h)(3), inserted "except when the elected officer has missed all regularly scheduled meetings of the Advisory Neighborhood Commission of which the single-member district is a part for at least a three-month period, in which case the recall petition must only include the valid signatures of 5% of the registered qualified electors of the single-member district from which the officer was elected" and "5%" preceding "10%."

Legislative history of Law 13-135. — Law 13-135, the "Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000," was introduced in Council and assigned Bill No. 13-468. The Bill was adopted on first and second readings on February 1, 2000, and March 7, 2000, respectively. Signed by the Mayor on March 28, 2000, it was assigned Act No. 13-313 and transmitted to both Houses of Congress for its review. D.C. Law 13-135 became effective on June 27, 2000.

CHAPTER 14. ELECTION CAMPAIGNS; LOBBYING; CONFLICT OF INTEREST.

Subchapter II. Financial Disclosures.

§ 1-1415. Registration statement of candidate; depository information.

(a) Each individual shall, within 5 days of becoming a candidate, or within 5 days of the day on which he or she, or any person authorized by him or her to do so, has received a contribution or made an expenditure in connection with his or her campaign or for the purposes of preparing to undertake his or her campaign, file with the Director a registration statement in such form as the Director may prescribe.

(b) In addition, candidates shall provide the Director the name and address of the campaign depository or depositories designated by that candidate, together with the title and number of each account and safety deposit box used by that candidate at the depository or depositories, and the identification of each individual authorized to make withdrawals or payments out of such account or box, and such other information as shall be required by the Director. (1973 Ed., § 1-1135; Aug. 14, 1974, 88 Stat. 452, Pub. L. 93-376, title II, § 205; Apr. 23, 1977, D.C. Law 1-126, title IV, § 402, 24 DCR 2372; Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257; Mar. 16, 1982, D.C. Law 4-88, § 3(p), (r), 29 DCR 458; Apr. 12, 2000, D.C. Law 13-91, § 124(a), 47 DCR 520.)

Effect of amendments. — D.C. Law 13-91 deleted "(pursuant to § 1-1441(c))" following "person authorized by him or her" in (a).

Legislative history of Law 13-91. — Law 13-91, the "Technical Amendments Act of 1999," was introduced in Council and assigned Bill No. 13-435. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

§ 1-1419. Exemption for total expenses under $500.

Except for the provisions of subsections (c) and (d) of § 1-1411, and subsection (a) of § 1-1415, the provisions of this subchapter shall not apply to any candidate who anticipates spending or spends less than $500 in any 1 election and who has not designated a principal campaign committee. On the 15th day prior to the date of the election in which such candidate is entered, and on the 30th day after the date of such election, such candidate shall certify to the Director that he or she has not spent more than $500 in such election. (1973 Ed., § 1-1139; Aug. 14, 1974, 88 Stat. 454, Pub. L. 93-376, title II, § 209; Apr. 23, 1977, D.C. Law 1-126, title IV, § 402, 24 DCR 2372; Mar. 16, 1982, D.C. Law 4-88, § 3(q), (r), 29 DCR 458; _____, 2000, D.C. Law 13- (Act 13-204), § 2(a), 46 DCR 10460.)

Effect of amendments. — D.C. Law 13- (Act 13-204) substituted "$500" for "$250" twice.

Subchapter III. Director of Campaign Finance.

§ 1-1431. Office of Director of Campaign Finance established; enforcement of chapter.

(a) There is established within the District of Columbia Board of Elections and Ethics the office of Director the Office of Campaign Finance. After the effective date of the Campaign Finance Reform Amendment Act of 1999, the Board of Elections and Ethics shall appoint the Director, who shall serve at the pleasure of the Board. The Director shall be entitled to receive compensation at the maximum rate for Grade 16 of the District Schedule pursuant to Title XII of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139, D.C. Code § 1-1612 et seq.). The Director shall be responsible for the administrative operations of the Board pertaining to this subchapter and shall perform other duties as may be delegated or assigned to him or her by regulation or by order of the Board,

provided that the Board shall not delegate to the Director the making of regulations regarding elections.

(b) Repealed.

(b-1)(1) The Board may issue, amend, and rescind rules and regulations related to the operation of the Director, absent recommendation of the Director.

(2) The Board shall prepare an annual report of the Director's performance pursuant to his or her functions as prescribed in § 1-1433 in addition to those duties the Board may by law assign.

(c) Where the Board, following the presentation by the Director of evidence constituting an apparent violation of this chapter, makes a finding of an apparent violation of this chapter, it shall refer such case to the United States Attorney for the District of Columbia for prosecution, and shall make public the fact of such referral and the basis for such finding. In addition, the Board, through its General Counsel, shall initiate, maintain, defend, or appeal any civil action (in the name of the Board) relating to the enforcement of the provisions of this chapter. The Board may, through its General Counsel, petition the courts of the District of Columbia for declaratory or injunctive relief concerning any action covered by the provisions of this chapter. The Director shall have no authority concerning the enforcement of provisions of § 1-1301 et seq., and recommendations of criminal or civil, or both, violations under § 1-1301 et seq. shall be presented by the General Counsel to the Board in accordance with the rules and regulations of general application adopted by the Board in accordance with the provisions of the District of Columbia Administrative Procedure Act (D.C. Code § 1-1501 et seq.). Upon the direction of the Board, the Director may be called upon to investigate allegations of violations of the elections laws in accord with the provisions of this subsection. (1973 Ed., § 1-1151; Aug. 14, 1974, 88 Stat. 454, Pub. L. 93-376, title III, § 301; Jan. 3, 1975, 88 Stat. 2177, Pub. L. 93-635, § 12; Aug. 18, 1978, D.C. Law 2-101, § 3, 25 DCR 257; Mar. 3, 1979, D.C. Law 2-139, § 3205(w), 25 DCR 5740; Mar. 16, 1982, D.C. Law 4-88, § 3(d), (p), (r), 29 DCR 458; Aug. 2, 1983, D.C. Law 5-17, § 6, 30 DCR 3196; _____, 2000, D.C. Law 13- (Act 13-204), § 2(b), 46 DCR 10460.)

Effect of amendments. — D.C. Law 13- (Act 13-204) rewrote (a).

Editor's notes. — The "Campaign Finance Reform Amendment Act of 1999," referenced in (a), is D.C. Law 13- (Act 13-204).

Cited in National Black Police Ass'n v. District of Columbia Bd. of Elections & Ethics, 858 F. Supp. 251 (D.D.C. 1994).

§ 1-1432. Powers of Director.

(a)(1) The Director, under regulations of general applicability approved by the Board, shall have the power:

(A) To require any person to submit in writing such reports and answers to questions as the Director may prescribe relating to the administration and enforcement of this chapter; and such submission shall be made within such reasonable period and under oath or otherwise as the Director may determine;

(A-1) To require any person to submit through an electronic format or medium the reports required in §§ 206, 402, 505, 602, and 801. The Board

shall issue regulations governing the submission of reports, pursuant to this subparagraph, through a standardized electronic format or medium.

(B) To administer oaths;

(C) To require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties;

(D) In any proceeding or investigation to order testimony to be taken by deposition before any person who is designated by the Director and has the power to administer oaths and, in such instances, to compel testimony and the production of evidence in the same manner as authorized under subparagraph (C) of this paragraph;

(E) To pay witnesses the same fees and mileage as are paid in like circumstances in the Superior Court of the District of Columbia;

(F) To accept gifts; and

(G) To institute or conduct, on his or her own motion, an informal hearing on alleged violations of the reporting requirements contained in this chapter. Where the Director, in his or her discretion, determines that such violation has occurred, the Director may issue an order to the offending party or parties to cease and desist such violations within the 5-day period immediately following the issuance of such order. Should the offending party or parties fail to comply with said order, the Director shall present evidence of such failure to the Board. Following the presentation of said evidence to the Board by the Director, in an adversary proceeding and an open hearing, the Board may refer such matter to the United States Attorney for the District of Columbia in accordance with the provisions of § 1-1431(c) or may dismiss the action.

(2) Subpoenas issued under this section shall be issued by the Director upon the approval of the Board.

(b) The Superior Court of the District of Columbia may, upon petition by the Board, in case of refusal to obey a subpoena or order of the Board issued under subsection (a) of this section, issue an order requiring compliance therewith; and any failure to obey the order of the Court may be punished by the Court as a contempt thereof.

(c) All investigations of alleged violations of this chapter shall be made by the Director in his or her discretion, in accordance with procedures of general applicability issued by the Director in accordance with the District of Columbia Administrative Procedure Act (D.C. Code § 1-1501 et seq.). All allegations of violations of this chapter which shall be presented to the Board, in writing, shall be transmitted to the Director without action by the Board. In a reasonable time, the Director shall cause evidence concerning the alleged violation of this chapter to be presented to the Board, if he or she believes that sufficient evidence exists constituting an apparent violation of this chapter. Following the presentation of such evidence to the Board by the Director, in an adversary proceeding and an open hearing, the Board may refer such matter to the United States Attorney for the District of Columbia in accordance with the provisions of § 1-1431(c), or may dismiss the action. In no case may the Board refer information concerning an alleged violation of this chapter to the United States Attorney for the District of Columbia without the presentation herein provided by the Director. Should the Director fail to present a matter or

advise the Board that insufficient evidence exists to present such a matter, or that an additional period of time is needed to investigate the matter further, within 90 days of its receipt by the Board or the Director, the Board may order the Director to present the matter as herein provided. The provisions of this subsection shall in no manner limit the authority of the United States Attorney for the District of Columbia. (1973 Ed., § 1-1152; Aug. 14, 1974, 88 Stat. 455, Pub. L. 93-376, title III, § 302; June 28, 1977, D.C. Law 2-12, § 6(i), 24 DCR 1442; Aug. 18, 1978, D.C. Law 2-101, § 3, 25 DCR 257; Mar. 16, 1982, D.C. Law 4-88, § 3(e), (r), 29 DCR 458; _____, 2000, D.C. Law 13- (Act 13-204), § 2(c), 46 DCR 10460.)

Effect of amendments. — D.C. Law 13- (Act 13-204) inserted (a)(1)(A-1).

§ 1-1433. Duties of Director.

The Director shall:

(1) Develop and furnish prescribed forms, materials, and electronic formats or mediums for the making of the reports and statements required to be filed with him or her pursuant to this chapter;

(2) Develop a filing, coding, and cross-indexing system consonant with the purposes of this chapter;

(3) Make the reports and statements filed with him or her available for public inspection and copying, commencing as soon as practicable but not later than the end of the 2nd day following the day during which it was received, and to permit and facilitate copying of any such report or statement by hand and by duplicating machine, as requested by any person, at reasonable cost to such person, except any information copied from such reports and statements shall not be sold or utilized by any person for the purpose of soliciting contributions or for any commercial purpose;

(4) Preserve such reports and statements for a period of 10 years from date of receipt;

(5) Compile and maintain a current list of all statements or parts of statements on file pertaining to each candidate;

(6) Prepare and publish such other reports as he or she may deem appropriate;

(7) Assure dissemination of statistics, summaries, and reports prepared under this chapter, including a biennial report summarizing the receipts and expenditures of candidates for public office in the prior 2-year period, and the receipts and expenditures of political committees during the prior 2-year period. The Director shall make available to the Mayor, Council, and the general public the first report by January 31, 2001, and shall present the summary report on the same date every 2 years thereafter. The report shall describe the receipts and expenditures of candidates for Mayor, the Chairman and members of the Council, the President and members of the Board of Education, shadow Senator, and shadow Representative, but shall exclude candidates for Advisory Neighborhood Commissioner. The report shall provide, at a minimum, the following data, as well as other information that the Director deems appropriate:

(A) A summary of each candidate's receipts, in dollar amount and percentage terms, by donor categories that the Director deems appropriate,

such as the candidate himself or herself, individuals, political party committees, other political committees, corporations, partnerships, and labor organizations;

(B) A summary of each candidate's receipts, in dollar amount and percentage terms, by the size of the donation, including donations of $500 or more; donations of $250 or more but less than $500; donations of $100 or more but less than $250; and donations of less than $100;

(C) The total amount of a candidate's receipts and expenditures for primary and general elections, respectively, when applicable;

(D) A summary of each candidate's expenditures, in dollar amount and percentage terms, by operating expenditures, transfers to other authorized committees, loan repayments, and refunds of contributions; and

(E) A summary of the receipts and expenditures of political committees, using such categories deemed appropriate by the Director.

(8) Make from time to time audits and field investigations with respect to reports and statements filed under the provisions of this subchapter, and with respect to alleged failures to file any report or statement required under the provisions of this subchapter; and

(9) Perform such other duties as the Board may require. (1973 Ed., § 1-1153; Aug. 14, 1974, 88 Stat. 456, Pub. L. 93-376, title III, § 303; Apr. 23, 1977, D.C. Law 1-126, title IV, § 402, 24 DCR 2372; Mar. 16, 1982, D.C. Law 4-88, § 3(p)-(r), 29 DCR 458; _____, 2000, D.C. Law 13- (Act 13-204), § 2(d), 46 DCR 10460; Oct. 4, 2000, D.C. Law 13-163, § 2(a), 47 DCR 5812.)

Effect of amendments. — D.C. Law 13-(Act 13-204) rewrote (1).

D.C. Law 13-163 rewrote (7).

Legislative history of Law 13-163. — Law 13-163, the "Campaign Finance Disclosure and Enforcement Amendment Act of 2000," was introduced in Council and assigned Bill No. 13-283. The Bill was adopted on first and second readings on May 3, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 22, 2000, it was assigned Act No. 13-362 and transmitted to both Houses of Congress for its review. D.C. Law 13-163 became effective on October 4, 2000.

§ 1-1435. District of Columbia Board of Elections and Ethics created; penalties; advisory opinions.

(a) On and after August 14, 1974, the Board of Elections of the District of Columbia established under Chapter 13 of this title, shall be known as the "District of Columbia Board of Elections and Ethics" and shall have the powers, duties, and functions as provided in such chapter, in any other law in effect on the date immediately preceding August 14, 1974, and in this chapter. Any reference in any law or regulation to the Board of Elections for the District of Columbia or the District of Columbia Board of Elections shall, on and after August 14, 1974, be held and considered to refer to the District of Columbia Board of Elections and Ethics.

(b)(1) Any person who violates any provision of this chapter or of Chapter 13 of this title may be assessed a civil penalty by the District of Columbia Board of Elections and Ethics under paragraph (2) of this subsection of not more than $200, or three times the amount of an unlawful contribution, expenditure, gift, honorarium, or receipt of outside income, whichever is greater, for each such violation. Each occurrence of a violation of this chapter and each day of noncompliance with a disclosure requirement of this chapter or an order of the Board shall constitute a separate offense.

(2) A civil penalty shall be assessed by the Board by order only after the person charged with a violation has been given an opportunity for a hearing, and the Board has determined, by decision incorporating its findings of facts therein, that a violation did occur, and the amount of the penalty. Any hearing under this section shall be of record and shall be held in accordance with the District of Columbia Administrative Procedure Act (D.C. Code, § 1-1501 et seq.).

(3) Notwithstanding the provisions of paragraph (2) of this subsection, the Board may issue a schedule of fines for violations of this chapter, which may be imposed ministerially by the Director. A civil penalty imposed under the authority of this paragraph may be reviewed by the Board in accordance with the provisions of paragraph (2) of this subsection. The aggregate set of penalties imposed under the authority of this paragraph may not exceed $2,000.

(4) If the person against whom a civil penalty is assessed fails to pay the penalty, the Board shall file a petition for enforcement of its order assessing the penalty in the Superior Court of the District of Columbia. The petition shall designate the person against whom the order is sought to be enforced as the respondent. A copy of the petition shall be forthwith sent by registered or certified mail to the respondent and his attorney of record, and if the respondent is a political committee, to the chairman thereof, and thereupon the Board shall certify and file in such Court the record upon which such order sought to be enforced was issued. The Court shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order and the decision of the Board or it may remand the proceedings to the Board for such further action as it may direct. The Court may determine de novo all issues of law but the Board's findings of fact, if supported by substantial evidence, shall be conclusive.

(c)(1) Upon application made by any individual holding public office, any candidate, any person who may be a potential registrant under this chapter, or any political committee, the Board shall provide within a reasonable period of time an advisory opinion with respect to any specific transaction or activity inquired of, as to whether such transaction or activity would constitute a violation of any provision of this chapter or of any provision of Chapter 13 of this title over which the Board has primary jurisdiction. The Board shall publish a concise statement of each request for an advisory opinion, without identifying the person seeking such opinion, in the District of Columbia Register within 20 days of its receipt by the Board. Comments upon such requested opinions shall be received by the Board for a period of at least 15 days following publication in the District of Columbia Register. The Board may waive the advance notice and public comment provisions, following a finding that the issuance of such advisory opinion constitutes an emergency necessary for the immediate preservation of the public peace, health, safety, welfare, or morals.

(2) Advisory opinions shall be published in the District of Columbia Register within 30 days of their issuance, provided, that the identity of any person requesting an advisory opinion shall not be disclosed in the District of Columbia Register without their prior consent in writing. When issued according to rules of the Board, an advisory opinion shall be deemed to be an

order of the Board, reviewable in the Superior Court of the District of Columbia by any interested person adversely affected thereby. (1973 Ed., § 1-1156; Aug. 14, 1974, 88 Stat. 458, Pub. L. 93-376, title III, § 306; Jan. 3, 1975, 88 Stat. 2178, Pub. L. 93-635, § 14(a); Apr. 23, 1977, D.C. Law 1-126, title III, § 302(a), 24 DCR 2372; Aug. 18, 1978, D.C. Law 2-101, § 3, 25 DCR 257; Mar. 16, 1982, D.C. Law 4-88, § 3(f), (r), 29 DCR 458; Oct. 4, 2000, D.C. Law 13-163, § 2(b), 47 DCR 5812.)

Effect of amendments. — D.C. Law 13-163 substituted "$200, or three times the amount of an unlawful contribution, expenditure, gift, honorarium, or receipt of outside income, whichever is greater" for "$50" in (b)(1); and substituted "$2,000" for "$500" in (b)(3).

Legislative history of Law 13-163. — See note to § 1-1433.

Subchapter IV. Finance Limitations.

§ 1-1441. General limitations.

Cited in National Black Police Ass'n v. District of Columbia Bd. of Elections & Ethics, 858 F. Supp. 251 (D.D.C. 1994).

§ 1-1441.1. Contribution limitations.

Temporary legislation. — Section 2 of D.C. Law 13-(Act 13-469) rewrote (a)(4) and (a)(5) to read as follows:

"(a)(4) In the case of a contribution in support of a candidate for member of the Board of Education elected at-large or for member of the Council elected from a ward or for the recall of a candidate for member of the Board of Education elected at-large or for the recall of a member of the Council elected from a ward, $500; and"

"(a)(5) In the case of a contribution in support of a candidate for member of the Board of Education elected from a ward or for the recall of a member of the Board of Education elected from a ward or for an official of a political party, $200."

Section 4(b) of D.C. Law 13-(Act 13-469) provides that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 2 of the Board of Education Campaign Contribution Clarification Emergency Amendment Act of 2000 (D.C. Act 13-416, August 14, 2000, 47 DCR 7304).

Cited in National Black Police Ass'n v. District of Columbia Bd. of Elections & Ethics, 924 F. Supp. 270 (D.D.C. 1996).

§ 1-1443. Constituent services.

(a) The Mayor, the Chairman of the Council, and each member of the Council may establish citizen-service programs within the District of Columbia. The Mayor, the Chairman of the Council, and each member of the Council may finance the operation of such programs with contributions from persons, provided, that contributions received by the Mayor, the Chairman of the Council, and each member of the Council do not exceed an aggregate amount of $40,000 in any 1 calendar year. The Mayor, the Chairman of the Council, and each member of the Council may expend a maximum of $40,000 in any 1 calendar year for such programs. No person shall make any contribution which, and neither the Mayor, the Chairman of the Council, nor any member of the Council shall receive any contribution from any person which, when aggregated with all other contributions received from such person, exceed $400 per calendar year, provided, that such $400 limitation shall not apply to contributions made by the Mayor, the Chairman of the Council, or any member of the Council for the purpose of funding his or her own citizen-service

programs within the District of Columbia. The Mayor, the Chairman of the Council, and each member of the Council shall file a quarterly report of all contributions received and monies expended in accordance with this subsection with the Director of Campaign Finance. No campaign activities shall be conducted nor shall campaign literature or paraphernalia be distributed as part of citizen-service programs conducted pursuant to this subsection.

(a-1) Upon the request of any member of the Council, the Mayor shall provide the member with suitable office space in a publicly owned building for the operation of a citizen-service program office located in the ward represented by the member. Each at-large member of the Council shall be offered citizen-service office space located in a ward of the member's choice. Members shall be provided with space of approximately equivalent square footage, and in similar proximity to commercial corridors and public transportation where practicable. The space provided shall also be easily accessible by persons who are handicapped or elderly. Any space so provided shall not be counted as an in-kind contribution. Furnishings, equipment, telephone service, and supplies to this office space shall be provided from funds other than appropriated funds of the District of Columbia government.

(b) Repealed.

(c) Contributions of personal property from persons to the Mayor or to any members of the Council or contributions of the use of personal property shall be valued, for purposes of this section, at the fair market value of such property not to exceed $1,000 per calendar year at the time of the contribution. Contributions made or received pursuant to this section shall not be applied against the limitation on political contributions established by §§ 1-1441.1 through 1-1441.3.

(d) All contributions and expenditures made by persons to the Mayor, Chairman of the Council, and each member of the Council as provided by subsection (a) of this section, and all expenditures made by the Mayor, Chairman of the Council, and each member of the Council as provided by subsection (a) of this section, shall be reported to the Director of Campaign Finance quarterly on forms which the Director shall prescribe. All of the record keeping requirements of this chapter shall apply to contributions and expenditures made under this section. At the time a program of services as authorized in subsection (a) of this section is terminated, any excess funds shall be used to retire the debts of the program, or shall be donated to an organization operating in the District of Columbia as a not-for-profit organization within the meaning of § 501(c) of the Internal Revenue Code of 1954, as amended.

(e) Activities authorized by this section may be carried on at any location in the District of Columbia, provided that employees of the District of Columbia government do not engage in citizen-service fundraising activities during normal business hours. (1973 Ed., § 1-1162; Aug. 14, 1974, 88 Stat. 461, Pub. L. 93-376, title IV, § 402; Oct. 10, 1975, D.C. Law 1-21, § 7(b), 22 DCR 2069; Oct. 30, 1975, D.C. Law 1-27, § 3(c), 22 DCR 2471; Sept. 2, 1976, D.C. Law 1-79, title VII, § 702, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title I, § 102(d), 24 DCR 2372; Mar. 16, 1982, D.C. Law 4-88, § 3(h), (r), 29 DCR 458; Jan. 28, 1988, D.C. Law 7-66, § 2, 34 DCR 7439; Apr. 12, 2000, D.C. Law 13-91, § 124(b), 47 DCR 520.)

Effect of amendments. — D.C. Law 13-91 substituted "by §§ 1-1441.1 through 1-1441.3" for "in § 1-1441" in (c).

Legislative history of Law 13-91. — Law 13-91, the "Technical Amendments Act of 1999," was introduced in Council and assigned Bill No. 13-435. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

Subchapter V. Lobbying.

§ 1-1451. Definitions.

As used in this subchapter, unless the context requires otherwise:

(1) The term "administrative decision" means any activity directly related to action by an executive agency to issue a Mayor's order, to cause to be undertaken a rule-making proceeding (which does not include a formal public hearing) under the District of Columbia Administrative Procedure Act (D.C. Code § 1-1501 et seq.), or to propose legislation or make nominations to the Council, the President, or the Congress.

(2) The term "compensation" means any money or an exchange of value received, regardless of its form, by a person acting as a lobbyist.

(3) The term "executive agency" means a department, agency, or office in the executive branch of the District of Columbia government under the direct administrative control of the Mayor; the Board of Education or any of its constituent elements; the University of the District of Columbia or any of its constituent elements; the Board of Elections and Ethics; and any District of Columbia professional licensing and examining board under the administrative control of the executive branch.

(4) The term "expenditure" means any money or an exchange of value regardless of its form.

(5) The term "gift" means a payment, subscription, advance, forebearance, rendering, or deposit of money, services, or anything of value, unless consideration of equal or greater value is received, for the purpose of influencing the actions of a public official in making or influencing the making of an administrative decision or legislative action; and shall not include a political contribution otherwise reported as required by law, a commercially reasonable loan made in the ordinary course of business, or a gift received from a member of the person's household as defined by § 1-1461(i)(4).

(6) The term "legislative action" includes any activity conducted by an official in the legislative branch in the normal course of carrying out his or her duties as such an official, and relating to the introduction, passage, or defeat of any legislation in the Council.

(7)(A) The term "lobbying" means communicating directly with any official in the legislative or executive branch of the District of Columbia government with the purpose of influencing any legislative action or an administrative decision.

(B) As used in this subchapter, the term "lobbying" shall not include:

(i) The appearance or presentation of written testimony by a person in his or her own behalf, or representation by an attorney on behalf of any such person in a rule-making (which includes a formal public hearing), rate-making, or adjudicatory hearing before an executive agency or the Tax Assessor;

(ii) Information supplied in response to written inquiries by an executive agency or the Council of the District of Columbia or any public official;

(iii) Inquiries concerning only the status of specific actions by an executive agency or the Council of the District of Columbia;

(iv) Testimony given before a committee of the Council of the District of Columbia or before the Council of the District of Columbia, during which a public record is made of such proceedings or testimony submitted for inclusion in such a public record;

(v) A communication made through the instrumentality of a newspaper, television, or radio of general circulation or a publication whose primary audience is the organization's membership; and

(vi) Communications by a bona fide political party as defined in § 1-1401(10).

(8) The term "lobbyist" means any person who engages in lobbying. Public officials communicating directly or soliciting others to communicate with other public officials shall not be deemed lobbyists for the purposes of this chapter, so long as such public officials do not receive compensation in addition to their salary for such communications or solicitations and make such communications and solicitations in their official capacity.

(9) The term "official in the executive branch" means the Mayor, any officer or employee in the Executive Service, persons employed under the authority of §§ 1-610.1 through 1-610.3 (except § 1-610.3(a)(3)) paid at a rate of GS-13 or above in the General Schedule or equivalent compensation under the provisions of subchapter XII of Chapter 6 of this title or designated in § 1-610.8 (except paragraphs (9) and (10) of that section) or members of boards and commissions designated in § 1-1462(a).

(10) The term "official in the legislative branch" means any candidate for Chairman or member of the Council in a primary, special, or general election, the Chairman or Chairman-elect or any member or member-elect of the Council, officers and employees of the Council appointed under the authority of §§ 1-610.1 through 1-610.3 or designated in § 1-610.8.

(11) The term "public official" means any official in the executive, judicial, or legislative branch of the District of Columbia government.

(12) The term "registrant" means a person who is required to register as a lobbyist under the provisions of § 1-1452. (1973 Ed., § 1-1171; Aug. 14, 1974, 88 Stat. 462, Pub. L. 93-376, title V, § 501; Sept. 2, 1976, D.C. Law 1-79, title III, § 302, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title III, § 302(b)-(i), title IV, § 402, 24 DCR 2372; Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257; Mar. 3, 1979, D.C. Law 2-139, § 3205(w), 25 DCR 5740; Apr. 23, 1980, D.C. Law 3-58, § 2(a), 27 DCR 963; Mar. 16, 1982, D.C. Law 4-88, § 3(i), 29 DCR 458; Apr. 12, 2000, D.C. Law 13-91, § 124(c), 47 DCR 520.)

Effect of amendments. — D.C. Law 13-91 substituted "paragraphs (9) and (10)" for "paragraphs (9), (10), and (11)" in (9).

Legislative history of Law 13-91. — Law 13-91, the "Technical Amendments Act of 1999," was introduced in Council and assigned Bill No. 13-435. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

§ 1-1456. Prohibited activities.

(a) No registrant or anyone acting on behalf of a registrant shall offer, give, or cause to be given a gift to an official in the legislative or executive branch or a member of his or her staff, that exceeds $100 in value in the aggregate in any calendar year. This section shall not be construed to restrict in any manner contributions authorized by §§ 1-1441.1 through 1-1441.3 and 1-1443.

(b) No official in the legislative or executive branch or a member of his or her staff shall solicit or accept anything of value in violation of subsection (a) of this section.

(c) No person shall knowingly or willfully make any false or misleading statement or misrepresentation of the facts (relating to pending administrative decisions or legislative actions) to any official in the legislative or executive branch, or knowing a document to contain a false statement (relating to pending administrative decisions or legislative actions), cause a copy of such document to be transmitted to an official in the legislative or executive branch without notifying such official in writing of the truth.

(d) No information copied from registration forms and activity reports required by this chapter or from lists compiled from such forms and reports shall be sold or utilized by any person for the purpose of soliciting campaign contributions or selling tickets to a testimonial or similar fund raising affair or for any commercial purpose.

(e) No public official shall be employed as a lobbyist while acting as a public official, except as provided in § 1-1453. (1973 Ed., § 1-1176; Aug. 14, 1974, 88 Stat. 463, Pub. L. 93-376, title V, § 506; Sept. 2, 1976, D.C. Law 1-79, title III, § 302, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title III, § 302(q), title IV, § 402, 24 DCR 2372; Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257; Apr. 12, 2000, D.C. Law 13-91, § 124(d), 47 DCR 520.)

Effect of amendments. — D.C. Law 13-91 substituted "by §§ 1-1441.1 through 1-1441.3 and 1-1443" for "in §§ 1-1441 and 1-1443" in (a).

Legislative history of Law 13-91. — See note to § 1-1451.

Subchapter VI. Conflict of Interest and Disclosure.

§ 1-1461. Conflict of interest.

(a) The Congress declares that elective and public office is a public trust, and any effort to realize personal gain through official conduct is a violation of that trust.

(b) No public official shall use his or her official position or office to obtain financial gain for himself or herself, any member of his or her household, or any business with which he or she or a member of his or her household is associated, other than that compensation provided by law for said public official. This subsection shall not affect a vote by a public official: (1) On any matter which affects a class of persons (such a class shall include no less than 50 persons) of which such public official is a member if the financial gain to be realized is de minimus; (2) on any matter relating to such public official's compensation as authorized by law; or (3) regarding any elections law. If an action is taken by any department, agency, board, or commission of the District

of Columbia, except by the Council of the District of Columbia, in violation of this section, such action may be set aside and declared void and of no effect, upon a proper order of a court of competent jurisdiction.

(c) No person shall offer or give to a public official or a member of a public official's household, and no public official shall solicit or receive anything of value, including a gift, favor, service, loan gratuity, discount, hospitality, political contribution, or promise of future employment, based on any understanding that such public official's official actions or judgment or vote would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the public official in the discharge of his or her duties, or as a reward, except for political contributions publicly reported pursuant to § 1-1416 and transactions made in the ordinary course of business of the person offering or giving the thing of value.

(d) No person shall offer or pay to a public official, and no public official shall solicit or receive any money, in addition to that lawfully received by the public official in his or her official capacity, for advice or assistance given in the course of the public official's employment or relating to his or her employment.

(e) No public official shall use or disclose confidential information given in the course of or by reason of his or her official position or activities in any way that could result in financial gain for himself or herself or for any other person.

(f) No member or employee of the Council of the District of Columbia or Board of Education of the District of Columbia shall accept assignment to serve on a committee the jurisdiction of which consists of matters (other than of a de minimis nature) in which he or she or a member of his or her family or a business with which he or she is associated, has financial interest.

(g) Any public official who, in the discharge of his or her official duties, would be required to take an action or make a decision that would affect directly or indirectly his or her financial interests or those of a member of his or her household, or a business with which he or she is associated, or must take an official action on a matter as to which he or she has a conflict situation created by a personal, family, or client interest, shall:

(1) Prepare a written statement describing the matter requiring action or decision, and the nature of his or her potential conflict of interest with respect to such action or decision;

(2) Cause copies of such statement to be delivered to the District of Columbia Board of Elections and Ethics (referred to in this subchapter as the "Board"), and to his or her immediate superior, if any;

(3) If he or she is a member of the Council of the District of Columbia or member of the Board of Education of the District of Columbia, or employee of either, deliver a copy of such statement to the Chairman thereof, who shall cause such statement to be printed in the record of proceedings, and, upon request of said member or employee, shall excuse the member from votes, deliberations, and other action on the matter on which a potential conflict exists;

(4) If he or she is not the Mayor or a member of the Council of the District of Columbia, his or her superior, if any, shall assign the matter to another employee who does not have a potential conflict of interest, or, if he or she has no immediate superior, except the Mayor, he or she shall take such steps as the Board prescribes through rules and regulations to remove himself or herself

from influence over actions and decisions on the matter on which potential conflict exists; and

(5) During a period when a charge of conflict of interest is under investigation by the Board, if he or she is not the Mayor or a member of the Council of the District of Columbia or a member of the Board of Education, his or her superior, except the Mayor, if any, shall have the arbitrary power to assign the matter to another employee who does not have a potential conflict of interest, or if he or she has no immediate superior, he or she shall take such steps as the Board shall prescribe through rules and regulations to remove himself or herself from influence over actions and decisions on the matter on which there is a conflict of interest.

(h) Neither the Mayor nor any member of the Council of the District of Columbia may represent another person before any regulatory agency or court of the District of Columbia while serving in such office. The preceding sentence does not apply to an appearance by such an official before any such agency or court in his or her official capacity or to the appearance by a member of the Council (not the Chairman) licensed to practice law in the District of Columbia, before any court or non-District of Columbia regulatory agency in any matter which does not affect his or her official position.

(h-1)(1) No member of a board or commission shall be eligible for appointment by the members of that board or commission to any paid office or position under the supervision of that board or commission.

(2) No former member of a board or commission shall be eligible for appointment to any paid office or position under the supervision of the board or commission on which he or she served, unless:

(A) At least 45 days have passed since the date of termination of his or her service as a member of the board or commission; and

(B) He or she has followed the same employment application requirements required of other applicants for the paid office or position.

(i) As used in this section, the term:

(1) "Public official" means any person required to file a financial statement under § 1-1462.

(2) "Business" means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock, trust, and any legal entity through which business is conducted for profit.

(3) "Business with which he or she is associated" means any business of which the person or member of his or her household is a director, officer, owner, employee, or holder of stock worth $1,000 or more at fair market value, and any business which is a client of that person.

(4) "Household" means the public official and his or her immediate family.

(5) "Immediate family" means the public official's spouse and any parent, brother, or sister, or child of the public official, and the spouse of any such parent, brother, sister, or child. (1973 Ed., § 1-1181; Aug. 14, 1974, 88 Stat. 465, Pub. L. 93-376, title VI, § 601; Jan. 3, 1975, 88 Stat. 2178, Pub. L. 93-635, § 14(b); Sept. 2, 1976, D.C. Law 1-79, title II, § 202, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title I, § 102(b), title IV, § 402, 24 DCR 2372; Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257; Mar. 3, 1979, D.C. Law 2-139, § 3205 (w), 25 DCR 5740; Apr. 23, 1980, D.C. Law 3-58, § 2(b), 27 DCR 963; Mar. 16,

1982, D.C. Law 4-88, § 3(p), 29 DCR 458; Oct. 21, 2000, D.C. Law 13-184, § 2, 47 DCR 7066.)

Effect of amendments. — D.C. Law 13-184 inserted (h-1).

Legislative history of Law 13-184. — Law 13-184, the "Conflict of Interest Amendment Act of 2000," was introduced in Council and assigned Bill No. 13-485. The Bill was adopted on first and second readings on June 26, 2000, and July 11, 2000, respectively. Signed by the Mayor on August 2, 2000, it was assigned Act No. 13-400 and transmitted to both Houses of Congress for its review. D.C. Law 13-184 became effective on October 21, 2000.

§ 1-1462. Disclosure of financial interest.

(a) Any candidate for nomination for election, or election, to public office at the time he or she becomes a candidate, who does not occupy any such office, shall file within one month after he or she becomes a candidate for such office, and the Mayor and the Chairman and each member of the Council of the District of Columbia holding office under the District of Columbia Self-Government and Governmental Reorganization Act, a Representative or Senator elected pursuant to § 1-113, the President and each member of the Board of Education, and persons serving as subordinate agency heads or serving in positions designated as within either the Legal or Excepted Service (regardless of date of appointment) and paid at a rate of GS-13 or above or designated in § 1-610.8, and each member of the District of Columbia Board of Accountancy, established by § 2-103; the Board of Examiners and Registrars of Architects, established by § 2-201; the Board of Directors of the Public Parking Authority of the District of Columbia, established by § 40-843; the Board of Barber Examiners for the District of Columbia, established by § 2-403; the District of Columbia Boxing and Wrestling Commission, established by § 2-604; the Board of Dental Examiners, established by § 2-1201; the District of Columbia Board of Cosmetology, established by § 2-902; the Educational Institution Licensure Commission, established by § 31-1603; the Electrical Board, established by Commissioners' Order No. 54-1301, dated June 17, 1954; the Board of Funeral Directors, established by § 2-2803; District of Columbia Taxicab Commission, established by Chapter 17 of Title 40; the Commission on Licensure to Practice the Healing Art in the District of Columbia, established by § 2-1303; the Board of Examiners for Nursing Home Administrators, established by Commissioner's Order No. 70-37, effective October 15, 1970; the Board of Occupational Therapy Practice, established by § 2-1705.5; the Board of Optometry, established by § 2-1803; the Board of Pharmacy, established by Chapter 20 of Title 2; the Practical Nurses' Examining Board, established by § 2-1702.6; the Physical Therapists' Examining Board, established by § 2-1703.5; the Board of Psychologist Examiners, established by § 2-1704.5; the Plumbing Board, established by § 2-2101; the Board of Podiatry Examiners, established by § 2-2201; the District of Columbia Board of Registration for Professional Engineers, established by § 2-2305; the Real Estate Commission of the District of Columbia, established by § 45-1903; the Refrigeration and Air Conditioning Board, established by Commissioners' Order No. 55-2028, effective October 18, 1955; the Nurses Examining Board, established by § 2-1701.2; the Board of Examiners of Steam and Other Operating Engineers, established by § 2-2402; the Board of Examiners in Veterinary Medicine, established by § 2-2701; the Alcoholic

Beverage Control Board, established by § 25-104; the Board of Appeals and Review, established by Part I of Commissioners' Order No. 55-1500, effective August 11, 1955; the District of Columbia Armory Board, established by § 2-302; the Commission on the Arts and Humanities, established by § 31-2003; the Condemnation Review Board, established by Commissioners' Order No. 54-2305, dated September 27, 1954; the Contract Appeals Board, D.C., established by Part VI of Commissioner's Order No. 68-399, dated June 6, 1968; the Criminal Justice Supervisory Board, established by § 2-1103; the D.C. General Hospital Commission, established by § 32-211 et seq.; the District of Columbia Developmental Disabilities Planning Council, established by Mayor's Order No. 77-51a, dated March 30, 1977; the District of Columbia Board of Elections and Ethics, established by § 1-1303; the Office of Employee Appeals, established by subchapter VI of Chapter 6 of this title; Board of Real Property Assessments and Appeals for the District, established by § 47-825.1; the Board of Library Trustees, established by § 37-104; the District of Columbia Local Business Opportunity Commission, established by § 1-1143; the District of Columbia Occupational Safety and Health Board, established by Reorganization Plan No. 1 of 1978, effective June 27, 1978; the Public Employee Relations Board, established by subchapter V of Chapter 6 of this title; the Committee for the Purchase of Products and Services of the Blind and Other Severely Handicapped, established by § 36-603; the District of Columbia Rental Accommodations Commission, established by Chapter 15 of Title 45; the Statewide Health Coordinating Commission, established by Mayor's Order No. 72-43, dated March 15, 1977; the Board of Trustees of the University of the District of Columbia, established by § 31-1511 et seq.; the Board of Zoning Adjustment, established by § 5-424; the Zoning Commission, established by § 5-412; the District of Columbia Commission on Postsecondary Education, established by Mayor's Order No. 75-23a, dated February 1, 1975; the District of Columbia Redevelopment Land Agency, established by § 5-803; the District of Columbia Housing Finance Agency, established by § 45-2111; and any board or commission created after April 23, 1980, which makes decisions in areas of contracting, procurement, administration of grants or subsidies, planning or developing policies, inspecting, licensing, regulating, auditing or acting in areas of responsibility involving any potential conflict of interest shall file annually with the Board a report containing a full and complete statement of: (1) the name of each business entity (including sole proprietorships, partnerships, and corporations) transacting any business with the District of Columbia government (including any of its agencies, departments, boards, commissions, or educational bodies) in which such person (or his or her spouse, if property is jointly titled): (A) has a beneficial interest (including those held in such person's own name, in trust, or in the name of a nominee) exceeding in the aggregate $1,000; provided, however, if such interest consists of corporate stocks which are registered and traded upon a recognized national exchange, such aggregate value must exceed $5,000; or (B) earns income for services rendered during a calendar year in excess of $1,000; or (C) serves as an officer, director, partner, employee, consultant, contractor, or in any other formal capacity or affiliation; (2) any outstanding individual liability in excess of $1,000 for borrowing by such person or his or her spouse if such liability is joint, from anyone other than a federal or state

insured or regulated financial institution (including any revolving credit and installment accounts from any business enterprise regularly engaged in the business of providing revolving credit or installment accounts) or a member of such person's immediate family; (3) all real property located in the District of Columbia (and its actual location) in which such person or his or her spouse if such property is jointly titled, has an interest with a fair market value in excess of $5,000; provided, however, that this provision shall not apply to personal residences actually occupied by such person or his or her spouse; (4) all professional or occupational licenses issued by the District of Columbia government held by such person; (5) all gifts received in an aggregate value of $100 in a calendar year by such person from any business entity (including sole proprietorships, partnerships, and corporations) transacting any business with the District of Columbia government (including any of its agencies, departments, boards, commissions, or educational bodies); and (6) an affidavit stating that the subject candidate or office holder has not caused title to property to be placed in another person or entity for purposes of avoiding the disclosure requirements of this subsection. In addition to the foregoing information required to be disclosed pursuant to this subsection, the Mayor, the members of the Council, and the members of the Board of Education shall also disclose annually all outside income and honoraria, as defined in § 1-1481, accepted during the calendar year, as well as the identity of any client for whom the public official performed a service in connection with the public official's outside income if the client has a contract with the government of the District of Columbia or the client stands to gain a direct financial benefit from legislation that was pending before the Council during the calendar year. For the purpose of this subsection, "outside income" means any fixed payment at regular intervals for services rendered, self-employment, and royalties for any publication. For the purpose of this subsection, the words "immediate family" shall have the same meaning as in § 1-1461. The Board may, by rule, provide forms for the submission of the statement required by this subsection in aggregate categories. Information supplied pursuant to this subsection shall be modified by the filer within 30 days of any changes therein, and failure to inform the Board of such modifications is deemed to be a willful violation of this filing requirement. The Board may, on a case-by-case basis, provide for certain exemptions to this filing requirement which are deemed to be de minimis by the Board.

(b) Before the 1st day of February of each year, the Mayor of the District of Columbia for persons appointed under the authority of subchapter IX-B of Chapter 6 of this title (and paid at a rate of DS-13 or above), subchapter XI of Chapter 6 of this title or §§ 1-610.1 through 1-610.3 (and paid at a rate of a GS-13 or above in the General Schedule or comparable compensation under subchapter XII of Chapter 6 of this title) or designated in § 1-610.8 (and appointed by the Mayor) and members of boards and commissions listed in subsection (a) of this section; the Chairman of the Council of the District of Columbia for persons appointed under the authority of subchapter IX-B of Chapter 6 of this title (and paid at a rate of DS-13 or above), §§ 1-610.1 through 1-610.3 (and paid at a rate of a GS-13 or above in the General Schedule or comparable compensation under subchapter XII of Chapter 6 of this title) or designated in § 1-610.8 and employed by the Council; and the

Chief Executive Officer of the Board of Education, the University of the District of Columbia, or any independent agency or instrumentality by whom a person appointed under subchapter IX-B of Chapter 6 of this title (and paid at a rate of DS-13 or above), or a person designated in § 1-610.8 is employed shall submit on behalf of their respective agency, the names and current mailing addresses of all persons required to file a financial statement as required by this section with the Director of Campaign Finance. It shall be the responsibility of each chief executive to maintain the currency of the names and current mailing addresses of all persons required to file under this chapter, and to advise the Director of Campaign Finance within 21 days of such person's appointment, election, resignation, termination, or death. During April of each year, the Board shall publish, in the District of Columbia Register, a list of names of candidates, officers, and employees required to file under this section as of the last day of the preceding March.

(c) Except as otherwise provided by this section, all papers filed under this section shall be kept by the Board in the custody of the Director for not less than 4 years. Upon receipt of a request by any member of the Board adopted by a recorded majority vote of the full Board requesting the examination and audit of any of the reports filed by any individual under subsection (b) of this section, the Director shall transmit to the Board the envelopes containing such reports. Within a reasonable time after such recorded vote has been taken, the individual concerned shall be informed of the vote to examine and audit, and shall be advised of the nature and scope of such examination. If, upon such examination, the Board determines that further consideration by the Board is warranted and within the jurisdiction of the Board, or the Director or General Counsel of the Board which is required for the discharge of his or her official duties, the Board may receive the papers as evidence, after giving to the individual concerned due notice and opportunity for hearing in a closed session. The Board shall publicly disclose not later than the 1st day of June each year the names of the candidates, officers, and employees who have filed a report. Any paper which has been filed with the Board for longer than 4 years, in accordance with the provisions of this subsection, shall be returned to the individual concerned or his legal representative. In the event of the death or termination of service of the Mayor or Chairman or member of the Council of the District of Columbia or President or member of the Board of Education, or officer or employee of the District of Columbia, such papers shall be returned to such individual, or to the surviving spouse or legal representative of such person within 1 year of such date or termination of service.

(d)(1) Reports required by this section (other than reports so required by candidates) shall be filed not later than 60 days following August 14, 1974, and not later than May 15th of each succeeding year. In the case of any person who ceases, prior to such date in any year, to occupy the office or position, the occupancy of which imposes upon him or her the reporting requirements contained in subsection (a) of this section, he or she shall file such report on the last day he or she occupies such office or position, or on such later date, not more than 3 months after such last day, as the Board may prescribe. The Board shall publish, in the District of Columbia Register, not later than the 1st day of June each year, the name of each candidate, officer, and employee who has filed a report under this section; the name of each candidate, officer, and

employee who has sought and received an extension of the deadline filing requirement and the reason therefor; and the name of each candidate, officer, and employee published in the District of Columbia Register under subsection (c) of this section who has not filed a report and the reason for not filing, if known. Any paper which has been filed with the Board for longer than 4 years, in accordance with the provisions of this section, shall be returned to the person who filed it or his or her legal representative. In the event of the death or termination of service of the Mayor, Chairman or member of the Council of the District of Columbia, or President or member of the Board of Education of the District of Columbia, or officer or employee of the District of Columbia, such papers shall be returned to such individual, or to the surviving spouse or legal representative of such individual within 1 year after such death or termination of service.

(2) Any report required to be filed with the Director from an employee who is no longer covered under the provisions of this chapter on March 1, 1979, shall be returned to such employee or his or her representative on or before June 1, 1979: Provided, however, that should the Director certify that any routine audit or an investigation concerning compliance with the provisions of this chapter is currently underway, such reports shall not be returned to such employees, except as otherwise provided in this section.

(e) Reports required by this section shall be in such form and detail as the Board may prescribe. The Board may provide for the grouping of items of income, sources of income, assets, liabilities, dealings in securities or commodities, and purchases and sales of real property, when separate itemization is not feasible or is not necessary for an accurate disclosure of the income, net worth, dealing in securities and commodities or purchases, and sales of rental property of any individual.

(f) All public reports filed under this section shall be maintained by the Board as public records which, under such reasonable regulations as it shall prescribe, shall be available for inspection by members of the public.

(g) For the purposes of any report required by this section, an individual shall be considered to have been a public official, if he or she has served as a public official for more than 30 days during any calendar year in a position for which financial disclosure reports are required under this subchapter.

(h) For purposes of this section, the term:

(1) "Income" means gross income as defined in § 61 of the Internal Revenue Code of 1954.

(2) "Security" means security as defined in § 2 of the Securities Act of 1933, as amended (15 U.S.C. § 77b).

(3) "Commodity" means commodity as defined in § 2 of the Commodities Exchange Act, as amended (7 U.S.C. § 2).

(4) "Transactions in securities or commodities" means any acquisition, holding, withholding, use, transfer, or other disposition involving any security or commodity.

(5) "Immediate family" means the child, parent, grandparent, brother, or sister of an individual, and the spouse of such person.

(6) "Tax" means the taxes imposed under Chapter 1 of the Internal Revenue Code of 1954, under the District of Columbia Revenue Act of 1947, and under the District of Columbia Public Works Act of 1954 and any other

provision of law relating to the taxation of property within the District of Columbia.

(7) "Gift" means a payment, subscription, advance, forebearance, rendering or deposit of money, services or any thing of value, unless consideration of equal or greater value is received, for the purpose of influencing the actions of a public official in making or influencing the making of an administrative decision or legislative action; and shall not include a political contribution otherwise reported as required by law, a commercially reasonable loan made in the ordinary course of business, or a gift received from a member of the person's immediate family.

(i)(1) This section shall not apply to any candidate for nomination for election, or election as a member of an Advisory Neighborhood Commission, or to any member of an Advisory Neighborhood Commission, except to the extent that the section applies to the candidate or member because of his or her status other than as the candidate or member.

(2) Members of Advisory Neighborhood Commissions shall be covered under the conflict of interest provisions of § 1-1461.

(j) No person shall unlawfully disclose or use for any purpose other than in accordance with the terms of this chapter any information contained in financial statements required by this chapter. (1973 Ed., § 1-1182; Aug. 14, 1974, 88 Stat. 467, Pub. L. 93-376, title VI, § 602; Oct. 10, 1975, D.C. Law 1-21, § 7(c), 22 DCR 2069; Oct. 30, 1975, D.C. Law 1-27, § 3(d), 22 DCR 2471; Sept. 2, 1976, D.C. Law 1-79, title II, § 203, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title I, § 102(a), (c), title IV, § 402, 24 DCR 2372; Aug. 18, 1978, D.C. Law 2-101, § 3, 25 DCR 257; Mar. 3, 1979, D.C. Law 2-139, § 3205(w), 25 DCR 5740; Apr. 23, 1980, D.C. Law 3-58, § 2(c)-(f), 27 DCR 963; Aug. 1, 1981, D.C. Law 4-23, § 2, 28 DCR 2616; Mar. 16, 1982, D.C. Law 4-88, § 3(l), (p)-(s), 29 DCR 458; Sept. 26, 1984, D.C. Law 5-111, §§ 2(a), 3, 31 DCR 3952; Mar. 25, 1986, D.C. Law 6-97, § 23(c), 33 DCR 703; Feb. 24, 1987, D.C. Law 6-192, § 21, 33 DCR 7836; May 10, 1989, D.C. Law 7-231, § 6, 36 DCR 492; Oct. 18, 1989, D.C. Law 8-41, § 2(a), 36 DCR 5758; June 8, 1990, D.C. Law 8-135, § 3, 37 DCR 2616; Mar. 17, 1993, D.C. Law 9-241, § 3, 40 DCR 629; Aug. 23, 1994, D.C. Law 10-153, § 16, 41 DCR 4652; May 16, 1995, D.C. Law 10-255, § 4, 41 DCR 5193; _____, 2000, D.C. Law 13- (Act 13-204), § 2(e), 46 DCR 10460; Apr. 12, 2000, D.C. Law 13-91, § 124(e), 47 DCR 520.)

Effect of amendments. — D.C. Law 13-(Act 13-204) substituted "(C) serves as an officer, director, partner, employee, consultant, contractor, or in any other formal capacity or affiliation" for "(C) services as an officer, director, partner, employee, or in any other fiduciary capacity" in (a).

D.C. Law 13-91, in (a), substituted "either the Legal or Excepted Service" for "the Excepted Service" near the beginning, and substituted "the District of Columbia Local Business Opportunity Commission" for "the Minority Business Opportunity Commission"; and, in (b), inserted "subchapter IX-B of Chapter 6 of this title (and paid at a rate of DS-13 or above)" twice, and substituted "appointed under subchapter IX-B of Chapter 6 of this title (and paid at a rate of DS-13 or above), or a person designated" for "designated."

Emergency legislation. — For temporary amendment of section, see § 4 of the Legal Services Clarification and Technical Emergency Amendment Act of 1999 (D.C. Act 13-203, December 8, 1999, 46 DCR 10456).

For temporary amendment of section, see § 4 of the Legal Services Clarification and Technical Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-293, March 7, 2000, 47 DCR 2063).

Legislative history of Law 13-91. — Law 13-91, the "Technical Amendments Act of 1999," was introduced in Council and assigned Bill No. 13-435. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the

Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

Subchapter VII. Miscellaneous Provisions.

§ 1-1472. Use of surplus campaign funds.

(a) Within the limitations specified in this chapter, any surplus, residual, or unexpended campaign funds received by or on behalf of an individual who seeks nomination for election, or election to office shall be contributed to a political party for political purposes, used to retire the proper debts of his or her political committee which received such funds, or returned to the donors as follows:

(1) In the case of an individual defeated in an election, within 6 months following such election;

(2) In the case of an individual elected to office, within 6 months following such election; and

(3) In the case of an individual ceasing to be a candidate, within 6 months thereafter.

(b) An individual defeated or elected to office as member of the Board of Education under this chapter, or a political committee formed to collect signatures or advocate the ratification or defeat of any initiative, referendum, or recall measure shall be authorized to transfer any surplus, residue, or unexpended campaign funds to any charitable, scientific, literary, or educational organization or organizations which meet the requirements of § 47-1803.3(a)(8); and an individual elected to an office under this chapter and authorized to establish a program of constituent services under § 1-1443 shall be authorized to transfer any surplus, residue, or unexpended campaign funds to his or her program of constituent services.

(c) Notwithstanding any other provision of this chapter, any funds remaining in the John Wilson Campaign Fund shall be transferred to the John Wilson Achievement Award Fund. (1973 Ed., § 1-1192; Aug. 14, 1974, 88 Stat. 471, Pub. L. 93-376, title VII, § 703; Sept. 2, 1976, D.C. Law 1-79, title VIII, § 805, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title IV, § 402, 24 DCR 2372; June 7, 1979, D.C. Law 3-1, § 3(f), 25 DCR 9454; Mar. 16, 1982, D.C. Law 4-88, § 3(o), (r), (s), 29 DCR 458; July 18, 2000, D.C. Law 13-138, § 2, 47 DCR 3424.)

Effect of amendments. — D.C. Law 13-138 added (c).

Legislative history of Law 13-138. — Law 13-138, the "John Wilson Campaign Fund Transfer Amendment Act of 2000," was introduced in Council and assigned Bill No. 13-238. The Bill was adopted on first and second readings on March 7, 2000, and April 4, 2000, respectively. Signed by the Mayor on April 20, 2000, it was assigned Act No. 13-320 and transmitted to both Houses of Congress for its review. D.C. Law 13-138 became effective on July 18, 2000.

CHAPTER 15. ADMINISTRATIVE PROCEDURE.

Subchapter I. Administrative Procedure.

Sec.
1-1506. Public notice and participation in rulemaking; emergency rules.

Subchapter I. Administrative Procedure.

§ 1-1502. Definitions.

Contested case.

The denial by the Department of Employment Services of the petitioner's application for a change of physician did not present a "contested case." Renard v. District of Columbia Dep't of Emp. Servs., App. D.C., 731 A.2d 413 (1999).

Where an intervenor was an employee of the District of Columbia Department of Public and Assisted Housing at the time of alleged acts of discrimination, the matter fell squarely within the "contested case" exception of paragraph (8)(B), notwithstanding the fact that such Department was later abolished and that the District of Columbia Housing Authority was created in its stead. District of Columbia Hous. Auth. v. District of Columbia Dep't of Human Rights, App. D.C., 733 A.2d 338 (1999).

An extension of a planned unit development (PUD) order was simply a post-hearing aspect of a contested case involving the PUD hearing, and there was no reason to separate it from the original contested case for jurisdictional purposes. Hotel Tabard Inn v. District of Columbia Zoning Comm'n, App. D.C., 661 A.2d 150 (1995).

Court lacked jurisdiction to review a decision of the Foreign Missions Board of Zoning Adjustment concerning application by foreign instrumentality for location of chancery facility, because the decision was not a contested case within the meaning of the Administrative Procedure Act. United States v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 644 A.2d 995 (1994).

Rulemaking requirement.

Board of Elections' internal manual for implementing initiative verification rules did not contain any "policy decision affecting the general public," and was thus not subject to the rulemaking requirement of this chapter. Stevenson v. District of Columbia Bd. of Elections & Ethics, App. D.C., 683 A.2d 1371 (1996).

Cited in Shook v. District of Columbia Fin. Responsibility & Mgt. Assistance Auth., 132 F.3d 775 (D.C. Cir. 1998); Gill v. Tolbert Constr., Inc., App. D.C., 676 A.2d 469 (1996).

§ 1-1506. Public notice and participation in rulemaking; emergency rules.

(a) The Mayor and each independent agency shall, prior to the adoption of any rule or the amendment or repeal thereof, publish in the District of Columbia Register (unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law) notice of the intended action so as to afford interested persons opportunity to submit data and views either orally or in writing, as may be specified in such notice. The notice shall also contain a citation to the legal authority under which the rule is being proposed. The publication or service required by this subsection of any notice shall be made not less than 30 days prior to the effective date of the proposed adoption, amendment, or repeal, as the case may be, except as otherwise provided by the Mayor or the agency upon good cause found and published with the notice.

(b) Any interested person may petition the Mayor or an independent agency requesting the promulgation, amendment, or repeal of any rule. The Mayor and each independent agency shall prescribe by rule the form for such petitions, and the procedure for their submission, consideration, and disposition. Nothing in this subchapter shall make it mandatory that the Mayor or any agency promulgate, amend, or repeal any rule pursuant to a petition therefor submitted in accordance with this section.

(c) Notwithstanding any other provision of this section, if, in an emergency, as determined by the Mayor or an independent agency, the adoption of a rule is necessary for the immediate preservation of the public peace, health, safety, welfare, or morals, the Mayor or such independent agency may adopt such

rules as may be necessary in the circumstances, and such rule may become effective immediately. Any such emergency rule shall forthwith be published and filed in the manner prescribed in subchapter III of this chapter. No such rule shall remain in effect longer than 120 days after the date of its adoption. (Oct. 21, 1968, 82 Stat. 1206, Pub. L. 90-614, § 6; 1973 Ed., § 1-1505; Oct. 8, 1975, D.C. Law 1-19, title I, § 102(y), 22 DCR 2053; Mar. 29, 1977, D.C. Law 1-96, § 3(a), (c), (e), 23 DCR 9532b; Apr. 12, 2000, D.C. Law 13-91, § 167, 47 DCR 520.)

Effect of amendments. — D.C. Law 13-91 inserted the second sentence in (a).

Legislative history of Law 13-91. — Law 13-91, the "Technical Amendments Act of 1999," was introduced in Council and assigned Bill No. 13-435. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

§ 1-1509. Contested cases.

Findings.

Where the court concluded, on the basis of an appeal examiner's evidentiary findings, that the petitioner suffered a post-compensation statute aggravation of a pre-existing injury, and that such aggravation was compensable, remand for further proceedings was required. Harris v. District of Columbia Office of Worker's Comp., App. D.C., 660 A.2d 404 (1995).

Although record established that a corrections officer, who pled guilty to accepting a bribe from an inmate, was guilty of job-related misconduct, the record did not establish that he was discharged as a result of that misconduct, requiring that his disqualification from receiving unemployment benefits be vacated and remanded for further proceedings. Mack v. District of Columbia Dep't of Employment Servs., App. D.C., 651 A.2d 804 (1994).

Board of Zoning Adjustment failed to make findings of fact necessary to support an implicit underpinning of its ruling, and therefore remand was required. Mendelson v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 645 A.2d 1090 (1994).

Hearing.

Since foster home in Maryland was never licensed by a District of Columbia agency, the District's licensing and de-licensing procedures were not applicable, and in the absence of any constitutional or statutory right to an administrative hearing, petitioner's claim that further child placements could not be suspended without a hearing failed on the "contested case" requirements of this section. Minnis v. District of Columbia Dep't of Human Servs., App. D.C., 712 A.2d 1030 (1998).

Information outside of record.

Portions of agency's letter to hospital service provider sought to make substantive alterations to agency's previous decision and order concerning proposed merger, and since the letter was precipitated by ex parte contacts between agency and provider that were not made part of record or subject to adversarial attack, the court was unable to conduct an appropriate review of the agency's action; treating letter as a separate order, court was therefore required to vacate it. Fair Care Found. v. District of Columbia Dep't of Ins. & Sec. Regulation, App. D.C., 716 A.2d 987 (1998).

Notice.

Where agency did not make a factual finding as to precisely when the claimant provided notice to his employer of his work-related injuries, but found that he was aware of the relationship and his employment more than 30 days prior to the provision of notice, there was no error in finding that an interrogatory admission did not constitute notice in compliance with the requirements of § 36-313. Jimenez v. District of Columbia Dep't of Emp. Servs., App. D.C., 701 A.2d 837 (1997).

Proceedings in employment dispute between doctor and District of Columbia fell short of minimum requirements of reasonable notice and opportunity to be heard, requiring reversal of Contract Appeals Board's dismissal of doctor's appeal for failure to comply with discovery order. Abia-Okon v. District of Columbia Contract Appeals Bd., App. D.C., 647 A.2d 79 (1994).

Official notice.

Hearing examiner erred in concluding that official notice could not be taken of a claim form in agency's file in determining whether petitioner's worker's compensation claim was timely filed. Renard v. District of Columbia Dep't of Emp. Servs., App. D.C., 673 A.2d 1274 (1996).

Commission improperly took official notice of an entire agency file, rather than just the previous decision and order, to overcome patent insufficiency of housing providers' proof that

tenant had been a party to first proceeding and was thus precluded from asserting claim on res judicata grounds; while tenant's party status may have been perfectly clear from entire file, the tenant was given no opportunity to show the contrary. Johnson v. District of Columbia Rental Hous. Comm'n, App. D.C., 642 A.2d 135 (1994).

Proponent and burden of proof.

Remand was required in dispute concerning liability for nonresident tuition, in view of uncertainty as to whether parent or school district was the "proponent" bearing the burden of proof. Braddock v. Smith, App. D.C., 711 A.2d 835 (1998).

The burden of persuasion fell on a utility as the proponent of its cost recovery. Potomac Elec. Power Co. v. Public Serv. Comm'n, App. D.C., 661 A.2d 131 (1995).

Reductions in force.

Cited in Plummer v. District of Columbia Bd. of Funeral Dirs., App. D.C., 730 A.2d 159 (1999); Olson v. District of Columbia Dep't of Emp. Servs., App. D.C., 736 A.2d 1032 (1999); Metropolitan Poultry v. District of Columbia Dep't of Emp. Servs., App. D.C., 706 A.2d 33 (1998); Radwan v. District of Columbia Rental Hous. Comm'n, App. D.C., 683 A.2d 478 (1996); Jerome Mgt., Inc. v. District of Columbia Rental Hous. Comm'n, App. D.C., 682 A.2d 178 (1996); Walton v. District of Columbia, App. D.C., 670 A.2d 1346 (1996); Breen v. District of Columbia Police & Firefighters Retirement & Relief Bd., App. D.C., 659 A.2d 1257 (1995); United States v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 644 A.2d 995 (1994); Cathedral Park Condo. Comm. v. District of Columbia Zoning Comm'n, App. D.C., 743 A.2d 1231 (2000).

§ 1-1510. Judicial review.

Contested case.

Because this chapter contemplates exclusive jurisdiction in the Court of Appeals over review of administrative proceedings involving contested cases, the Superior Court acted properly in declining to entertain appellants' claims concerning proposed merger involving hospital service provider. Fair Care Found. v. District of Columbia Dep't of Ins. & Sec. Regulation, App. D.C., 716 A.2d 987 (1998).

Because bid protests are not contested cases and thus cannot be appealed directly to the Court of Appeals, the trial court erred in holding that it lacked subject matter jurisdiction to hear the case. Francis v. Recycling Solutions, Inc., App. D.C., 695 A.2d 63 (1997).

An extension of a planned unit development (PUD) order was simply a post-hearing aspect of a contested case involving the PUD hearing, and there was no reason to separate it from the original contested case for jurisdictional purposes. Hotel Tabard Inn v. District of Columbia Zoning Comm'n, App. D.C., 661 A.2d 150 (1995).

Court lacked jurisdiction to review decision of Foreign Missions Board of Zoning Adjustment concerning an application by a foreign instrumentality for location of chancery facility, because decision was not a contested case within the meaning of the Administrative Procedure Act. United States v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 644 A.2d 995 (1994).

Decision upheld.

Hearing examiner's refusal to reopen record was not an abuse of discretion where petitioners failed to demonstrate any unusual circumstances justifying such reopening, and where any relevant and material evidence in petitioners' possession could have reasonably been presented at the hearing. Charles P. Young Co. v. District of Columbia Dep't of Emp. Servs., App. D.C., 681 A.2d 451 (1996).

A decision of the zoning board approving a special exemption was upheld where the board properly considered and addressed all relevant factors. French v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 658 A.2d 1023 (1995).

Findings.

Intra-agency remand ordered by Department of Employment Services was not in clear excess or plain contravention of its statutory mandate, and therefore subsection (a) of this section did not confer jurisdiction on court to review what was in essence an interlocutory order, with a record devoid of factual findings which could be essential to outcome of case. Washington Hosp. Ctr. v. District of Columbia Dep't of Emp. Servs., App. D.C., 712 A.2d 1018 (1998).

Where the workers' compensation hearing examiner interpreted the applicable statutory provision but the director of the defendant agency did not, remand was required for adoption of findings of fact and conclusions of law and for determination of the sufficiency of the notice of injury. Wahlne v. District of Columbia Dep't of Emp. Servs., App. D.C., 704 A.2d 1196 (1997).

Where the agency did not make a factual finding as to precisely when the claimant provided notice to his employer of his work-related injuries, but found that he was aware of the relationship and his employment more than 30 days prior to the provision of notice, there was no error in finding that an interrogatory admis-

sion did not constitute notice in compliance with the requirements of § 36-313. Jimenez v. District of Columbia Dep't of Emp. Servs., App. D.C., 701 A.2d 837 (1997).

The court must consider whether agency findings are supported by reliable, probative, and substantial evidence in the record, and whether the conclusions reached by the agency flow rationally from those findings. Breen v. District of Columbia Police & Firefighters Retirement & Relief Bd., App. D.C., 659 A.2d 1257 (1995).

In making the necessary findings, a Mayor's agent is not required to explain why he favored one witness' testimony over another, or one statistic over another. Kalorama Heights Ltd. Partnership v. District of Columbia Dep't of Consumer & Regulatory Affairs, App. D.C., 655 A.2d 865 (1995).

Agency must make findings on each material issue of fact, and factual findings must be supported by substantial evidence on the record as a whole; agency's conclusions must flow rationally from those findings and comport with applicable law. Williamson v. District of Columbia Bd. of Dentistry, App. D.C., 647 A.2d 389 (1994).

Harmless error.

To the extent that agency failed to follow its regulations in providing required notices to petitioner, that failure was harmless and could not form the basis for reversal. Robinson v. Smith, App. D.C., 683 A.2d 481 (1996).

Information outside of record.

Portions of agency's letter to hospital service provider sought to make substantive alterations to agency's previous decision and order concerning proposed merger, and since the letter was precipitated by ex parte contacts between agency and provider that were not made part of record or subject to adversarial attack, the court was unable to conduct an appropriate review of the agency's action; treating letter as a separate order, court was therefore required to vacate it. Fair Care Found. v. District of Columbia Dep't of Ins. & Sec. Regulation, App. D.C., 716 A.2d 987 (1998).

Justiciable controversy.

Petition for review was dismissed because petitioner did not suffer a legal wrong, nor was petitioner adversely affected by order of Mayor's agent denying construction permits, since findings and conclusions by agent of which petitioner complained were beyond agent's statutory jurisdiction. District Intown Properties, Ltd. v. District of Columbia Dep't of Consumer & Regulatory Affairs, App. D.C., 680 A.2d 1373 (1996).

Tolling of agency orders.

Because the unambiguous language of this section states that the filing of a petition for review "shall not" operate to stay the effect of an agency's order, where an intervenor failed to apply for a stay and also failed to seek a building permit within the prescribed period, the zoning board's order was not tolled by the filing of the petition. French v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 658 A.2d 1023 (1995).

Although the practice of the District had been to accept the view of the Corporation Counsel that the filing of a petition for review operated to stay the effect of an agency order, the plain language of this section did not permit such a tolling. French v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 658 A.2d 1023 (1995).

Cited in Olson v. District of Columbia Dep't of Emp. Servs., App. D.C., 736 A.2d 1032 (1999); Jewell v. District of Columbia Police & Firefighters Retirement & Relief Bd., App. D.C., 738 A.2d 1228 (1999); Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp. Servs., App. D.C., 703 A.2d 1225 (1997); In re McLain, App. D.C., 671 A.2d 951 (1996); Walton v. District of Columbia, App. D.C., 670 A.2d 1346 (1996); Tri-County Indus. v. District of Columbia, 932 F. Supp. 4 (D.D.C. 1996); Watergate E., Inc. v. Public Serv. Comm'n, App. D.C., 665 A.2d 943 (1995); Kingsley v. District of Columbia Dep't of Consumer & Regulatory Affairs, App. D.C., 657 A.2d 1141 (1995); Joel Truitt Management, Inc. v. District of Columbia Comm'n on Human Rights, App. D.C., 646 A.2d 1007 (1994); District of Columbia Preservation League v. Department of Consumer & Regulatory Affairs, App. D.C., 646 A.2d 984 (1994).

Subchapter II. Freedom of Information.

§ 1-1522. Right of access to public records; allowable costs; time limits.

Cited in Beard v. Department of Justice, 917 F. Supp. 61 (D.D.C. 1996).

§ 1-1524. Exemptions from disclosure.

Cited in Anderson v. Thomas, App. D.C., 683 A.2d 156 (1996).

§ 1-1527. Administrative appeals.

Jurisdiction.

Trial court incorrectly concluded that an appeal from the denial of petitioner's Freedom of Information Act request should have been brought in federal court rather than Superior Court. Anderson v. Thomas, App. D.C., 683 A.2d 156 (1996).

CHAPTER 19. SUBMISSION OF STATE ENERGY PLANS.

Subchapter I. General Provisions.

Subchapter I. General Provisions.

§ 1-1904. District of Columbia Office of Energy; energy conservation plan; facilities energy management plan; emergency energy shortage contingency plan; energy research and development program.

(a) *Establishment.* —

(1) The District of Columbia Office of Energy is established in the executive branch of the government of the District of Columbia, and shall have the powers, duties, and functions vested in it by the provisions of this subchapter.

(2) All of the powers, duties, and functions assigned to the District of Columbia Energy Unit of the Executive Office of the Mayor shall be transferred to the District of Columbia Office of Energy. All positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available relating to the powers, duties, and functions so transferred, are transferred to the District of Columbia Office of Energy as created by this subchapter.

(b) *Appointment of Director.* — The administrator and head of the Office shall be the Director of the District of Columbia Office of Energy, who shall be a person qualified by training and experience to perform the duties of the Office. The Director shall be a resident of the District of Columbia and shall be appointed by the Mayor, and confirmed by the Council of the District of Columbia.

(c) *Powers, duties, and functions of Director.* — The Director shall:

(1) Supervise, direct, and account for the administration and operation of the Office, its units, functions, and employees; and

(2) Coordinate and facilitate the overall effort of the District of Columbia government to achieve energy conservation and renewable resource utilization by devising pertinent policies, plans, and programs.

(d) *Powers, duties, and functions of Office.* — The District of Columbia Office of Energy is authorized to:

(1) Advise the Mayor on current or impending energy related problems and to serve as the lead agency to develop and implement the District's response to such problems;

(2) Act as central repository and clearinghouse for the collection and public inspection of data and information with respect to energy resources and energy matters in the District, including, but not limited to: (A) Data on energy supply, demand, costs, projections, and forecasts; and (B) inventory data on energy research and development projects, studies, or other programs conducted in the District under public and private supervision or sponsorship of both and the results thereof. The Office shall develop an energy information reporting system for use by all government agencies and by the general public;

(3) Develop and recommend to the Mayor a comprehensive long-range District energy plan to achieve maximum effective management and use of present and future sources of energy, including, but not limited to, an energy conservation plan, a District facilities energy management plan, an annual energy supply and demand forecast, an emergency energy shortage contingency plan, and an energy research and development program;

(4) Plan, oversee, and coordinate the various programs mandated by the federal energy conservation acts: The 1975 Energy Policy and Conservation Act (42 U.S.C. § 6201), the 1976 Energy Conservation and Production Act (42 U.S.C. § 6801), the National Energy Conservation Policy Act of 1978 (42 U.S.C. § 8201), and any subsequent federal energy conservation and related legislation; and identify additional federal or other grant opportunities for District of Columbia energy programs, and coordinate the preparation and submission of energy grant applications for other departments, offices, and agencies: Provided, however, that no provisions of this subchapter shall be construed to limit the authority of any independent commission, office, board, or agency of the District of Columbia to apply for and receive federal and private grants;

(5) Develop and implement a District of Columbia fuel allocation program in a manner consistent with District energy policies;

(6) Act as the lead agency to represent the District before the federal government, other state and local governments, regional governments, and other appropriate public and private agencies in all energy and energy resource matters;

(7) Promote the development of energy-related businesses and employment in the District of Columbia, with special emphasis on renewable resource technologies and markets;

(8) Promote the application of energy conservation and renewable resource principles and policies in land use planning, zoning, building regulations, capital improvements, and lease agreements for government offices or other space needs;

(9) Coordinate the development and implementation of energy assistance policies and programs for low-income, fixed-income, and elderly households;

(10) Require, in order to assure the adequate development of relevant energy information as provided in paragraph (2) of this subsection, that all energy distributors and major energy consumers file such reports, data, and forecasts as the Office may require.

(A) In obtaining information under this paragraph, the Office:

(i) Shall, to the maximum extent feasible, provide that reports, data, and forecasts be consistent with material required by the District of Columbia and federal agencies in order to prevent unnecessary duplication; and

(ii) May, with the written consent of the Mayor, subpoena witnesses, material, and relevant books, papers, accounts, records, and memoranda; administer oaths; and cause the deposition of persons residing within or without the District to be taken in the manner prescribed for depositions in civil actions in the Superior Court of the District of Columbia; and

(B) Information furnished under this paragraph shall be confidential and maintained as such, if so requested by the person providing the information, if the information is proprietary in nature. Nothing in this subsection shall prohibit the use of confidential information to prepare statistics or other general data for publication when so presented as to prevent identification of particular persons or sources; nor shall the confidentiality requirement of this subsection apply to information furnished by, or relating to, governmental agencies, or to public utilities, or to carriers regulated by the Public Service Commission or by the Washington Metropolitan Area Transit Commission, or by any of the federal regulatory agencies; Provided, that utility customer account information shall remain confidential unless such confidentiality is expressly waived by the individual customer whose account is affected;

(11) Provide for the training and certification of energy auditors, and provide for such energy audits as may be deemed necessary and desirable to carry out the purposes, programs, and policies of this subchapter or any other energy-related law applicable to the District; to the maximum extent feasible, the energy audit program should be carried out as a decentralized, neighborhood-based effort;

(12) Require the annual submission of energy audit reports and conservation plans by departments, offices, boards, bureaus, commissions, authorities, and other agencies or instrumentalities of the District, and in cooperation with the Department of General Services, evaluate the plans and the progress of the agencies and instrumentalities in meeting the goals of the plans, and advise the agencies and instrumentalities of improvements or changes to be made in their plans, programs, and goals;

(13) Conduct hearings and investigations in order to carry out the purposes, programs, and policies of this subchapter, and to issue subpoenas in furtherance of such authority;

(14) Assist the Corporation Counsel and Office of Consumer Protection in safeguarding consumers from unfair, deceptive, and anticompetitive acts and practices in the marketing, selling, or distributing of energy, energy resources, energy technologies, and energy conserving goods or services;

(15) Evaluate policies governing the establishment of rates and prices for energy as related to energy conservation, and, through formal intervention before the District of Columbia Public Service Commission, recommend changes in energy pricing policies and rate schedules;

(16) Appoint, with the written consent of the Mayor, such advisory committees, boards, and task forces as are necessary and desirable to carry out the purposes and policies of this subchapter; and

(17) Promulgate regulations pursuant to the District of Columbia Administrative Procedure Act (D.C. Code, § 1-1501 et seq.), to conduct public hearings, and to fulfill all duties and responsibilities of the Office granted pursuant to this subchapter.

(e) *Components of energy conservation plan.* —

(1) The Office shall prepare and recommend, as part of a comprehensive energy plan for the District, an energy conservation plan for transmittal to the Mayor; the initial plan to be completed 180 days after monies have been appropriated to fund the District of Columbia Office of Energy.

(2) The energy conservation plan shall be designed to ensure the public health, safety, and welfare of the citizens and economy of the District of Columbia and to encourage and promote conservation of energy through reducing wasteful, uneconomical, or inefficient uses.

(3) The energy conservation plan may include, but not be limited to, the following:

(A) Recommendations for District energy conservation goals, consisting of a percentage change in projected energy consumption in the District for the years 1981, 1985, and 1990; which goals are economically feasible and are achievable by implementation of the energy conservation plan; and specific plans of action to achieve these goals;

(B) Recommendations for a continuing program of public education, to increase public awareness of the energy and cost savings likely to result from energy conservation; and to provide public information and technical assistance in the planning, financing, installing, and monitoring of energy conservation measures;

(C) Recommendations to the District of Columbia Department of Transportation of programs and policies to encourage energy efficient modes of transportation for people and goods, including, but not limited to, public transportation, park-and-ride lots, van pools and car pools, electric and hybrid vehicles, and other energy efficient forms of transportation, variable working schedules, preferential traffic controls, and urban area traffic restrictions;

(D) Recommendations of energy conservation measures and renewable energy resource measures which:

(i) Can be carried out in residential and nonresidential buildings;

(ii) Increase the efficient use of energy; and

(iii) Are economically feasible to implement, based on climatic, environmental, demographic, architectural, and economic conditions within the District; and recommend programs and policies to encourage, promote, and finance such measures; and

(E) Any other recommendations which the Office considers to be a significant part of a District-wide energy conservation effort and goal, and which include provisions for sufficient incentives to further energy conservation.

(4) The energy conservation plan may include a detailed description of the following:

(A) The estimated energy savings;

(B) The estimated effects on public budgets and revenues;

(C) The estimated impact on District economy;

(D) The estimated increase or decrease in environmental residuals as a result of implementing the plan; and

(E) The estimated impact of existing energy plans on District economy.

(5) The energy conservation plan shall contain proposals for implementing the recommendations made pursuant to paragraph (3) of this subsection as can be carried out by order of the Mayor.

(6) The Office shall hold such public hearings on the energy conservation plan as it deems necessary and desirable. Upon completion of the energy conservation plan and public hearings on such plan, the Office shall transmit the plan to the Mayor for approval or disapproval. Upon approval of the plan, the Mayor shall assign administrative responsibility to appropriate agencies of the District government for implementation of the plan as may be carried out by order of the Mayor.

(7) The Mayor shall transmit the approved energy conservation plan to the Council of the District of Columbia and make copies available for public inspection.

(8) At least once every 3 years, or whenever such changes take place as would significantly affect energy supply or demand in the District, the Office shall review and, if necessary, revise the energy conservation plan, transmitting the revised plan to the Mayor. The public hearing procedures contained in paragraph (6) of this subsection shall not apply to any review of revisions of the energy conservation plan which take place within 3 years of any public hearings held on the plan or a revised plan.

(f) *Components of facilities energy management plan.* —

(1) The Office shall coordinate the preparation of, and recommend as part of the comprehensive energy plan for the District, a facilities energy management plan for transmittal to the Mayor, the initial plan to be completed 180 days after monies have been appropriated to fund the District of Columbia Office of Energy.

(2) The District facilities energy management plan shall be designed to ensure that energy conservation methods and life-cycle cost analysis are employed in the design, acquisition, lease, construction, renovation, and maintenance of all new and existing District-assisted facilities, and in the procurement and purchase of all District materials, supplies, and vehicles.

(3) The District facilities energy management plan may include, but not be limited to, the following:

(A) Development, promulgation, and maintenance of a life-cycle cost analysis method to be applied and enforced by the Department of General Services in reviewing the design, construction, renovation, and maintenance of District-owned facilities, and in the procurement of District materials, supplies, and vehicles. The Department of General Services shall also have the authority to review the design, construction, renovation, and maintenance of District-assisted facilities only for the purposes of advising the management of such facilities with respect to application of the life-cycle cost analysis methods developed under this paragraph;

(B) A program of energy audits of District-owned and District-assisted facilities, which audits shall, to the extent practicable, be developed and

maintained by periodic revision in cooperation with designated representatives of said facilities;

(C) Development, maintenance, and distribution to District-owned and District-assisted facilities of guidelines, recommendations, and technical assistance for energy conservation measures and renewable energy resource measures to be employed, installed, and monitored in the facilities and in the procurement and purchase of materials, supplies, and vehicles by the District government; and

(D) A detailed description of the estimated energy savings, effect on public budgets and revenues, impact on the District economy, and increase or decrease in environmental residuals of implementing the District facilities energy management plan.

(4) The District facilities energy management plan may contain proposals for the implementation of such recommendations as may be carried out by order of the Mayor.

(5) Upon completion of the draft plan, the Office and the Mayor shall follow the procedures as outlined in subsection (e) of this section, and § 1-1905: Except, that no public hearings on the plan shall be required.

(6) The Office shall update the District facilities energy management plan upon a finding by the Office that an update is justified.

(g) *Emergency Energy Shortage Contingency Plan.* —

(1) The Office in cooperation and consultation with the Public Service Commission, Office of People's Counsel, and the Office of Emergency Preparedness and other appropriate District agencies shall, as part of the comprehensive energy plan for the District, prepare a recommended emergency energy shortage contingency plan for transmittal to the Mayor, the initial plan to be completed 180 days after monies have been appropriated to fund the District of Columbia Office of Energy.

(2) The emergency energy shortage contingency plan shall be designed to protect the public health, safety, and welfare, minimize the adverse impact on the physical, social, and economic well-being of the District, and provide for the fair and equitable allocation of scarce energy resources, during emergency energy shortages.

(3) In preparing the plan, the Office shall collect and compile from all relevant governmental agencies, including the Public Service Commission, the Office of Emergency Preparedness, and the United States Department of Energy, any existing contingency and energy allocation or curtailment plans for dealing with emergency energy shortages, or information related thereto.

(4) The Office may hold 1 or more public hearings, investigate and review the plans submitted pursuant to this subsection, and shall approve and recommend to the Mayor the emergency energy shortage contingency plan to be implemented upon adoption by the Council and signed by the Mayor. The plan may be based upon the plans collected and compiled by the Office, and upon the information provided at the hearing(s); provided, however, that the plan is consistent with such federal programs and regulations that are already in effect at that time.

(5) The emergency energy shortage contingency plan may include, but not be limited to:

(A) Recommendations for differentiated curtailment during an emergency energy shortage of energy consumption by energy users on the basis or ability by users and energy distributors to accommodate such curtailments;

(B) A variety of strategies and staged conservation measures of increasing intensity and authority to reduce energy use during a state of emergency declared pursuant to § 1-229(a), by reason of an emergency energy shortage, and guidelines and criteria for allocation of energy resources to priority users during such an emergency. The plan shall contain alternative conservation actions and allocation plans to reasonably meet various foreseeable shortage circumstances and to allow a choice of appropriate responses;

(C) Evidence that the plan is consistent with the requirements for emergency energy conservation and allocation laws and regulations of the federal government and the District of Columbia Public Service Commission, and with procedures for implementing the District's responsibility as mandated by any federal programs, laws, orders, rules, or regulations relating to the allocation, conservation, or consumption of energy resources, and all orders, rules, and regulations thereto;

(D) A scheduled program of such investigations and studies by the Office as are necessary to determine if and when emergency energy shortages are likely to affect the District;

(E) Recommendations for administrative and legislative action required to avert emergency energy shortages; and

(F) Recommendations for procedures for fair and equitable review of complaints and requests for special exemptions from emergency conservation measures or emergency allocations.

(6) Upon completion of the draft recommended plan, the Office and the Mayor shall follow the procedures as outlined in subsection (e) of this section, and § 1-1905: Except, that no public hearings on the plan shall be required other than pursuant to subsection (g)(4) of this section.

(7) The Office may update the emergency energy shortage contingency plan at least every 3 years or whenever such changes are deemed necessary.

(h) *Coordination of energy research and development program.* — The Office, in cooperation and consultation with the institutions of higher education in the District, the United States Department of Energy, and other interested and qualified sources of expertise, may, as part of a comprehensive energy plan, develop and carry out an energy research and development program designed to encourage implementation of the District policies contained in § 1-1903.

(i) *Annual report.* — The Director shall make an annual report of the Office's operations to the Mayor and to the Council. Such report may include, but not be limited to:

(1) An overview of city-wide growth and development as they relate to further requirements for energy in the District, including patterns of community development and change, shifts in transportation modes, modifications in building types and designs, and other trends and factors which, as determined by the Office, will significantly affect District energy needs;

(2) A forecast of city-wide end-use sector energy demand and city-wide energy resource supply available for the coming year;

(3) An assessment of growth trends in energy consumption and production and an identification of potential adverse social, economic, or environmental impacts which might be imposed by current trends;

(4) Estimates of energy savings, effect on public budgets and revenues, impact on the District economy, and increase, or decrease, in environmental residuals in the District of plans, programs, and policies of this subchapter and federal plans, programs, and policies implemented in the coming year;

(5) Inventory and evaluation of energy research and development programs carried out in the past year or scheduled to be carried out in the coming year;

(6) Recommendations to the Mayor and to the Council for administrative and legislative actions on energy matters; and

(7) A summary review of the Office's activities during the year.

(j) *Action by District agencies and instrumentalities.* —

(1) Within 3 months of the date that monies are appropriated for the Office of Energy, all District agencies and instrumentalities shall do the following:

(A) Review their present statutory authority, administrative rules and regulations, and practices and procedures to determine whether such are consistent with the purposes and policies of this subchapter;

(B) Effect or recommend such changes as may be necessary to comply with the purposes and policies of this subchapter;

(C) Designate 1 officer or employee from each agency or instrumentality to serve as the official responsible for energy matters within the respective agency or instrumentality; and

(D) Submit a written report to the Office of its findings and actions pursuant to this paragraph.

(2) The Office shall prepare and distribute at the earliest feasible date after March 4, 1981, an index of functions and responsibilities of District agencies and instrumentalities, relating to energy and energy resources, in sufficient detail to guide the public and serve as a basis for further steps as may be necessary to assure full coordination without duplication of the energy-related activities of the agencies and instrumentalities. No later than 180 days after completion of the index, the Office shall recommend to the Mayor and to the Council, such action as may be necessary to preclude any identified or potential duplication of energy and energy resource related functions and responsibilities of District agencies and instrumentalities.

(k) *Budget and financing.* —

(1) The Director shall prepare a proposed budget for the operation of the Office to be submitted for the consideration of the Mayor and the Council.

(2) The Office shall be operated within the limitation of the appropriations and grants or other funds for which it qualifies, in accordance with approved programs. (Mar. 4, 1981, D.C. Law 3-132, § 5, 28 DCR 445; Apr. 12, 2000, D.C. Law 13-91, § 125, 47 DCR 520.)

Effect of amendments. — D.C. Law 13-91 rewrote (f)(5) and (g)(6).

Legislative history of Law 13-91. — Law 13-91, the "Technical Amendments Act of 1999," was introduced in Council and assigned Bill No. 13-435. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

§ 1-1905. Review by District Auditor.

Repealed.

(Mar. 4, 1981, D.C. Law 3-132, § 6, 28 DCR 445; Oct. 19, 2000, D.C. Law 13-172, § 2404, 47 DCR 6308.)

Emergency legislation. — For temporary repeal of this section, see § 2404 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary repeal of this section, see § 2404 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — Law 13-172, the "Fiscal Year 2001 Budget Support Act of 2000," was introduced in Council and assigned Bill No. 13-679. The Bill was adopted on first and second readings on May 19, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-375 and transmitted to both Houses of Congress for its review. D.C. Law 13-172 became effective on October 19, 2000.

Editor's notes. — Section 2401 of D.C. Law 13-172 provides that Title XXIV of the act, which repealed this section, may be cited as the "Auditor Personnel and Audit Reform Amendment Act of 2000."

CHAPTER 22. BUSINESS AND ECONOMIC DEVELOPMENT.

Subchapter I-B. Office of Local Business Development.

Sec.
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1-2293.1. Definitions.

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Subchapter I-A. Economic Development Liaison Office.

§ 1-2207.1. Establishment of the Economic Development Liaison Office.

Emergency legislation. — For temporary addition of §§ 1-2207.1 through 1-2207.3, see §§ 1432-1434 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

§ 1-2207.2. Functions.

Emergency legislation. — For temporary addition of §§ 1-2207.1 through 1-2207.3, see note to § 1-2207.1.

§ 1-2207.3. Transfer of functions; abolishment of the Office of Tourism and Promotions.

Emergency legislation. — For temporary addition of §§ 1-2207.1 through 1-2207.3, see note to § 1-2207.1.

Subchapter I-B. Office of Local Business Development.

§ 1-2208.1. Establishment of the Office of Local Business Development.

(a) Pursuant to § 1-227(b), there is hereby established, in the Executive Branch of the government of the District of Columbia, an Office of Local Business Development under the supervision of a Director, who shall carry out the functions and authorities assigned to the Office. The Office of Local Business Development ("Office") is established as a separate agency as of October 1, 1999.

(b) The Director shall have full authority over the Office and all functions and personnel assigned thereto, including the power to redelegate to other employees and officials of the Office such powers and authority as in the judgment of the Director are warranted in the interests of efficiency and sound administration. (Oct. 20, 1999, D.C. Law 13-38, § 221, 46 DCR 6373.)

Emergency legislation. — For temporary addition of subchapter I-B which consists of §§ 1-2208.1 through 1-2208.4, see §§ 220-224 of the Service Improvement and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

Legislative history of Law 13-38. — Law 13-38, the "Service Improvement and Fiscal Year 2000 Budget Support Act of 1999," was introduced in Council and assigned Bill No. 13-161. The Bill was adopted on first, amended first, and second readings on May 11, 1999, June 8, 1999, and June 22, 1999, respectively. Signed by the Mayor on July 8, 1999, it was assigned Act No. 13-111 and transmitted to both Houses of Congress for its review. D.C. Law 13-38 became effective on October 20, 1999.

Application of Law 13-38. — Section 227 of D.C. Law 13-38 provided that Title II of the act shall apply as of October 1, 1999.

Office of Local Business Development Establishment Act of 1999. — Section 220 of D.C. Law 13-38 provided that Subtitle B of Title II may be cited as the "Office of Local Business Development Establishment Act of 1999."

§ 1-2208.2. Purpose.

The purpose of the Office is to administer the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Act of 1998 (D.C. Code, § 1-1153.1 et seq.) ("LSDBE Act"), and to promulgate rules necessary for administration of the LSDBE Act. (Oct. 20, 1999, D.C. Law 13-38, § 222, 46 DCR 6373.)

Emergency legislation. — For temporary addition of subchapter I-B, see note to § 1-2208.1.

Legislative history of Law 13-38. — See note to § 1-2208.1.

Application of Law 13-38. — See note to § 1-2208.1.

§ 1-2208.3. Functions.

The functions of the Office shall be to:

(1) Educate the public, including District residents and businesses, about the LSDBE Act;

(2) Receive and review applications for certification, in conjunction with the Local Business Opportunity Commission;

(3) Stimulate and foster greater opportunities for businesses, certified as local, small, or disadvantaged businesses, to participate in District procurement for goods and services than would otherwise be possible;

(4) Educate, disseminate, and market contract opportunities information to those businesses already holding certification as local, small, or disadvantaged business enterprises;

(5) Enforce procurement regulations for businesses already holding certification;

(6) Receive and investigate complaints of violations of the LSDBE Act and take appropriate enforcement action regarding such complaints;

(7) Certify a complaint to the Office of the Corporation Counsel for legal action needed, in the Director's judgment, to preserve the status quo or to prevent irreparable harm to a party to the complaint;

(8) Forward to the Local Business Opportunity Commission, for a hearing, decision, and order, any complaint that has resulted in a finding of probable cause by the Office;

(9) Evaluate the local, small, and disadvantaged business enterprise programs under § 1-1153.2;

(10) Review the procurement plans of each agency of the District government and determine, if it deems appropriate, which contracts, or parts thereof, shall be reserved for the programs established under § 1-1153.3. If an agency has failed to meet the goals set forth in § 1-1153.2, the Office shall reserve portions of the agency's contracts to be performed in accordance with the programs established under § 1-1153.3 so that agency's failings may be timely remedied;

(11) Reviewing agency plans and taking appropriate action pursuant to § 1-1153.2;

(12) Consider an agency request for adjustment of goals of § 1-1153.2 in particular instances; provided, that the Office report to the Mayor and the Council, on a semiannual basis, recommendations for changes of the goals under § 1-1153.2, on an agency basis if appropriate, and accompanied by necessary supporting data;

(13) Review bids in the small business enterprise set-aside arrangements established under § 1-1153.3 and may authorize agencies to refuse to award a contract where the Office determines that bids for a particular contract are excessive; and

(14) Review contracting problems and make further recommendations that increase small, local, and disadvantaged contractor participation with the District government. Recommendations shall include improved schedules that ensure prompt payment to contractors, special geographic radii requirements

on certain contracts, innovative contract advertising procedures, the encouragement of joint ventures, and advice for the Mayor on methods to be utilized to ensure participation. (Oct. 20, 1999, D.C. Law 13-38, § 223, 46 DCR 6373; Oct. 4, 2000, D.C. Law 13-169, § 4, 47 DCR 5846.)

Effect of amendments. — D.C. Law 13-169 added (9) through (14).

Temporary legislation. — Section 4 of D.C. Law 13-(Act 13-468) added (9) through (14).

Section 11(b) of D.C. Law 13-(Act 13-468) provides that the act shall expire 225 days after its having taken effect.

Emergency legislation. — For temporary addition of subchapter I-B, see note to § 1-2208.1.

For temporary amendment of section, see § 4 of the Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Emergency Amendment Act of 2000 (D.C. Act 13-415, August 14, 2000, 47 DCR 7296).

Legislative history of Law 13-38. — See note to § 1-2208.1.

Legislative history of Law 13-169. — Law 13-169, the "Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Amendment Act of 2000," was introduced in Council and assigned Bill No. 13-341. The Bill was adopted on first and second readings on April 4, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-373 and transmitted to both Houses of Congress for its review. D.C. Law 13-169 became effective on October 4, 2000.

Application of Law 13-38. — See note to § 1-2208.1.

§ 1-2208.4. Transfers.

All positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available to the Department of Human Rights and Local Business Development for the local and minority business development functions set out in Reorganization Plan No. 1 of 1989, effective November 1, 1989, are hereby transferred to the Office. (Oct. 20, 1999, D.C. Law 13-38, § 224, 46 DCR 6373.)

Emergency legislation. — For temporary addition of subchapter I-B, see note to § 1-2208.1.

Legislative history of Law 13-38. — See note to § 1-2208.1.

Application of Law 13-38. — See note to § 1-2208.1.

Subchapter II. Economic Development Finance Corporation.

§ 1-2220. Biennial audit; report of audit; annual report of operation.

(a) The Auditor of the District of Columbia shall examine, at least once every 3 fiscal years (or sooner as considered appropriate by the Auditor) or upon the request of a Councilmember, and as appropriate, all accounts and records of financial transactions of the Corporation and its subsidiary corporation, including their receipts, income from whatever source derived, disbursements, contracts, agreements, resources, and any other matter relating to their financial operations and standings.

(b) A report of all audits shall be submitted to the Council of the District of Columbia.

(c) Within 90 days after the end of each fiscal year, the Board shall submit to the Council and the Auditor of the District of Columbia a detailed annual report setting forth a description of the Corporation's operation and accom-

plishments during the year, including an objective evaluation of the degree of success attained, which report shall include the following:

(1) The total number of applications for financing filed with the Corporation;

(2) A brief description of each project financed including the dollar amount of the Corporation's participation, the dollar amount of the project, location of the project, and the number of jobs and the amount of tax revenue anticipated from the project;

(3) The dollar percentage of financial assistance provided to minority business enterprises;

(4) The dollar amount of financial assistance provided minority business enterprises;

(5) A statement of the degree to which the Corporation has met the goals set in accordance with § 1-2216(5) and an explanation of any failure to meet those goals;

(6) Total income and expenditures of the Corporation;

(7) Source of income, projected and actual;

(8) Operating expenditures, including personnel costs, projected and actual;

(9) Economic impact results and projections; and

(10) Any other information deemed pertinent by the Council and the Auditor of the District of Columbia. (June 29, 1984, D.C. Law 5-89, § 11, 31 DCR 2514; Aug. 1, 1996, D.C. Law 11-152, § 401, 43 DCR 2978; Oct. 19, 2000, D.C. Law 13-172, § 2403, 47 DCR 6308.)

Effect of amendments. — D.C. Law 13-172 substituted "at least once every 3 fiscal years (or sooner as considered appropriate by the Auditor) or upon the request of a Councilmember" for "on a biennial basis" in (a).

Emergency legislation. — For temporary amendment of section, see § 2403 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary amendment of this section, see § 2403 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — Law 13-172, the "Fiscal Year 2001 Budget Support Act of 2000," was introduced in Council and assigned Bill No. 13-679. The Bill was adopted on first and second readings on May 19, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-375 and transmitted to both Houses of Congress for its review. D.C. Law 13-172 became effective on October 19, 2000.

Editor's notes. — Section 2401 of D.C. Law 13-172 provides that Title XXIV of the act, which amended this section, may be cited as the "Auditor Personnel and Audit Reform Amendment Act of 2000."

Section 2407 of D.C. Law 13-172 provides that "beginning February 1, 2001, the District of Columbia Auditor shall conduct biennial audits of the University of the District of Columbia's Endowment Fund. The Auditor shall provide the Council with a report on the status of the Fund not later than February 1 of each year of the biennial audit."

Subchapter III. Business Incubator Facilitation.

§ 1-2236. Mayor may contract for outside management.

The Mayor may contract with a for-profit or a nonprofit corporation or educational institution that can utilize its resources to provide management of the business incubator facility and its services, to provide business development assistance, and to coordinate financial assistance programs. The selection of a contractor for this purpose shall be subject to review by the Council's

Committee on Economic Development. (Dec. 12, 1985, D.C. Law 6-71, § 7, 32 DCR 6334; Apr. 12, 2000, D.C. Law 13-91, § 126(a), 47 DCR 520.)

Effect of amendments. — D.C. Law 13-91 deleted the former second sentence; and substituted "Committee on Economic Development" for "Committee on Housing and Economic Development ('HED' Committee)" at the end.

Legislative history of Law 13-91. — Law 13-91, the "Technical Amendments Act of 1999," was introduced in Council and assigned Bill No. 13-435. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

§ 1-2244. Annual report.

The Office of Business and Economic Development shall annually prepare a report for the Committee on Economic Development which shall describe in detail the operations of each business incubator, including, but not limited to, a discussion of:

(1) The business operation of each tenant business;

(2) The impact of the product or service provided to the public and the job training opportunities of each tenant business to the economic development objectives of the city for which the tenant business was selected;

(3) The employment benefits and revenues to the District as a result of the establishment of the business incubator;

(4) The utilization of shared services;

(5) Any recurrent problems experienced in the management of the business incubator as well as the recommended corrective action;

(6) Any financial or technical assistance provided to a tenant business by the public or private sector;

(7) The establishment and implementation of business incubator policies, rules, and regulations; and

(8) Any legislative initiatives which would increase the productivity, viability, and economic benefits of business tenants or a business incubator facility. (Dec. 12, 1985, D.C. Law 6-71, § 15, 32 DCR 6334; Apr. 12, 2000, D.C. Law 13-91, § 126(b), 47 DCR 520.)

Effect of amendments. — D.C. Law 13-91 substituted "Committee on Economic Development" for "HED Committee" in the introductory language.

Legislative history of Law 13-91. — See note to § 1-2236.

Subchapter VI. Business Improvement Districts.

§ 1-2275. Review of application.

(a) The Mayor shall have 15 days (excluding Saturdays, Sundays, and holidays) from the date of the filing of a BID application to conduct a preliminary review of the application to determine if the filing criteria set forth in § 1-2274 have been met and if the application is otherwise in conformity with this subchapter. If the Mayor fails to make a determination that the BID application is either not in conformity with this subchapter or that the BID application requirements have been met within 15 days (excluding Saturdays, Sundays, and holidays), such inaction shall constitute an affirmative prelim-

inary determination that the BID application requirements have been met and the Mayor shall schedule, notify, and hold the required public hearing pursuant to § 1-2276. The Mayor may designate the Deputy City Administrator for Business Services and Economic Development to perform the review functions described by this section.

(b) To establish a BID outside the central employment area, Georgetown, or Capitol Hill, the statement required by subsection (a)(1) of this section must be signed by at least 51% of the number of commercial tenants (or their authorized representatives) occupying nonexempt real properties in the geographic area of the proposed BID, owners (or their authorized representatives) who own at least a 51% interest in the most recent assessed value of the nonexempt real properties within the proposed BID area, and owners (or their authorized representatives) who own at least 51% in number of the individual nonexempt real properties within the proposed BID area. (May 29, 1996, D.C. Law 11-134, § 5, 43 DCR 1684; renumbered as § 6, Oct. 8, 1997, D.C. Law 12-26, § 2, 44 DCR 4320; _____, 2000, D.C. Law 14- (Act 13-465), § 2(a), 47 DCR 9467.)

Effect of amendments. — D.C. Law 13-(Act 13-465) rewrote (b).

§ 1-2279. Expanding the geographic area of a BID.

(a) An established BID may only expand its geographic area if:

(1)(A) Owners of at least 51% interest in the assessed value of the nonexempt real properties and at least 25% in number of individual properties of record in a geographic area petition the existing BID to join the BID; or

(B) With respect to areas outside of the central employment area, Georgetown, and Capitol Hill, owners who own at least 51% interest in the most recent assessed value of the nonexempt real properties, owners who own at least 51% of the individual nonexempt real properties, and at least 51% of the number of commercial tenants occupying nonexempt real properties in a geographic area petition the existing BID to join the BID.

(2) The BID meets the definition set forth in § 1-2272(7) in relation to the existing BID borders;

(3) Such petition is accepted by a majority vote of the existing BID Board; and

(4) Such petition is approved by the Mayor in accordance with the procedures set forth in § 1-2275. The Mayor may designate the Deputy City Administrator for Business Services and Economic Development to perform the review functions described by this section.

(b) An expansion of a BID's geographic area pursuant to this section shall become effective on the effective date of an act of Council which approves such BID geographic expansion. Initial BID taxes for such area shall be collected at the next practicable regularly scheduled billing pursuant to § 1-2285.

(c) For the purposes of this section, individual nonexempt properties shall mean properties identified by separate lot and square numbers to the extent reasonably ascertainable from the records of the Office of Taxation and Revenue or Office of Recorder of Deeds; provided, that any property subdivided into separate condominium units shall constitute a single property for the

purpose of determining the number of nonexempt properties referred to in subsection (a) of this section; provided further, that such condominium units shall constitute separate properties for purposes of assessing and levying any BID charges. Changes in the assessed values occurring after submission of a BID application, whether through regular reassessment, appeals, or otherwise, shall not affect the validity of the BID application to be taken into account in the Mayor's review of the BID application. (May 29, 1996, D.C. Law 11-134, § 9, 43 DCR 1684; renumbered as § 10, Oct. 8, 1997, D.C. Law 12-26, § 2, 44 DCR 4320; _____, 2000, D.C. Law 13- (Act 13-465), § 2(b), 47 DCR 9467.)

Effect of amendments. — D.C. Law 13-(Act 13-465) rewrote (a)(1)(B).

§ 1-2285. Collection and disbursement of BID taxes.

(a) Within 10 days of its date of registration, and 90 days in advance of the beginning of each fiscal year, each BID shall provide the CFO with a preliminary BID tax roll, which shall include, for each property subject to the relevant BID tax, the square number, the lot number, the name of the BID, the period of time for the BID tax, and the amount of the BID tax for that property for that period of time. In addition to the preliminary tax roll, the BID shall also provide supporting information which describes the information relied upon by the BID in preparing the preliminary tax roll. The supporting information shall be based on information provided to the BID by the Office of Taxation and Revenue and any other reliable source. The preliminary BID tax roll and the supporting information shall be prepared in such form as may be prescribed by regulation by the CFO. In the event that a BID fails to provide the preliminary BID tax roll and the supporting information within the time period specified by this subsection, the BID taxes shall be collected at the time of the next regularly scheduled tax bill.

(b) During a control year, the CFO, and in any other year, the Mayor shall examine the preliminary BID tax roll and backup information and shall make any changes it deems are required by this subchapter. During a control year, the CFO, and in any other year, the Mayor, shall certify a final BID tax roll no later than 30 days prior to the billing dates described in subsection (e) of this section.

(c) Except as otherwise provided by this subchapter, BID taxes shall be collected by the CFO during a control year, and by the Mayor in any other year. Except as otherwise provided by this subchapter, BID taxes shall be collected in the same manner as real property taxes are collected. The CFO during a control year, and the Mayor in any other year, may contract with a financial institution having assets in excess of $50 million or a BID (if the BID tax is related to such BID) to perform services for the District in connection with the collection and distribution of BID taxes.

(d) BID taxes shall be effective as of the date a BID is registered or deemed registered by the Mayor pursuant to § 1-2276, except for BID taxes that become effective pursuant to § 1-2274(f) or (g). Any changes to the BID tax adopted pursuant to § 1-2278 shall be effective as of the first day of the subsequent fiscal year. BID taxes related to properties affected by a geographic

expansion of the BID shall be effective as of the date such an expansion becomes effective pursuant to § 1-2279.

(e) BID taxes shall be payable in advance and shall cover the 6 months following the due date of the billing described by paragraph (1) of this subsection; provided however, in the case of the period of time between the effective date of a BID's registration and the last day of the applicable 6-month period, BID taxes shall be payable as described by paragraph (2) of this subsection.

(1) BID taxes shall be due and payable semiannually in 2 equal installments, the first installment to be paid on or before March 31st, and the second installment to be paid on or before September 15th.

(2) BID taxes for the period of time between the effective date of a BID's registration and the last day of the applicable 6-month period shall be collected through a special bill, if the relevant BID application requests such a special bill, to be mailed by the District or its contractee within 30 days of the effective date of the BID tax with such special bill due for payment 45 days from the date of such special bill, or if the BID application does not request such a special bill, the BID taxes for such period of time shall be billed at the time of the next practicable regularly scheduled property tax bill pursuant to paragraph (1) of this subsection, along with any other BID taxes collectible at the time of such billing.

(f) If at any time after the dates provided by subsection (e) of this section any BID tax is not paid within the time prescribed, there shall be added to the BID tax a penalty of 10% of the unpaid amount plus interest on the unpaid amount at the rate of 1½% per month or portion of a month until the BID tax is paid.

(g) If any BID tax shall remain unpaid after the expiration of 60 days from the date such tax became due, the property subject to such BID tax may be sold at the next ensuing tax sale in the same manner and under the same conditions as property sold for delinquent real property taxes, if such BID taxes with interest and penalties thereon shall not have been paid in full prior to said sale. The proceeds from such sale shall be applied towards such delinquent BID taxes together with interest and penalties thereon, including costs associated with such sale; provided, that the proceeds from such sale shall be applied first towards any delinquent real property taxes (and penalties and costs associated therewith), and then towards any delinquent water and sewer charges, and then towards any delinquent litter control nuisance fines, in accordance, respectively, with § 47-1303.4, §§ 43-1529 and 43-1610, and § 6-2907. The proceeds shall then be applied towards any other delinquent tax, aside from the BID tax, owed by the owner of such property. The proceeds due for such delinquent BID taxes with interest and penalties thereon shall then be delivered to the collection agent for deposit into the relevant special account within 30 business days of its receipt by the District or the BID pursuant to § 1-2287.

(h) The Treasurer of the District shall establish a special account of the District for each BID registered pursuant to § 1-2276. Each such special account shall be established by the Treasurer within 20 days of the date of the BID's registration pursuant to § 1-2276.

(1) Within 10 business days of the date of establishment of any such special account, the Treasurer shall contract with the existing real property

tax collection agent of the District to collect the BID taxes and to administer each special account created pursuant to this subsection for such period of time that said tax collection agent is responsible for collecting the real property taxes of the District. Upon the termination of any such contract, the District shall contract with the successor tax collection agent of the District to collect the BID taxes and to administer each special account created pursuant to this subsection for such period of time that said tax collection agent is responsible for collecting the real property taxes of the District. Such transactions shall not be subject to Chapter 11 of Title 1.

(2) Each special account created pursuant to this section shall consist solely of funds deposited pursuant to this section, which funds shall at no time be commingled with the general fund or any other fund of the District. The following shall be deposited into the special account associated with a BID within 3 business days of its receipt by the collection agent:

(A) All BID taxes collected pursuant to subsections (a) through (e) of this section;

(B) All penalties and interest collected pursuant to subsection (f) of this section; and

(C) Any proceeds from collections pursuant to subsection (g) of this section.

(3) The funds received as payment of a BID tax shall be applied first towards any real property taxes owed and to any delinquent real property taxes (and penalties and costs associated therewith) in the manner described by § 47-1303.4(g), before such payment is applied to the BID tax and any associated penalty and interest.

(i) The District may recover costs from the special accounts only as specifically provided by this subsection. Any recovery of funds from a special account shall be only by payment from the collection agent to the District.

(1) The collection agent shall make a payment to the District equal to the amount of any tax refund associated with such special account that the District documents is required pursuant to District law; provided, that to the extent that a special account lacks the funds needed to make a payment pursuant to this paragraph, the collection agent shall make said payment to the District as soon as sufficient funds are deposited into such special account; provided further, that a BID corporation shall have standing to participate in any administrative proceeding or to intervene in any judicial proceeding for the refund of BID taxes associated with such BID.

(2) The collection agent shall make a monthly accounting to each BID of any payments to the District from the special account associated with that BID.

(j) Each month, prior to the 5th day of the month, the collection agent shall make a payment to the BID associated with the special account, which payment shall consist of all of the funds in such account as of the end of the final day of the preceding calendar month; provided, that the collection agent shall first provide for the payment of costs pursuant to subsection (i) of this section; provided further, that the collection agent shall withhold a portion of such funds, not to exceed 2% of the total annual BID taxes associated with such account when the BID taxes are based on assessed value or ½ of 1% of the total annual BID taxes associated with such account when BID taxes are based on

square footage or per building, that the Treasurer of the District finds is needed as a reserve fund to pay any tax refund that may be required pursuant to District law.

(k) Each month, the collection agent shall provide a statement regarding the transactions in such special account to the Treasurer of the District and to the BID associated with such special account.

(l)(1) No funds may be withdrawn from a special account established pursuant to this section except as specifically provided in subsections (i) and (j) of this section. The District and the collection agent shall not pledge the funds in any special account established pursuant to this section under any circumstances, except that the funds in any such account shall be pledged if and when requested by the BID associated with such account as security for bonds or other borrowing by such BID.

(2) Authority to obligate or expend any taxes collected pursuant to this subchapter shall be subject to the appropriations process.

(m) The BID shall be the beneficial owner of the funds in the special account associated with that BID. (May 29, 1996, D.C. Law 11-134, § 15, 43 DCR 1684; renumbered as § 16, Oct. 8, 1997, D.C. Law 12-26, § 2, 44 DCR 4320; Apr. 12, 2000, D.C. Law 13-91, § 127, 47 DCR 520.)

Effect of amendments. — D.C. Law 13-91 substituted "§ 47-1303.4" for "§ 47-1304.4" in (g); and substituted "§ 47-1303.4(g)" for "§ 47-1304.4(g)" in (h)(3).

Legislative history of Law 13-91. — Law 13-91, the "Technical Amendments Act of 1999," was introduced in Council and assigned Bill No. 13-435. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

Subchapter VII. Tax Increment Financing.

§ 1-2293.1. Definitions.

For the purposes of this subchapter, the term:

(1) "Assessor" means the Office of Taxation and Revenue, or such other person or office responsible for assessing the value of real property.

(2) "Authority" means the District of Columbia Financial Responsibility and Management Assistance Authority.

(3) "Available real property tax revenues" means the revenues resulting from the imposition of the tax provided for in Chapter 8 of Title 47 and payments in lieu of real property taxes, exclusive of the special tax provided for in § 47-331 and pledged to the payment of general obligation indebtedness of the District.

(4) "Available sales tax revenue" means the revenues resulting from the imposition of the tax imposed pursuant to Chapter 20 of Title 47, including any penalties and interest charges, exclusive of the portion thereof required to be deposited in the Washington Convention Center Authority Fund established pursuant to § 9-809.

(5) "Capital City Business and Industrial Area" means the area beginning at the intersection of New York Avenue, N.E., and 9th Street, N.E., to Montana Avenue, N.E.; north on Montana Avenue, N.E., to W Street N.E.; west on W Street, N.E., to 13th Street, N.E.; northwest on 13th Street, N.E., to Brentwood

Road, N.E.; southwest on Brentwood Road, N.E., to 9th Street, N.E.; south on 9th Street, N.E., to New York Avenue, N.E.

(6) "Capital City Market Area" means the area beginning at the intersection of Florida Avenue, N.E., and North Capitol Street; southeast on Florida Avenue, N.E., to 12th Street, N.E.; south on 12th Street, N.E., to H Street, N.E.; west on H Street, N.E., to 9th Street, N.E.; north on 9th Street, N.E., to Florida Avenue, N.E.

(7) "Capital improvement" means the same under generally accepted accounting principles.

(8) "CFO" means the Chief Financial Officer of the District as established by § 47-317.1(a).

(9) "Collector" means the District of Columbia Treasurer, or such other person or office as is from time to time responsible for the collection of real property taxes and sales taxes.

(10) "Comprehensive Plan" means the Comprehensive Plan of the District of Columbia adopted by the Council, as amended from time to time.

(11) "Current assessed value" means for any tax year, the assessed value of each lot of taxable real property within a TIF area as then recorded on the land records of the District as of January preceding the tax year.

(12) "DD Regulations" means the Downtown Development District Regulations, 11 DCMR § 1700 et seq. (1995).

(13) "Development costs" means any or all of the following costs either actual or estimated for a development project:

(A) Costs of studies, surveys, plans and specifications, including professional service costs for architectural, accounting, engineering, legal, marketing, financial and planning services;

(B) Property assembly costs, including acquisition or leasing of land and other property, real or personal, or rights or interests in property, demolition of buildings and other structures, remediation of environmental hazards, and the clearing and grading of land;

(C) Costs of preservation, rehabilitation, reconstruction, repair or remodeling of existing public or private buildings, structures and fixtures;

(D) Costs of any public works or improvements undertaken by, or at the direction of the District or any other governmental unit;

(E) Costs of parking and transportation facilities, stadia, museums, other cultural institutions, educational institutions, retail, entertainment and recreation facilities, telecommunications infrastructure, public plazas, malls, pedestrian walkways and parks that are owned by the District or any other governmental unit or are privately owned but available for use by the general public;

(F) Costs of construction of new public or privately owned housing units and community facilities and costs of preservation, rehabilitation, reconstruction, repair or remodeling of public and private buildings for use as housing units and community facilities;

(G) Costs of maintaining and operating public works and improvements;

(H) Financing costs, including but not limited to all expenses related to the issuance of TIF bonds, interest on TIF bonds, TIF bond reserves, credit enhancements, and costs related to the performance by the District government of its covenants and agreements with the holders of its TIF bonds;

(I) Working capital and working capital reserves directly related to the development of a project;

(J) Administrative costs of the District in issuing TIF bonds pursuant to this subchapter; and

(K) Relocation, job training, and education costs.

(14) "Development sponsor" means any organization or person that seeks to undertake, or undertakes, a project.

(15) "District" means the District of Columbia.

(16) "Downtown area" means the area of the District addressed by the Downtown Interactive Task Force, being the area with the boundary commencing at the intersection of Pennsylvania Avenue, N.W. and 12th Street, N.W.; north on 12th Street, N.W., to N Street, N.W.; east on N Street, N.W., to New Jersey Avenue, N.W.; southeast on New Jersey Avenue, N.W., to 2nd Street, N.W.; south on 2nd Street, N.W., to Pennsylvania Avenue, N.W.; and northwest on Pennsylvania Avenue, N.W., to the point of commencement.

(17) "Downtown Report" means the Interactive Downtown Task Force Report.

(18) "Eligible project" means a project that has been certified by the CFO as complying with the requirements set forth in this subchapter.

(19) "Georgia Avenue Area" means any square located on or abutting Georgia Avenue, N.W., beginning at the intersection Florida Avenue, N.W., and north on Georgia Avenue, N.W., to Eastern Avenue, N.W.

(20) "Gross floor area" means gross floor area within the meaning of the Zoning Regulations of the District.

(21) "HPRB" means the District of Columbia Historic Preservation Review Board.

(22) "Initial assessed value" means the assessed value of each lot of taxable real property within a tax increment area on the date the tax increment area is established.

(23) "Initial sales tax amount" means the amount of available sales tax revenues from locations within the tax increment area in the calendar year immediately preceding the year in which the tax increment area is established.

(24) "Priority development area" means the downtown area, Capital City Business and Industrial Area; Capital City Market Area; Georgia Avenue Area; any District-designated Foreign Trade Zones or Free Trade Zones as defined under Federal law; any federally-approved Enterprise Zones, Empowerment Zones, or Enterprise Community; Development Zone Areas; and the Southeast Federal Center/Navy Yard Area; and any housing opportunity area, development area, or new or upgraded commercial center designated on the District of Columbia Generalized Land Use Policies Map that is part of the Comprehensive Plan; the Minnesota Avenue area which shall consist of land within the boundary descriptions beginning from East Capitol Street, N.E., to Nannie Helen Burroughs Avenue, N.E.; the Dix Street area which shall consist of land within the boundary descriptions beginning from 58th Street, N.E. to Eastern Avenue, N.E.; the Nannie Helen Burroughs area which shall consist of land within the boundary descriptions beginning from Eastern Avenue, N.E., to 49th Street, N.E.; the Pennsylvania Avenue area which shall consist of land within the boundary descriptions beginning from Branch Avenue, S.E., to Carpenter Street, S.E.; and the Benning Road area which shall consist of land

within the boundary descriptions beginning from East Capitol Street, S.E., to 44th Street, N.E., from Hanna Place, S.E., to Hillside Road, S.E., and from 39th Street, S.E., to 36th Street, S.E.; the Division Avenue area from Eads Street, N.E., to Hayes Street, N.E.; any block, a portion of which is located in the Uptown Arts-Mixed Use Overlay District, as defined in subsection 1900.1 of Title 11 of the District of Columbia Municipal Regulations (11 DCMR § 1900.1); and the census tracts located in the District for which the poverty rate is not less than 10% as determined on the basis of the 1990 census.

(25) "Project" means any capital improvement undertaken within the priority development area.

(26) "Real property tax increment revenues" means the portion of the available real property tax revenues allocable to one or more tax allocation funds pursuant to this subchapter.

(27) "Sales tax increment revenues" means the portion of the available sales tax revenues allocable to one or more tax allocation funds pursuant to this subchapter.

(28) "Southeast Federal Center/Navy Yard Area" means the area beginning at the intersection of Interstate 395/295 (SW/SE Freeway) and the Anacostia River Waterfront, S.W., northwest to 14th Street, S.W.; south on 14th Street, S.W., to the Washington Channel Waterway; east along the Washington Channel Waterway to the Anacostia River eastern banks and adjacent areas encompassing the public housing and residential parcels adjacent to the Navy Yard, 8th Street, S.W., commercial corridor, marine barracks, Buzzard Point area, northern tip of the Naval station, Poplar Point, Anacostia waterfront, portions of the West Campus of Saint Elizabeth's, and the area surrounding the Anacostia Metro Station.

(29) "Special merits" means other economic, cultural, social, or financial factors, apart from the criteria established in this subchapter, that may justify the approval of TIF for a project. The special merits shall be established, by regulation, by the CFO in consultation with the City Administrator or during a control year, as defined in § 47-393, the Chief Management Officer ("CMO"), and the Director of the Department of Housing and Economic Development.

(30) "TIF" means tax increment financing.

(31) "TIF area" means any area designated and established for TIF pursuant to the provisions of this subchapter.

(32) "TIF bonds" means bonds, notes or other obligations issued pursuant to this subchapter. (Sept. 11, 1998, D.C. Law 12-143, § 2, 45 DCR 3724; Apr. 27, 1999, D.C. Law 12-271, § 2(a), 46 DCR 3615; June 24, 2000, D.C. Law 13-128, § 2, 47 DCR 2682.)

Effect of amendments. — D.C. Law 13-128 in (24), deleted "and" following "36th Street, S.E." and added "any block, a portion of which is located in the Uptown Arts-Mixed Use Overlay District, as defined in subsection 1900.1 of Title 11 of the District of Columbia Municipal Regulations (11 DCMR § 1900.1); and the census tracts located in the District for which the poverty rate is not less than 10% as determined on the basis of the 1990 census" to the end.

Legislative history of Law 13-128. — Law 13-128, the "Tax Increment Financing Amendment Act of 2000," was introduced in Council and assigned Bill No. 13-263. The Bill was adopted on first and second readings on February 1, 2000, and March 7, 2000, respectively. Signed by the Mayor on March 22, 2000, it was assigned Act No. 13-298 and transmitted to both Houses of Congress for its review. D.C. Law 13-128 became effective on June 24, 2000.

Editor's notes. — Section 4 of D.C. Law 13-128 provides that the act shall apply to any project approved by the Council under § 5 of the TIF Act after July 1, 1999.

§ 1-2293.3. Certification of development project.

Emergency legislation. — For temporary amendment of section, see § 2(a) of the Tax Increment Financing Authorization Emergency Amendment Act of 1999 (D.C. Act 13-134, August 4, 1999, 46 DCR 6788).

Section 3 of D.C. Act 13-134 provides that the lapse or repeal of the act shall not in any way affect the validity, due and proper authorization, or enforceability of any TIF bonds issued in accordance with the act.

§ 1-2293.4. Approval by the Council.

Emergency legislation. — For temporary amendment of section, see § 2(b) of the Tax Increment Financing Authorization Emergency Amendment Act of 1999 (D.C. Act 13-134, August 4, 1999, 46 DCR 6788).

Section 3 of D.C. Act 13-134 provides that the lapse or repeal of the act shall not in any way affect the validity, due and proper authorization, or enforceability of any TIF bonds issued in accordance with the act.

Subchapter VIII. National Capital Revitalization Corporation.

§ 1-2295.1. Definitions.

For the purposes of this subchapter, the term:

(1) "Applicant" means an individual, sole proprietorship, corporation, partnership, limited partnership, limited liability company, limited liability partnership, society, joint venture, trust, firm, association, unincorporated organization, agency, department, enterprise, or instrumentality of the District, or any other legal entity including any development sponsor as defined in § 1-2293.1(14), applying for the financing, refinancing, or reimbursement of development costs, and other forms of assistance pursuant to this subchapter.

(2) "Assistance" means the Corporation providing, or facilitating the provision, to applicants or related parties pursuant to a development agreement between the Corporation and applicants and related parties, any of the following in connection with the financing, purchase, acquisition, protection, construction, expansion, improvement, reconstruction, restoration, rehabilitation, repair, job training and employment matching, programming, and the furnishing, equipping, and operating of eligible projects pursuant to this subchapter:

(A) Loans made from the proceeds of bonds and other loans, extensions of credit, equity investments, grants, fixed contributions to loan loss or debt service reserve funds, or any other similar forms of financing or refinancing, including loan guarantees, insurance of payments of principal and interest, or other forms of credit support;

(B) Purchases, leases, lease-purchases, leases with option to purchase, ground leases, installment sales, purchase/lease/leaseback, purchase/sale/leaseback, receipt of conservation easement, and any other forms of conveyance, of real and personal property, including the sale of property at less than its cost to the Corporation or at less than its market value in consideration of the undertaking of the purchaser or related person to develop it or cause it to be developed in a timely manner pursuant to a development agreement with the Corporation;

(C) Clearance and remediation of sites to be developed by applicants or by the Corporation by contract with a developer, and the construction, extension, improvement, or installation of public infrastructure and facilities

to enhance accessibility of, and services to, or available for, eligible projects; and

(D) Transfers, assignments, awards, allocations, grants, contracts, monies, goods, services, and other assets and resources of the Corporation.

(3) "Authority" means the District of Columbia Financial Responsibility and Management Assistance Authority established pursuant to § 47-391.1(a).

(4) "Authorized delegate" means the Chief Financial Officer, or any officer or employee of the Executive Office of the Mayor to whom the Mayor has delegated or to whom the foregoing individuals have subdelegated any of the Mayor's functions under this subchapter pursuant to § 1-242(6).

(5) "Available revenues" means gross revenues and receipts of the Corporation lawfully available for the purposes to which they are to be applied under this subchapter, and not otherwise exclusively committed to another purpose, including, but not limited to, those gross revenues and receipts made available to the Corporation from grants, subsidies, contributions, fees, dedicated taxes and fees, and proceeds of bonds issued pursuant to this subchapter; provided, however, that dedicated taxes and fees, which shall not be used by the Corporation except as authorized, shall be considered "available revenues" only if and to the extent approved, by the Council pursuant to this subchapter or pursuant to subsequent acts of the Council.

(6) "Blighted area" means an area within the District in which there is a predominance of buildings or improvements, whether residential or nonresidential, which by reason of dilapidation, deterioration, age, or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property, by fire or other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and is detrimental to public health, safety, morals, or welfare, or in which area by reason of the presence of a substantial number of slums, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility, or usefulness, excessive vacant land, abandoned or vacant buildings, substandard structures, vacancies, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, excessive tax or special assessment delinquency, defective or unusual conditions of title, or the existence of conditions that endanger life or property by fire and other causes, or any combination of such factors that substantially impairs or arrests the sound growth of the District, retards the provision of housing accommodations, or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use.

(7) "Board" means the Board of Directors of the Corporation.

(8) "Bonds" means revenue bonds, notes, or other obligations, including refunding revenue bonds, notes, or other obligations and tax increment revenue bonds authorized to be issued by the Corporation pursuant to this subchapter.

(9) "Chair" means the chairperson of the Board.

(10) "Chief Financial Officer" or "CFO" means the Chief Financial Officer of the District as established by § 47-317.1(a).

(11) "Code" means the Internal Revenue Code of 1986, as in effect from time to time and any successor thereto.

(12) "Comprehensive Plan" means the Comprehensive Plan of the National Capital adopted under § 1-244.

(13) "Control year" means that period defined under § 47-393(4).

(14) "Corporation" means the National Capital Revitalization Corporation established by § 1-2295.2.

(15) "Corresponding office or agency" means the office or agency of the District government responsible for administering a corresponding program.

(16) "Corresponding program" means any program, or the programs offered by the District government comparable to any program, or the employee benefit plans and programs referred to in § 1-2295.5(d).

(17) "Current assessed value" means, for any tax year the assessed value of each lot of taxable real property within a redevelopment district established pursuant to § 1-2295.21, as then recorded on the land records of the District as of the January 1 preceding the tax year.

(18) "Debt service" means the principal of, interest on, and call premium, if any, for the redemption of bonds.

(19) "Dedicated taxes and fees" means dedicated taxes and fees as defined in § 47-334, that are dedicated pursuant to laws enacted by the Council, including this subchapter, to the payment of debt service on revenue bonds of the Corporation, the provision and maintenance of reserves for that purpose, or the provision of working capital for, or maintenance, repair, reconstruction, restoration, rehabilitation, or improvement of, the undertaking to which the revenue bonds relate, including tax increment revenues or real property tax increment revenues, and sales and use tax increment revenues and portions thereof, and penalties, fees, and earnings and all payments in lieu of such taxes collected by the District and dedicated to the Corporation.

(20) "Development agreement" means an agreement, lease, deed, or other contract, document, or arrangement in writing between, from, or to the Corporation and the Applicant, providing for or setting forth the assistance to be provided and the terms and conditions relating to the assistance.

(21) "Development costs" means all costs and expenses approved by the Corporation relating to the purchase, acquisition, protection, financing, construction, expansion, reconstruction, restoration, rehabilitation, repair, interpretation, and the furnishing, equipping, and operating of an eligible project, including without limitation: (i) The purchase or lease expense for land, structures, real or personal property, rights, rights-of-way, roads, franchises, easements, and interests acquired or used for, or in connection with, eligible projects and costs of demolishing or removing buildings or structures on land so acquired; (ii) expenses incurred for acquiring any lands to which buildings may be moved or located; (iii) expenses incurred for utility lines, structures, or equipment charges; (iv) interest prior to, and during, construction and for a period as the Board reasonably may determine to be necessary for the operation of an eligible project; (v) provisions for reserves for principal and interest for extensions, enlargements, additions, improvements, and extraordinary repairs and replacements; (vi) expenses incurred for architectural, engineering, energy efficiency technology, design and consulting, financial and legal services; (vii) fees for letters of credit, bond insurance, debt service reserve insurance, surety bonds or similar credit, or liquidity, enhancement instruments; (viii) costs and expenses associated with the conduct and prepa-

ration of specification and feasibility studies, plans, surveys, historic structure reports, estimates of expenses and of revenues; (ix) expenses necessary or incident to issuing bonds and determining the feasibility and the fiscal impact of financing the acquisition, construction, or development of eligible projects; and (x) the provision of a proper allowance for contingencies, initial working capital, as applicable, and other forms of assistance.

(22) "District" means the District of Columbia.

(23) "District government" means the government of the District of Columbia.

(24) "DD Regulations" means the Downtown Development District Regulations, 11 DCMR § 1700 et seq. and the Zoning Regulations of the District.

(25) "Eligible project" means an undertaking that, as determined by the Board, qualifies for Assistance under this subchapter or a project that has been certified by the CFO as in compliance with the requirements set forth in subchpater VII of this chapter.

(26) "Enhanced services" means:

(A) With respect to a redevelopment district, services, including the capital costs and operating expenses related to such services, of a generally public nature supplementing or in addition to those normally performed or provided by the District government within or benefiting the redevelopment district, which include, but are not limited to, public safety and personal security; fire protection; waste and trash removal; lighting of public rights-of-way and grounds; public transportation; cleaning and clearing of streets, sidewalks, and public grounds; cleaning, painting, repairing and replacing public signage, street and park furniture, fountains, rest areas and rest rooms, kiosks, waste receptacles, barriers, and lighting fixtures; repairing or replacing and marking curbs, gutters, pedestrian ramps and walkways, and parking areas; traffic control; the development of standards and designs for, and assistance with, streetscape and storefront improvements; design, specification, installation, maintenance and replacement of landscaping; planting, removal, and replacement of trees and shrubbery.

(B) With respect to any other areas of the District, such supplemental or additional services within or benefiting those areas.

(27) "Ex-officio Board member" means a Board member who holds that position by reason of being an officer or employee in another position in the District government.

(28) "Home Rule Act" means the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 777; D.C. Code § 1-201 passim).

(29) "Mayor" means the Mayor of the District of Columbia.

(29A) "Property tax increment revenues" means the amount by which the tax receipts in any subsequent tax year exceed the tax receipts in the real property tax increment base year determined under § 1-2295.22(b)(1) from the real property tax levied under § 47-812 derived from properties within applicable redevelopment districts excluding special real property taxes levied under § 47-331.

(30) "Priority development area" means areas of the District so designated under § 1-2295.20.

(31) "Public citizen Board members" means members of the Board appointed pursuant to § 1-2295.3(b)(2).

(32) "Redevelopment district" means a district established within one or more priority development areas from which dedicated taxes and fees, including any tax increment revenues, are used for redevelopment purposes or for the payment or securing of the payment of debt service for bonds issued for redevelopment purposes, under this subchapter, related to that district. A redevelopment district may contain one or more eligible projects.

(33) "Redevelopment purposes" means providing for or paying costs of:

(A) The acquisition of real property and interests in real property;

(B) Demolition or removal of buildings and structures from the site, remediation of sites contaminated with hazardous materials, and otherwise preparing the site for development;

(C) Rehabilitation of existing buildings and structures and rehabilitating or replacing the related fixtures and equipment;

(D) Provision of access roads, streets, curbs, gutters, sidewalks, water lines and other public infrastructure, other forms of public access, including elevated walkways, ramps, and public parking, landscaping, and fencing on public property and other public and community facilities and amenities that will serve, provide access to, enhance, or otherwise accommodate the eligible project or that otherwise are useful or beneficial to a redevelopment district, including any improvement or expansion or extension of public infrastructure, or public or community facilities, all of which shall be situated on publicly owned land, easements, or other interests in real property, and capital costs relating to enhanced services;

(E) Architectural, engineering, condition assessment, cost estimation, research, surveying, appraisal, accounting, legal, and other professional services related to the activities enumerated in subparagraphs (A)through (I) of this paragraph;

(F) Relocation of occupants from such sites in connection with bonds issued for any of the purposes set forth in subparagraphs (A)through(E) of this paragraph;

(G) Reasonable reserves for payment of debt service on the bonds and for extraordinary repair or replacement of public facilities;

(H) Initial costs, fees, and expenses of providing bond insurance, letters of credit, surety bonds, and other credit enhancements for the bonds; and

(I) Printing, publishing notices, underwriting discounts, placement agent fees, accounting and legal fees and expenses, trustee fees and expenses, and costs of issuance of the bonds.

(34) "Revitalization Plan" means the strategic plans for the Corporation's economic development programs and projects, pursuant to § 1-2295.12, with the participation of the Office of Planning, Office of Real Property Management, and in close consultation with the National Capital Planning Commission and which are not inconsistent with the Comprehensive Plan.

(35) "Sales and use tax increment revenues" means the amount by which the tax receipts in any subsequent tax year exceed the tax receipts in the sales tax increment base year from the gross sales tax levied under § 47-2002 and the compensating-use tax under § 47-2202 derived from sales and uses within 1 or more redevelopment districts.

(36) "Sales tax increment base year" means the tax year during which the application of sales tax increments to a redevelopment district was first authorized pursuant to §§ 1-2295.21 and 1-2295.22.

(37) "Tax increment revenue bonds" means bonds payable from, or secured in whole or in part by, the pledge of dedicated taxes and fees and which are authorized to be issued pursuant to this subchapter.

(38) "Tax increment revenues" means:

(A) Property tax increment revenues; and

(B) Sales and use tax increment revenues.

(39) "Tax year" means the period beginning October 1st of each year and ending September 30th of each succeeding year, or whatever fiscal period may be established by the District for the levy and collection of ad valorem taxes on real property. (Sept. 11, 1998, D.C. Law 12-144, § 2, 45 DCR 3747; Oct. 16, 1998, D.C. Law 12-169, § 301(a), 45 DCR 5187; Mar. 26, 1999, D.C. Law 12-175, § 2401(a), 45 DCR 7193; Apr. 12, 2000, D.C. Law 13-91, § 128(a), 47 DCR 520.)

Effect of amendments. — D.C. Law 13-91 validated previously made technical corrections in (1) and (24).

Emergency legislation. — For temporary amendment of section, see § 2001(a) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

Legislative history of Law 13-91. — Law 13-91, the "Technical Amendments Act of 1999," was introduced in Council and assigned Bill No. 13-435. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

§ 1-2295.3. Board of Directors.

(a) The powers of the Corporation shall be vested in, and the Corporation shall be administered by, the Board of Directors.

(b) The Board shall consist of 9 voting members to be appointed as follows:

(1) Three Board members who may be designated by the President of the United States and who shall become Board members on the dates that the designations from the President are filed with the Secretary of the District of Columbia;

(2)(A) Four public citizen Board members, appointed by the Mayor with the advice and consent of the Council. The nomination of each public citizen Board member shall be submitted to the Council for a 90-day period of review, excluding days of Council recess. If the Council does not approve the nomination by resolution within this 90-day review period, the nomination shall be deemed disapproved;

(B) Public citizen Board nominees shall meet the following requirements:

(i) The individual's appointment shall be recommended by official action of a governing board or executive committee of a generally-recognized and reputable local corporation, including private business, civic, community, or business membership organization, that is a leading private corporation (in size by financial measures, number of members, or other appropriate measure) among all local corporations of a similar class of business or activity, and that, as determined by the Mayor during the nomination process, is likely to make significant contributions to the development and implementation of the Corporation's strategic economic development plan; or

(ii) The individual shall be a senior elected or appointed officer within his or her respective organization that is a leading local corporation as described in sub-subparagraph (i) of this subparagraph;

(C) In addition to the requirements of subparagraph (B)(i) of this paragraph, each public citizen Board member shall be an individual who:

(i) Has demonstrated knowledge of, and competence in, business or entrepreneurial development, commercial and residential development, real estate finance or management, community-based redevelopment policies or activities, workforce preparation issues, public management or administration, personnel or procurement administration, municipal finance or law, or banking or finance;

(ii) Is not an officer or employee of the federal government or the District government; and

(iii) Maintains a primary residence, or performs most of his or her business or organizational activities in the District throughout the term of his or her incumbency on the Board; and

(3) Two ex-officio Board members, the Chief Financial Officer and the Mayor.

(c) Board members shall serve the term in office as follows:

(1) Each presidentially-designated Board member shall serve at the pleasure of the President of the United States. Each presidentially-designated Board member who is not an officer or employee of the federal government shall be designated to a term of 5 years, except if there are originally 2 or more such members, their terms shall be determined by lot so that the term of 1 such member shall expire 4 years after the date of designation and the terms of the other such members shall expire 3 years and 2 years, as the case may be, after the date of designation. Each presidentially-designated Board member may continue to serve after the expiration of the term until a successor is designated.

(2) Each public citizen Board member shall be appointed to a term of 5 years, except that the terms of the first 4 public citizen Board members shall be staggered so that the term of one such member shall expire 5 years after the date of appointment, the term of one such other member shall expire 4 years after the date of appointment, the term of one such other member shall expire 3 years after the date of appointment, and the term of the other member shall expire 2 years after the date of appointment. Any public citizen Board member appointed to fill a vacancy occurring before the end of the term to which that member's predecessor was appointed shall be appointed only for the remainder of the term. No public citizen Board member may serve after the expiration of the term of office to which that member was appointed. The Mayor may reappoint a public citizen Board member pursuant to subsection (b)(2) of this section, but no public citizen Board member may serve more than 2 full consecutive terms. Any public citizen Board member may resign by filing a notice of resignation with the Corporation. When necessary, the Mayor shall remove a public citizen Board member for inefficiency, neglect of duty, malfeasance in office, or conduct bringing disrespect to, or impugning, the character of the Board or the Corporation.

(3) The District government ex-officio Board members shall serve by virtue of their incumbency in District government offices.

(4) Repealed.

(d) A vacancy on the Board shall be filled in the same manner in which the original appointment was made.

(e) A majority of the number of Board members designated or appointed under this section shall constitute a quorum for the conduct of business; provided, that a quorum shall consist of not less than 5 Board members designated or appointed under this section or such larger number as may be prescribed in the bylaws of the Corporation. No vacancy in any membership of the Board shall impair the right of a quorum to exercise all rights and perform all duties of the Corporation.

(f) The Board shall elect a Chair from among the public citizen Board members and the presidentially-designated Board members who are not officers of the federal government. The Chair shall serve for a term of 2 years from the date of election and preside over all meetings of the Board. The Board shall elect from among its members a Vice Chair who shall serve for a term of 2 years and preside over meetings of the Board in the absence of the Chair. The Board may appoint such other officers of the Board as it determines appropriate. The officers shall have such duties, not inconsistent with this subchapter, provided in the bylaws and as otherwise determined by the Board.

(g) As soon as practicable after appointment or designation of a majority of its members, the Board shall adopt bylaws, and may adopt guidelines, rules, and procedures for the governance of its affairs and the conduct of its business.

(h) The Board shall meet at the times specified in the bylaws, which shall not be less than quarterly each year, and at other times at the call of the Chair or as additionally provided in the bylaws. Notwithstanding any other District law or rule to the contrary, the Board may meet by any electronic means, provided that each Board member may speak, hear, and be heard by the other Board members.

(i) The Board members shall serve without compensation for their membership on the Board and may receive travel, per diem, and other actual, reasonable, and necessary expenses incurred in the performance of their official duties as Board members to the same extent as employees of the District government classified at a Grade 15, Step 1 of the District Services ("DS") Salary Schedule for Nonunion Employees. In no event shall a Board member receive more than $10,000 per annum.

(j) No public citizen Board member or presidentially-designated Board member who is not an officer of the federal government may delegate their duties as a Board member to any other person. (Sept. 11, 1998, D.C. Law 12-144, § 4, 45 DCR 3747; Oct. 16, 1998, D.C. Law 12-169, § 301(b), 45 DCR 5187; Apr. 20, 1999, D.C. Law 12-264, § 12, 46 DCR 2118; June 12, 1999, D.C. Law 12-285, § 4(c), 46 DCR 1355; June 18, 1999, D.C. Law 12-288, §§ 3(a)-(c), 45 DCR 4471; Oct. 20, 1999, D.C. Law 13-38, § 1102(a), 46 DCR 6373.)

Effect of amendments. — D.C. Law 13-38, in (b)(2)(A), substituted "Four" for "Five," and deleted the former second sentence; in (b)(3), substituted "Mayor" for "City Administrator" and deleted the last two sentences; rewrote the first sentence in (c)(2); and repealed (c)(4).

Emergency legislation. — For temporary amendment of section, see § 4(c) of the Confirmation Act Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-92, June 4, 1999, 46 DCR 5330).

For temporary amendment of section, see § 1102(a) of the Service Improvement and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

Legislative history of Law 13-38. — Law 13-38, the "Service Improvement and Fiscal Year 2000 Budget Support Act of 1999," was introduced in Council and assigned Bill No. 13-161. The Bill was adopted on first, amended first, and second readings on May 11, 1999, June 8, 1999, and June 22, 1999, respectively. Signed by the Mayor on July 8, 1999, it was assigned Act No. 13-111 and transmitted to both Houses of Congress for its review. D.C. Law 13-38 became effective on October 20, 1999.

§ 1-2295.5. Officers and employees.

(a) Chapter 6 of this title shall not apply to employees of the Corporation, except as otherwise provided for in this subchapter.

(b) Not later than 90 days after installation of a majority of the authorized number of Board members, the Corporation shall establish a personnel system and adopt written rules and procedures relating to employment matters including, without limitation, appointments, compensation, leave policies, injured worker compensation, employee education and training, promotions, retirement programs, voluntary and involuntary separations, and other adverse actions. Rules and procedures adopted or amended by the Board shall be submitted to the Council for a 10-day period of review excluding days of Council recess. If no Councilmember introduces a disapproval resolution during this 10-day period, at the end of the period the rules and procedures shall be deemed approved. If any Councilmember introduces a disapproval resolution during the 10-day period, the Council review period shall be 45 days from the date of introduction, excluding days of Council recess. If the Council does not adopt a resolution of disapproval within the 45-day period, the rules and procedures shall be deemed approved.

(c) No later than 60 days after installation of a majority of the authorized number of Board members, the Corporation shall appoint a chief executive officer, who shall direct and supervise the general management and administrative affairs of the Corporation under terms and conditions prescribed by the Board. The Board may appoint other senior officers of the Corporation as the Board deems necessary or desirable. The chief executive officer may appoint additional officers and employees as he or she determines appropriate, subject to the budget of the Corporation or any other limitations prescribed by the Board. The chief executive officer, and each senior officer and senior employee of the corporation, shall be residents of the District or shall become residents within 6 months of his or her hiring date and shall remain District residents for the duration of his or her employment by the Corporation.

(d)(1) The Board shall fix, adjust, and administer the compensation (including benefits) for the chief executive officer, the chief financial officer, the general counsel, the inspector general, and appointed senior officers.

(2) The chief executive officer shall fix, adjust, and administer the compensation (including benefits), except as provided in subsection (i) of this section for all other officers and employees of the Corporation.

(3) The annual report described in § 1-2295.13(b) shall describe the compensation structure for officers and employees of the Corporation.

(e) The Corporation is authorized to establish and administer its own employment benefits programs for individuals who become employed by the Corporation other than individuals who make an election under subsections (f) and (i) of this section.

(f) Each employee of the District government with accrued and vested benefits under health, life, and retirement benefit plans of the District

government pursuant to subchapters XXII, XXIII, and XXVII of Chapter 6 of this title, who becomes and remains continuously employed by the Corporation may elect to be treated, for the purposes of such District benefit programs, as if such employee had remained continuously in the employ of the District government with all attendant rights, benefits, and privileges that have accrued to, and vested in, such employee. Any employee whose employment with the District government is restored, shall be entitled to have that employee's service with the Corporation treated, for purposes of determining the applicable leave accrual rate and other benefits, as if such service with the Corporation had been with the District government.

(g) An election made under subsection (f) of this section shall not be effective unless it is made before the employee separates from prior service with the District government, and the employee's service with the Corporation commences within 30 calendar days after so separating (not counting any holiday observed by the District government). If an employee makes an election, the Corporation shall make the same deductions from pay and the same employer contributions for the corresponding programs as would be made if the Corporation were the agency of the District government that employed the employee.

(h) Any regulations necessary to carry out the provisions of subsections (f) and (g) of this section may be prescribed by the Mayor.

(i) Employees of the federal government who become employees of the Corporation may elect continuation of participation in corresponding federal government benefit programs in similar fashion to those provided in subsections (f) and (g) of this section, provided that provision is made by the applicable federal agency that any employer costs of such benefits in excess of those applicable to other District employees with the same tenure, compensation, and other relevant characteristics, are paid by the federal government, by appropriate authorization of the federal government.

(j) No political test or qualification shall be used in selecting, appointing, assigning, promoting, or taking other personnel actions with respect to officers and employees of the Corporation.

(k) Upon the request of the Corporation, the Mayor, and the governing officer or body of each instrumentality of the District, by delegation, contract, or agreement may direct that personnel or other resources of a District department, office, agency, establishment, or instrumentality be made available to the Corporation on a reimbursable or other basis to carry out the Corporation's duties. Personnel detailed to the Corporation under this subsection shall not be considered employees of the Corporation, but shall remain employees of the department, agency, establishment, or instrumentality from which such employee was detailed.

(l) With the consent of any executive agency, department, or independent agency of the federal government or the District government, the Corporation may utilize the information, services, staff, and facilities of such department or agency on a reimbursable or other basis.

(m) In carrying out the Corporation's duties, the Corporation may utilize, to the maximum extent possible, both contract services and pro bono services, provided that such services are itemized in the annual report of the Corporation. (Sept. 11, 1998, D.C. Law 12-144, § 6, 45 DCR 3747; Oct. 20, 1999, D.C.

Law 13-38, § 1102(b), 46 DCR 6373; Apr. 12, 2000, D.C. Law 13-91, § 128(b), 47 DCR 520.)

Effect of amendments. — D.C. Law 13-38 substituted the present last four sentences for the former last two sentences in (b); and rewrote (c).

D.C. Law 13-91 made an amendment in (f) in the organic act that did not affect the statutory text as codified.

Emergency legislation. — For temporary amendment of section, see § 1102(b) of the Service Improvement and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

Legislative history of Law 13-38. — See note to § 1-2295.3.

Legislative history of Law 13-91. — See note to § 1-2295.1.

§ 1-2295.7. Relation to other laws.

Emergency legislation. — For temporary amendment of section, see § 2001(b) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

§ 1-2295.12. Revitalization Plan.

(a) Within 180 calendar days after the initial meeting of the Board, the Corporation shall have completed and adopted a Revitalization Plan for the District which is not inconsistent with the Comprehensive Plan of the National Capital adopted under § 1-244. The Revitalization Plan shall be prepared in consultation with the executive and legislative branches of the District government, the public, the Authority, and the National Capital Planning Commission. The Revitalization Plan shall set forth strategies and timetables for carrying out the purposes of this subchapter and shall give due consideration to the implementation of existing economic development plans and proposed real property asset management plans as may be required by law of the District government. Any real property asset management plans proposed for implementation by the District shall be incorporated into the Corporation's Revitalization Plan. Such Revitalization Plan shall be made available for a 30-day public comment period. At the conclusion of the public comment period, the Board shall adopt the Revitalization Plan with 2/3rds vote at a public meeting. The Revitalization Plan, as adopted by the Board, and any amendments to the Plan, shall be submitted to the Council for a 45-day period of review excluding days of Council recess. If the Council does not adopt a disapproval resolution within the 45-day period, the Revitalization Plan shall be deemed approved.

(b) The Revitalization Plan shall set forth the Corporation's strategy for facilitating business investment, employment growth, the development and renovation of ownership and rental housing, retail and other services, off-street parking facilities, and public infrastructure improvements within Priority Development Areas and in neighborhoods throughout the District, including, but not limited to the:

(1) Business development, including business retention, expansion and recruitment, and eligible business lending;

(2) Redevelopment of abandoned, contaminated, and underutilized commercial, industrial, and residential sites;

(3) Economic reuse of the Corporation's inventory of undeveloped or surplus real and personal property, including, without limitation, redevelop-

ment properties, public schools, residential properties, public recreational facilities, properties acquired by the government through escheat condemnation and tax avoidance, machinery, equipment, and other personal property;

(4) Establishment of entrepreneurial development programs and contractual agreements or other arrangements with governmental entities and private industries that will help to maximize the engagement of District residents and businesses in the development of eligible projects and which permit District residents and businesses to take advantage of employment and commercial opportunities throughout the District and the metropolitan area;

(5) Infusion and effective allocation of private and public resources to achieve the purposes of this subchapter, including the acquisition and use of appropriated federal and District funds, transfers and dedications of land and land development rights, contributions of machinery, equipment, and other personal property, award of grants, contracts, and gifts, dedicated taxes and fees, payments in lieu of taxes, earnings on investments of the Corporation, and federal tax incentives available under subchapter W of Chapter 1 of the Code;

(6) The establishment of lending, bonding, equity finance, and surety programs, to facilitate District businesses' access to capital needed to conduct and enhance operations and services, which programs to the maximum extent feasible shall be conducted in conjunction with private lending and surety institutions;

(7) The Corporation shall work to achieve a fair and equitable balance, subject to its discretion, in preparing its Revitalization Plan, in granting benefits, and in locating projects, among all eligible areas of the city. The Corporation shall also work to achieve a fair and equitable balance among small, medium-sized and large businesses and nonprofits, and among types of land uses: retail sales, services, housing, hotels, offices, production and technology, government, entertainment, education, health, transit-related development and mixed uses;

(8) In preparing its Revitalization Plan, redevelopment districts and projected benefit plans, the Corporation shall consult with affected Advisory Neighborhood Commissions, business and community groups and shall give appropriate weight to the opinions and priorities of such groups; and

(9) Establishment of an international business development thrust to explore the transformation of global trade opportunities into local economic development.

(c) The Council directs that part of the increased resources that are being provided in the FY 2000 Budget to the Office of Planning should be allocated to the priority of producing small area action plans that are needed to implement policies and objectives contained in the Comprehensive Plan and in the Revitalization Plan. (Sept. 11, 1998, D.C. Law 12-144, § 13, 45 DCR 3747; Oct. 16, 1998, D.C. Law 12-169, § 301(e), 45 DCR 5187; Mar. 26, 1999, D.C. Law 12-175, § 2401(c), 45 DCR 7193; Oct. 20, 1999, D.C. Law 13-38, § 1102(c), 46 DCR 6373.)

Effect of amendments. — D.C. Law 13-38 substituted the present last two sentences for the former last four sentences in (a); and rewrote (c).

Emergency legislation. — For temporary amendment of section, see § 2001(c) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

For temporary amendment of section, see

§ 1102(c) of the Service Improvement and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

Legislative history of Law 13-38. — See note to § 1-2295.3.

§ 1-2295.13. Performance plan; independent audit; evaluation.

(a) The Corporation shall prepare an annual performance plan for the operations of the Corporation during the 5-year period that begins on the date of the Board's adoption of a Revitalization Plan. Each annual performance plan shall set forth:

(1) Annual performance goals for the Corporation;

(2) Performance benchmarks to be used in measuring or assessing the extent to which the Corporation has met the annual performance goals; and

(3) Methodologies for comparing the performance results of the Corporation with the established annual performance goals.

(b) Not later than April 1st of each year, the Corporation shall submit a report on its performance during the prior fiscal year to the Mayor, the Chief Financial Officer, the Council, in a control year the Authority, the President of the United States, and the public. The annual report shall include a financial statement audited by an independent auditor. The annual report shall also include a description of the performance plan established by the Corporation under subsection (a) of this section for the fiscal year being reported and the performance results achieved by the Corporation in the fiscal year being reported compared with the performance goals established in the performance plan for that year. The Council Committee on Economic Development shall hold a hearing and initiate a review process of the performance and operations of the Corporation.

(c) For the fiscal years ending September 30, 2001, and September 30, 2004, the Corporation shall engage a nationally recognized, independent consulting firm to perform an evaluation of the efficacy of the provisions of this subchapter as aids to the Corporation in carrying out the purposes of this subchapter. Not later than 30 days after the close of a fiscal year in which an evaluation is performed under this section, the Corporation shall submit the report of the independent evaluation to the Mayor, the Council, the Authority (if its activities have not been suspended under § 47-392.9(b), and the President. (Sept. 11, 1998, D.C. Law 12-144, § 14, 45 DCR 3747; Oct. 20, 1999, D.C. Law 13-38, § 1102(d), 46 DCR 6373.)

Effect of amendments. — D.C. Law 13-38, in (b), substituted "performance" for "operations" in the first sentence, and inserted "performance and" preceding "operations" in the last sentence.

Emergency legislation. — For temporary amendment of section, see § 1102(d) of the Service Improvement and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

Legislative history of Law 13-38. — See note to § 1-2295.3.

§ 1-2295.14. Criteria for assistance.

(a) Not later than 120 days after its initial meeting, the Board shall establish written criteria for selecting the types of assistance that are most

appropriate for particular types of economic development projects. The Board criteria shall establish general standards for anticipated monetary returns and economic development results from assistance determined by the Corporation to be proportionate to the nature of the risk to be incurred. The criteria shall be submitted to the Council for a 45-day period of review excluding days of Council recess. The Council shall approve or disapprove the criteria by resolution within 45 days of the date the criteria is transmitted to the Council. If the Council does not adopt a disapproval resolution within the 45-day period, the criteria shall be deemed approved. The Corporation may, from time to time, amend the criteria for assistance, subject to Council approval by resolution. The amended criteria, as adopted by the Board, shall be submitted to the Council for a 10-day period of review excluding days of Council recess. During this period of review, if any Councilmember introduces a disapproval resolution, the Council review period shall be 45 days from the date of introduction, excluding days of Council recess. If the Council does not adopt a disapproval resolution within the 45-day period, the amended criteria shall be deemed approved.

(b) The Board shall establish written criteria for making its determinations to approve, disapprove, or take no action with respect to applications for assistance under this subchapter and the types and amounts of assistance to be provided an eligible project under this subchapter. The criteria shall be based upon the following:

(1) Whether the proposed undertaking to be financed is consistent with the Revitalization Plan adopted under § 1-2295.12, except for nongovernmental project based revenue bonds;

(2) Whether the project is located within a Priority Development Area;

(3) The nature of the economic development project;

(4) The likelihood the project will result in the employment of District residents and create or retain private sector jobs within the District;

(5) The direct and indirect contributions of the project to the economy of the District;

(6) The extent to which the provision of assistance from the Corporation is likely to attract economic activity and residents to the District, prevent a business closing, partial closing, or business relocation from the District;

(7) The extent to which the project serves or will contribute to the commercial, employment, housing, educational, social, cultural, recreational, or other needs of the community in which it is or will be located;

(8) The extent to which the project is likely to benefit the economy of the District by improving linkages between the District's economy and economic activity within the region;

(9) The extent to which assistance of the Corporation is accompanied by, or is likely to attract, funds from sources other than the Corporation; and

(10) The extent to which the project is likely to benefit the economy of the District by improving linkages between the appropriateness of the amount and forms of assistance requested, and the magnitude of risk or the amount of investment to be incurred by the Corporation, considering the continuing obligations and responsibilities of the Corporation under this subchapter.

(c) The Corporation may adopt rules and procedures pursuant to subchapter I of Chapter 15 of this title, governing performance requirements under any development agreement entered into between the District and each applicant,

any annual determination required of employees and businesses receiving direct benefits as a result of each undertaking, and any other administrative determination necessary to carry out the purposes of this subchapter. (Sept. 11, 1998, D.C. Law 12-144, § 15, 45 DCR 3747; Mar. 26, 1999, D.C. Law 12-175, § 2401(d), 45 DCR 7193; Oct. 20, 1999, D.C. Law 13-38, § 1102(e), 46 DCR 6373.)

Effect of amendments. — D.C. Law 13-38, in (a), substituted "120 days" for "90 days" in the first sentence, inserted the present fifth sentence, and added the present last three sentences.

Emergency legislation. — For temporary amendment of section, see § 2001(d) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

For temporary amendment of section, see § 1102(e) of the Service Improvement and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

Legislative history of Law 13-38. — See note to § 1-2295.3.

§ 1-2295.16. Subsidiaries.

(a) The Corporation may establish one or more for-profit or not-for-profit corporate subsidiaries for, or in connection with, providing any one or more types of assistance authorized by this subchapter, including, without limitation, the administration of capital development, programs, and other activities. No subsidiary of the Corporation may have any power that the Corporation does not have. Any contemplated provision of assistance to any person by a subsidiary of the Corporation shall require the approval of the Board. Any subsidiary established by the Corporation shall be submitted to the Council for a 45-day period of review, excluding days of Council recess. The Council shall approve or disapprove the criteria by resolution within 45 days of the date it is transmitted to the Council. If the Council does not adopt a resolution within the 45-day period, the criteria shall be deemed approved.

(b) In respect of establishing subsidiaries, their operations, and applications of their income or the Corporation's income from them, the Corporation shall have regard for avoiding the disqualification of the Corporation as an organization exempt under § 501 of the Code, or as an issuer of bonds the interest on which is intended to be excluded from gross income under § 103 of the Code in respect of the basic activities of the Corporation. (Sept. 11, 1998, D.C. Law 12-144, § 17, 45 DCR 3747; Oct. 16, 1998, D.C. Law 12-169, § 301(f), 45 DCR 5187; Oct. 20, 1999, D.C. Law 13-38, § 1102(f), 46 DCR 6373.)

Effect of amendments. — D.C. Law 13-38, in (a), in the present fourth sentence, deleted "required to be" following "Corporation shall be," and substituted "a 45-day period of review, excluding days of Council recess" for "approval," and added the present last two sentences.

Emergency legislation. — For temporary amendment of section, see § 1102(f) of the Service Improvement and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

Legislative history of Law 13-38. — See note to § 1-2295.3.

§ 1-2295.21. Redevelopment districts; allocation of tax increment revenues.

Emergency legislation. — For temporary amendment of section, see § 2001(e) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

§ 1-2295.27. Intragovernmental cooperation.

Emergency legislation. — For temporary amendment of section, see § 2001(f) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

CHAPTER 23. LATINO COMMUNITY DEVELOPMENT.

Subchapter III. Commission on Latino Community Development.

§ 1-2322. Composition.

Emergency legislation. — For temporary amendment of section, see § 4(j) of the Confirmation Act Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-92, June 4, 1999, 46 DCR 5330).

CHAPTER 24. NATIONAL CAPITAL REGION TRANSPORTATION.

Subchapter IV. Washington Metropolitan Area Transit Authority Compact.

§ 1-2431. Congressional consent given to Compact amendment.

Federal labor laws.

Washington Metropolitan Area Transit Authority (WMATA) is a political subdivision of two states, and presence of District of Columbia in the Compact does nothing to alter the nature of WMATA as a political subdivision; WMATA thus did not constitute an "employer" nor did employees of WMATA belong to a "labor organization" within meaning of federal Labor Management Reporting and Disclosure Act. Diven v. Amalgamated Transit Union Int'l & Local 689, 38 F.3d 598 (D.C. Cir. 1994).

Human Rights Act.

Washington Metro Area Transit Authority is not subject to District of Columbia Human Rights Act, since the Authority is an interstate compact agency and an instrumentality of three separate jurisdictions — Virginia, Maryland, and the District of Columbia. Lucero-Nelson v. Washington Metro. Area Transit Auth., 1 F. Supp. 2d 1 (D.D.C. 1998).

Police powers.

Transit police have the same powers, including the powers of arrest and limitations, as the D.C. Metropolitan Police. Saidi v. Washington Metro. Area Transit Auth., 928 F. Supp. 21 (D.D.C. 1996).

Proprietary versus governmental functions.

Defendant was immune from plaintiff's tort claims where all the challenged actions involved a large measure of choice by those appointed to oversee the reorganization of a department within the transit authority. Beebe v. Washington Metro. Area Transit Auth., 129 F.3d 1283 (D.C. Cir. 1997).

To distinguish governmental from proprietary functions the court considers whether the activity amounts to a "quintessential" governmental function. Beebe v. Washington Metro. Area Transit Auth., 129 F.3d 1283 (D.C. Cir. 1997).

Decisions concerning the hiring, training, and supervising of transit authority employees are discretionary in nature and immune from judicial review. Burkhart v. Washington Metro. Area Transit Auth., 112 F.3d 1207 (D.C. Cir. 1997).

The question of whether an activity is a governmental function for purposes of the Transit Authority Compact is one of federal law. Burkhart v. Washington Metro. Area Transit Auth., 112 F.3d 1207 (D.C. Cir. 1997).

Where defendant had consistently held its noise control program out as embodying its noise level guidelines and had actually followed the program's limits, it would have been unduly formalistic to require the defendant to hold an official proceeding before it could be considered to have adopted the program in the exercise of its governmental discretion. Souders v. Washington Metro. Area Transit Auth., 48 F.3d 546 (D.C. Cir. 1995).

Because it is infeasible to distinguish in every case between governmental and private sector functions, "governmental functions" are considered to include those acts that are "discretionary," as opposed to those that are purely "ministerial." Souders v. Washington Metro. Area Transit Auth., 48 F.3d 546 (D.C. Cir. 1995).

The mass transit authority was not immune from claims arising out of the maintenance of property it owned, since such activity was proprietary, not governmental. 325-343 E. 56th St. Corp. v. Mobil Oil Corp., 906 F. Supp. 669 (D.D.C. 1995).

Defendants' employee training and supervision was a ministerial function, and thus not subject to sovereign immunity. Wainwright v. Washington Metro. Area Transit Auth., 903 F. Supp. 133 (D.D.C. 1995).

Since waivers attach to proprietary, ministerial functions, it is the nature of the function that governs, not the cause of action under which it is litigated. Wainwright v. Washington Metro. Area Transit Auth., 903 F. Supp. 133 (D.D.C. 1995).

The choice of one type of window glass that conforms to applicable standards over another type of conforming glass is a design decision that is a governmental function protected by sovereign immunity. Warren v. Washington Metro. Area Transit Auth., 880 F. Supp. 14 (D.D.C. 1995).

Sovereign immunity.

Washington Metro Area Transit Authority enjoys sovereign immunity from punitive damages claims. Lucero-Nelson v. Washington Metro. Area Transit Auth., 1 F. Supp. 2d 1 (D.D.C. 1998).

Employees of the Transit Authority cannot be sued for contractual claims since the Authority itself is the exclusive defendant in cases where liability attaches. Beebe v. Washington Metro. Area Transit Auth., 129 F.3d 1283 (D.C. Cir. 1997).

Strict liability.

Since the imposition of strict liability upon the government is not authorized, there was no waiver of immunity in a claim grounded in alleged design defects and failure to warn. Wainwright v. Washington Metro. Area Transit Auth., 903 F. Supp. 133 (D.D.C. 1995).

Because a claim of strict liability in tort is effectively made out in a complaint for breach of warranty, defendant was immune from plaintiff's claim for breach of implied warranty. Wainwright v. Washington Metro. Area Transit Auth., 903 F. Supp. 133 (D.D.C. 1995).

Tort liability for actions of WMATA officer.

The District of Columbia Metropolitan Police Department (MPD) was not entitled to summary judgment for that portion of a plaintiff's complaint which alleged negligence and improper supervision of a Washington Metropolitan Area Transit Authority (WMATA) police officer during the course of a joint operation where the WMATA officer was summoned to the scene by an MPD officer to aid in a search wholly outside the jurisdiction of the transit police, where there was no evidence of any threat which would have required immediate action by the WMATA officer, and where MPD officers played a central and seemingly lead role in the chain of events. Griggs v. Washington Metro. Area Transit Auth., 66 F. Supp. 2d 23 (D.D.C. 1999).

Cited in Gary v. Washington Metro. Area Transit Auth., 886 F. Supp. 78 (D.D.C. 1995); Lewis v. Washington Metro. Area Transit Auth., 19 F.3d 677 (D.C. Cir. 1994).

Subchapter V. Adopted Regional System.

§ 1-2458. Guarantee of obligations.

(a)(1) The Secretary of Transportation is authorized to guarantee, and to enter into commitments to guarantee, upon such terms and conditions as he may prescribe, payment of principal of and interest on bonds and other evidences of indebtedness (including short-term notes) issued with the ap-

proval of the Secretary of the Treasury by the Transit Authority under the Compact. No such guarantee or commitment to guarantee shall be made unless the Secretary of Transportation determines and certifies that:

(A) The obligation to be guaranteed represents an acceptable financial risk to the United States and the prospective revenues of the Transit Authority furnish reasonable assurance that timely payments of interest on such obligation will be made;

(B) The Transit Authority has entered into an agreement with the Secretary of Transportation providing for reasonable and prudent action by the Transit Authority respecting its financial condition if at any time the Secretary, in his discretion, determines that such action would be necessary to protect the interest of the United States;

(C) Unless the obligation is a short-term note (as determined by the Secretary), it will be sold through a process of competitive bidding as prescribed by the Secretary of Transportation; and

(D) The rate of interest payable with respect to such obligation is reasonable in light of prevailing market yields.

(2) Notwithstanding subparagraph (C) of paragraph (1) of this subsection, the Secretary of Transportation may guarantee an obligation under this section sold through a process of negotiation if he makes a determination that prevailing market conditions would result in a higher net interest cost or would otherwise increase the cost of issuing the obligation if the obligation was sold through the competitive bidding process. The Secretary's determination shall be in writing and shall contain a detailed explanation of the reasons therefor.

(b) Any guarantee of obligations made by the Secretary of Transportation under this section shall be conclusive evidence of the eligibility of the obligations for such guarantee, and the validity of any guarantee so made shall be incontestable, except for fraud or material misrepresentation, in the hands of a holder of the guaranteed obligation.

(c) The aggregate principal amount of obligations which may be guaranteed under this section shall not exceed $1,200,000,000; except that:

(1) No obligation may be guaranteed under this section if, taking into account the principal amount of that obligation, the aggregate amount of principal of outstanding obligations guaranteed under this section exceeds $900,000,000 unless the local participating governments:

(A) Make, in accordance with agreements entered into with the Transit Authority, capital contributions to the Transit Authority for the adopted regional system in a total amount not less than 50 per centum of the amount by which the principal of such obligation causes such aggregate amount of principal to exceed $900,000,000; or

(B) Have entered into enforceable commitments with the Transit Authority to make such contributions by the end of the fiscal year in which such obligation is issued; and

(2) Obligations eligible for guarantees under this section which are issued solely for the purpose of refunding existing obligations previously guaranteed under this section may be guaranteed without regard to the $1,200,000,000 limitation.

(d) The interest on any obligation of the Transit Authority guaranteed by the Secretary under the provisions of this section shall be included in gross

income for the purposes of Chapter 1 of the Internal Revenue Code of 1954. (Dec. 9, 1969, Pub. L. 91-143, § 9; July 13, 1972, 86 Stat. 464, Pub. L. 92-349, title I, § 101; 1973 Ed., § 1-1446; Jan. 3, 1980, 93 Stat. 1323, Pub. L. 96-184, § 3(b); Apr. 12, 2000, D.C. Law 13-91, § 129, 47 DCR 520.)

Effect of amendments. — D.C. Law 13-91 deleted "(including payments under § 1-2459)" following "Transit Authority" in (a)(1)(A).

Legislative history of Law 13-91. — Law 13-91, the "Technical Amendments Act of 1999," was introduced in Council and assigned Bill No. 13-435. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

Subchapter VII. Woodrow Wilson Bridge and Tunnel Compact.

§ 1-2484. Compact provisions as law.

Temporary authorization to remove disabled vehicles from the Potomac River Bridges. — Sections 2-6 of D.C. Law 13-4 authorizes the Mayor of the District of Columbia to enter into a Compact regarding removal of disabled vehicles from any portion of the Potomac River Bridges.

Section 8(b) of D.C. Law 13-4 provides that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary authorization to remove disabled vehicles from the Potomac River Bridges, see § 2 of the Potomac River Bridges Towing Compact Congressional Review Emergency Act of 1999 (D.C. Act 13-88, June 4, 1999, 46 DCR 5319).

For temporary authorization to remove disabled vehicles from the Potomac River Bridges, see §§ 2-6 of the Potomac River Bridges Towing Compact Congressional Review Emergency Act of 1999 (D.C. Act 13-222, January 11, 2000, 47 DCR 470).

Legislative history of Law 13-4. — Law 13-4, the "Potomac River Bridges Towing Compact Temporary Act of 1999," was introduced in Council and assigned Bill No. 13-21. The Bill was adopted on first and second readings on January 5, 1999, and February 2, 1999, respectively. Signed by the Mayor on March 3, 1999, it was assigned Act No. 13-33 and transmitted to both Houses of Congress for its review. D.C. Law 13-4 became effective on May 28, 1999.

Subchapter VIII. Potomac River Bridges Towing Compact.

§ 1-2491.1. General provisions.

(a) The Mayor is authorized to enter into and execute on behalf of the District a compact with any state or states legally joining the Potomac River Bridges Towing Compact ("Compact").

(b) The parties to this Compact are the District of Columbia, the Commonwealth of Virginia, and the State of Maryland ("Parties").

(c) The purpose of this Compact is to facilitate the prompt and orderly removal of disabled and abandoned vehicles from the bridges by giving all 3 Parties jurisdiction to exercise appropriate authority anywhere on the following bridges which pass through the territory of 2 or more of the jurisdictions: the Woodrow Wilson Memorial Bridge, Rochambeau Memorial Bridge, George Mason Memorial Bridge, Theodore Roosevelt Memorial Bridge, Francis Scott Key Bridge, Chain Bridge, and American Legion Memorial Bridge. (_____, 2000, D.C. Law 13- (Act 13-164), § 2, 46 DCR 9217.)

Editor's notes. — This section heading was composed by the publisher.

§ 1-2491.2. Power and authority of Parties.

The Parties hereby give one another all necessary power and authority to have their respective state troopers or local law enforcement officers direct traffic and authorize the removal of disabled or abandoned vehicles, trailers, semitrailers or the parts or contents thereof, from any part of the Potomac River Bridges, to the same extent and in the same manner that such troopers and local law enforcement officers may exercise such authority in their own jurisdictions. No Party, acting through its troopers or local law enforcement officers, shall have the authority to direct or authorize the towing or removal of any vehicle or other thing to a destination outside its own jurisdiction, unless the consent of an officer or trooper of the destination jurisdiction has first been obtained. (_____, 2000, D.C. Law 13- (Act 13-164), § 3, 46 DCR 9217.)

Editor's notes. — This section heading was composed by the publisher.

§ 1-2491.3. Jurisdiction over vehicles towed or removed.

All vehicles and their contents towed or removed from the Potomac River bridges pursuant to this Compact shall be subject to the exclusive jurisdiction of the place to which such vehicle and its contents are taken, and the handling and disposition of such vehicle and its contents shall be governed by the laws and procedures of that jurisdiction. (_____, 2000, D.C. Law 13- (Act 13-164), § 4, 46 DCR 9217.)

Editor's notes. — This section heading was composed by the publisher.

§ 1-2491.4. Parties act on own authority.

Each of the parties shall act solely on its own authority within the jurisdiction granted. This Compact shall not be construed as creating any agency relationship between the Parties. (_____, 2000, D.C. Law 13- (Act 13-164), § 5, 46 DCR 9217.)

Editor's notes. — This section heading was composed by the publisher.

§ 1-2491.5. Withdrawal from Compact.

The Mayor of the District of Columbia, the Governor of the Commonwealth of Virginia, or the State of Maryland, may withdraw from this Compact at any time upon 30 days written notice to the other Parties. (_____, 2000, D.C. Law 13- (Act 13-164), § 6, 46 DCR 9217.)

Editor's notes. — This section heading was composed by the publisher.

CHAPTER 25. HUMAN RIGHTS.

Subchapter I. General Provisions.

Subchapter II. Prohibited Acts of Discrimination.

Subchapter III. Procedures.

Subchapter IV. Office of Human Rights.

Subchapter I. General Provisions.

§ 1-2501. Intent of Council.

Construction with other law.

Because count four of the plaintiff's complaint attempted to use the District of Columbia Human Rights Act to rewrite the terms of the Fannie Mae employee benefits plan, as it related to benefit levels for persons with mental versus physical disabilities, it was pre-empted by the Employment Retirement Income Security Act (ERISA). Fitts v. Federal Nat'l Mtg. Ass'n, 44 F. Supp. 2d 317 (D.D.C. 1999).

Liability for discrimination.

An individual supervisor can be personally liable for acts of discrimination taken during the course of his or her employment. Russ v. Van Scoyoc Assocs., 59 F. Supp. 2d 20 (D.D.C. 1999).

Applicability.

—Agencies.

Washington Metro Area Transit Authority is not subject to the District of Columbia Human Rights Act, since the Authority is an interstate compact agency and an instrumentality of three separate jurisdictions — Virginia, Maryland, and the District of Columbia. Lucero-Nelson v. Washington Metro. Area Transit Auth., 1 F. Supp. 2d 1 (D.D.C. 1998).

Members of the Lottery Board, as D.C. government employees, had no private right of action against the Financial Responsibility and Management Assistance Authority. Brewer v. District of Columbia Fin. Responsibility & Mgt. Assistance Auth., 953 F. Supp. 406 (D.D.C. 1997), aff'd, 132 F.3d 1480 (D.C. Cir. 1997).

—Supervisors.

Under the D.C. Human Rights Act, individual supervisors can be held liable for their acts of discrimination, given the differences in statutory language between the federal and local statutes and the fact that the D.C. Act is a remedial civil rights statute designed to secure an end to discrimination "for any reason other than that of individual merit." Martini v. FNMA, 977 F. Supp. 464 (D.D.C. 1997).

Collective claims.

Plaintiffs who raise a collective claim of a discriminatory pattern or practice have as their initial burden the task of demonstrating the unlawful discrimination has been the regular policy or practice of the employer. Hyman v. First Union Corp., 980 F. Supp. 46 (D.D.C. 1997).

When individual and collective claims of discrimination are brought contemporaneously, courts should consider the collective claim before the individual claims since, if the collective claim has merit, the named and unnamed individual class members are entitled to a presumption shifting the burden of persuasion to the defendant to demonstrate that age discrimination was not a determining factor in the employment decisions. Hyman v. First Union Corp., 980 F. Supp. 46 (D.D.C. 1997).

Employment discrimination.

Where the record was clear that the plaintiff remained on the payroll after notification of his termination until the day he filed a claim for age discrimination, this was sufficient to raise the inference that the two events were causally connected, and remand was required for trial on plaintiff's retaliation claim. Paquin v. FNMA, 119 F.3d 23 (D.C. Cir. 1997).

Although plaintiff's letter claiming his termination was based on age and his willingness to take legal action was a protected activity, where he had been involved in negotiations with his employer between the date of the letter and the date of the withdrawal of a proposed severance package, he failed to establish the causal connection necessary to establish a retaliation claim. Paquin v. FNMA, 119 F.3d 23 (D.C. Cir. 1997).

Where an employer came forward with a legitimate non-discriminatory reason for an employee's termination, the presumption that arose from the plaintiff's prima facie case of discrimination dropped out of the picture, and all that was left for the court to decide on remand was the ultimate question of whether the plaintiff had proven intentional discrimination against him. Paquin v. FNMA, 119 F.3d 23 (D.C. Cir. 1997).

Governing law.

Legal analysis of plaintiff's claim under this chapter was governed by McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802, 93 S. Ct. 1817, 1824, 36 L. Ed. 2d 668 (1973). Schwartz v. Paralyzed Veterans of Am., 930 F. Supp. 3 (D.D.C. 1996).

Grooming regulations.

Hearing examiner properly concluded that Fire Department's facial hair regulation was discriminatory, and this conclusion rationally flowed from examiner's findings; examiner deprived court of a basis from which to decide error as to Department's hair length regulation as applied to male firefighters, however, by omitting necessary nexus between hearing testimony and the conclusion of discrimination. Kennedy v. District of Columbia, App. D.C., 654 A.2d 847 (1995).

Peremptory challenges.

Trial judge did not commit plain error by failing to apply this chapter, sua sponte, to defendant's claims of discrimination in prosecutor's use of peremptory challenges of jurors. Baxter v. United States, App. D.C., 640 A.2d 714 (1994).

Racial discrimination.

To the extent that the plaintiff claimed that his discharge from the police force was based on race, it was cognizable under the Human Rights Act, and the exhaustion of administrative remedies requirement could not be circumvented by allegations of the understaffing and lack of prompt action of the local human rights agencies. Roache v. District of Columbia Armory Bd., App. D.C., 654 A.2d 1283 (1995).

Plaintiffs' federal claims were wholly without merit since uncontroverted material facts did not even suggest that restaurant's denial of seating was causally related to plaintiffs' race, and thus court lacked pendent jurisdiction to decide plaintiffs' claims of race and sex discrimination under this chapter. Jackson v. Tyler's Dad's Place, Inc., 850 F. Supp. 53 (D.D.C. 1994), aff'd, 107 F.3d 923 (D.C. Cir. 1996).

Recovery.

There is no cap on recovery under the D.C. Human Rights Act. Martini v. FNMA, 977 F. Supp. 464 (D.D.C. 1997).

Plaintiff's recovery under the Human Rights Act was reduced where the jury awarded punitive damages without awarding accompanying compensatory damages, since an award of punitive damages cannot stand alone. Martini v. FNMA, 977 F. Supp. 464 (D.D.C. 1997).

Sexual harassment.

Limitation of claims for emotional distress from sexual harassment to an administrative remedy under the worker's compensation statute would frustrate implementation of the Human Rights Act, not only by creating problems of judicial economy but also by forcing a litigant who seeks relief under the emotional distress label to settle for a recovery likely to be significantly less than the damages awarded in a tort action. Estate of Underwood v. National Credit Union Admin., App. D.C., 665 A.2d 621 (1995).

Cited in Whitbeck v. Vital Signs, Inc., 159 F.3d 1369 (D.C. Cir. 1998); Whitbeck v. Vital Signs, Inc., 116 F.3d 588 (D.C. Cir. 1997); O'Donnell v. Associated Gen. Contractors of Am., Inc., App. D.C., 645 A.2d 1084 (1994); Fiedler v. American Multi-Cinema, Inc., 871 F. Supp. 35 (D.D.C. 1994).

§ 1-2502. Definitions.

The following words and terms when used in this chapter have the following meanings:

(1) "Administrative Procedure Act" means the "District of Columbia Administrative Procedure Act," (D.C. Code, § 1-1501 et seq.).

(2) "Age" means 18 years of age or older.

(3) "Chairman" means the duly appointed Chairman of the District of Columbia Commission on Human Rights.

(4) "Commission" means the District of Columbia Commission on Human Rights, as established by Commissioner's Order No. 71-224, dated July 8, 1971.

(5) "Council" means the Council of the District of Columbia as established by § 1-221(a).

(5A) "Disability" means a physical or mental impairment that substantially limits one or more of the major life activities of an individual having a record of such an impairment or being regarded as having such an impairment.

(6) "Director" means the Director of the District of Columbia Office of Human Rights, or a designate.

(7) "District" means the District of Columbia.

(8) "Educational institution" means any public or private institution including an academy, college, elementary or secondary school, extension course, kindergarten, nursery, school system or university; and a business, nursing, professional, secretarial, technical, or vocational school; and includes an agent of an educational institution.

(9) "Employee" means any individual employed by or seeking employment from an employer.

(10) "Employer" means any person who, for compensation, employs an individual, except for the employer's parent, spouse, children or domestic servants, engaged in work in and about the employer's household; any person acting in the interest of such employer, directly or indirectly; and any professional association.

(11) "Employment agency" means any person regularly undertaking or attempting, with or without compensation, to procure employees for an employer or to procure for employees, opportunities to work for an employer, and includes an agent of such a person.

(11A) "Familial status" means one or more individuals under 18 years of age being domiciled with: (1) a parent or other person having legal custody of the individual; or (2) the designee, with written authorization of the parent, or other persons having legal custody of individuals under 18 years of age. The protection afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or in the process of securing legal custody of any individual under 18 years of age.

(12) "Family responsibilities" means the state of being, or the potential to become, a contributor to the support of a person or persons in a dependent relationship, irrespective of their number, including the state of being the subject of an order of withholding or similar proceedings for the purpose of paying child support or a debt related to child support.

(13) "Hearing tribunal" means members of the Commission, or 1 or more hearing examiners, appointed by the Commission to conduct a hearing.

(14) "Housing business" means a business operated under the authority of a license issued by the Mayor, or other authorized District agent, pursuant to § 47-2828 and the regulations promulgated thereunder.

(15) "Labor organization" means any organization, agency, employee representation committee, group, association, or plan in which employees participate directly or indirectly; and which exists for the purpose, in whole or in part, of dealing with employers, or any agent thereof, concerning grievances, labor disputes, wages, rates of pay, hours, or other terms, conditions, or privileges of employment; and any conference, general committee, joint or system board, or joint council, which is subordinate to a national or international organization.

(16) "Make public" means disclosure to the public or to the news media of any personal or business data obtained during the course of an investigation of

a complaint filed under the provisions of this chapter, but not to include the publication of EEO-1, EEO-2, or EEO-3 reports as required by the Equal Employment Opportunity Commission, or any other data in the course of any administrative or judicial proceeding under this chapter; or any judicial proceeding under Title VII of the Civil Rights Act of 1964 involving such information; nor shall it include access to such data by staff or the Office of Human Rights, members of the Commission on Human Rights, or parties to a proceeding, nor shall it include publication of aggregated data from individual reports.

(17) "Marital status" means the state of being married, single, divorced, separated, or widowed and the usual conditions associated therewith, including pregnancy or parenthood.

(18) "Matriculation" means the condition of being enrolled in a college, or university; or in a business, nursing, professional, secretarial, technical or vocational school; or in an adult education program.

(19) "Office" means the District of Columbia Office of Human Rights, as established by Commissioner's Order No. 71-224, dated July 8, 1971, as amended.

(20)(A) "Owner" means 1 of the following:

(i) Any person, or any one of a number of persons in whom is vested all or any part of the legal or equitable ownership, dominion, or title to any real property;

(ii) The committee, conservator, or any other legal guardian of a person who for any reason is non sui juris, in whom is vested the legal or equitable ownership, dominion or title to any real property; or

(iii) A trustee, elected or appointed or required by law to execute a trust, other than a trustee under a deed of trust to secure the payment of money; or one who, as agent of, or fiduciary, or officer appointed by the court for the estate of the person defined in sub-subparagraph (i) of this subparagraph shall have charge, care or control of any real property.

(B) The term "owner" shall also include the lessee, the sublessee, assignee, managing agent, or other person having the right of ownership or possession of, or the right to sell, rent or lease, any real property.

(21) "Person" means any individual, firm, partnership, mutual company, joint-stock company, corporation, association, organization, unincorporated organization, labor union, government agency, incorporated society, statutory or common-law trust, estate, executor, administrator, receiver, trustee, conservator, liquidator, trustee in bankruptcy, committee, assignee, officer, employee, principal or agent, legal or personal representative, real estate broker or salesman or any agent or representative of any of the foregoing.

(22) "Personal appearance" means the outward appearance of any person, irrespective of sex, with regard to bodily condition or characteristics, manner or style of dress, and manner or style of personal grooming, including, but not limited to, hair style and beards. It shall not relate, however, to the requirement of cleanliness, uniforms, or prescribed standards, when uniformly applied for admittance to a public accommodation, or when uniformly applied to a class of employees for a reasonable business purpose; or when such bodily conditions or characteristics, style or manner of dress or personal grooming presents a danger to the health, welfare or safety of any individual.

(23) Repealed.

(24) "Place of public accommondation" means all places included in the meaning of such terms as inns, taverns, road houses, hotels, motels, whether conducted for the entertainment of transient guests or for the accommodation of those seeking health, recreation or rest; restaurants or eating houses, or any place where food is sold for consumption on the premises; buffets, saloons, barrooms, or any store, park or enclosure where spirituous or malt liquors are sold; ice cream parlors, confectionaries, soda fountains and all stores where ice cream, ice and fruit preparation or their derivatives, or where beverages of any kind are retailed for consumption on the premises; wholesale and retail stores, and establishments dealing with goods or services of any kind, including, but not limited to, the credit facilities thereof; banks, savings and loan associations, establishments of mortgage bankers and brokers, all other financial institutions, and credit information bureaus; insurance companies and establishments of insurance policy brokers; dispensaries, clinics, hospitals, bathhouses, swimming pools, laundries and all other cleaning establishments; barber shops, beauty parlors, theatres, motion picture houses, airdromes, roof gardens, music halls, race courses, skating rinks, amusement and recreation parks, trailer camps, resort camps, fairs, bowling alleys, golf courses, gymnasiums, shooting galleries, billiards and pool parlors; garages, all public conveyances operated on land or water or in the air, as well as the stations and terminals thereof; travel or tour advisory services, agencies or bureaus; public halls and public elevators of buildings and structures, occupied by 2 or more tenants, or by the owner and 1 or more tenants. Such term shall not include any institution, club, or place of accommodation which is in its nature distinctly private except, that any such institution, club or place of accommodation shall be subject to the provisions of § 1-2531. A place of accommodation, institution, or club shall not be considered in its nature distinctly private if the place of accommodation, institution, or club:

(A) Has 350 or more members;

(B) Serves meals on a regular basis; and

(C) Regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages directly or indirectly from or on behalf of nonmembers for the furtherance of trade or business.

(25) "Political affiliation" means the state of belonging to or endorsing any political party.

(26) "Real estate broker (or salesperson)" means any person licensed as such in accordance with the provisions of Chapter 19 of Title 45.

(27) "Real Estate Commission" means the Real Estate Commission of the District of Columbia established by § 45-1923.

(28) "Sexual orientation" means male or female homosexuality, heterosexuality and bisexuality, by preference or practice.

(29) "Source of income" means the point, the cause, or the form of the origination, or transmittal of gains of property accruing to a person in a stated period of time; including, but not limited to, money and property secured from any occupation, profession or activity, from any contract, agreement or settlement, from federal payments, court-ordered payments, from payments received as gifts, bequests, annuities, life insurance policies and compensation for illness or injury, except in a case where conflict of interest may exist.

(30) "Transaction in real property" means the exhibiting, listing, advertising, negotiating, agreeing to transfer or transferring, whether by sale, lease, sublease, rent, assignment or other agreement, any interest in real property or improvements thereon, including, but not limited to, leaseholds and other real chattels.

(31) "Unlawful discriminatory practice" means those discriminatory practices which are so specified in subchapter II of this chapter. (1973 Ed., § 6-2202; Dec. 13, 1977, D.C. Law 2-38, title I, § 102, 24 DCR 6038; Mar. 10, 1983, D.C. Law 4-209, § 35(a)(1), 30 DCR 390; Feb. 24, 1987, D.C. Law 6-166, § 33(c), 33 DCR 6710; Dec. 10, 1987, D.C. Law 7-50, § 2, 34 DCR 6887; June 28, 1994, D.C. Law 10-129, § 2(b), 41 DCR 2583; Apr. 20, 1999, D.C. Law 12-242, § 2(b), 46 DCR 952; Apr. 12, 2000, D.C. Law 13-91, § 159(a), 47 DCR 520.)

Effect of amendments. — D.C. Law 13-91 validated a previously made technical correction to D.C. Law 12-242.

Legislative history of Law 13-91. — Law 13-91, the "Technical Amendments Act of 1999," was introduced in Council and assigned Bill No. 13-435. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

"Disability."

Plaintiff had no "disability" as defined by this section where there was no allegation of being precluded from working generally, but only that plaintiff was unable to perform her job at the defendant's location and that she was limited from doing some household chores. Stroman v. Blue Cross & Blue Shield Ass'n, 966 F. Supp. 9 (D.D.C. 1997), aff'd, 159 F.3d 637 (D.C. Cir. 1998).

In determining whether an employer failed to make reasonable accommodation for an employee's condition and, thus, whether the employee proved that her condition could be reasonably accommodated, the jury could properly consider evidence that there was a vacant position available which the employee was qualified to fill. Strass v. Kaiser Found. Health Plan, App. D.C., 744 A.2d 1000 (2000).

In determining whether an employer failed to make reasonable accommodation for an employee's condition and, thus, whether the employee proved that her condition could be reasonably accommodated, the jury could properly consider evidence that, after learning of her disability, the employer tried to force her to quit by failing to fill positions on her staff that were essential to the performance of her job. Strass v. Kaiser Found. Health Plan, App. D.C., 744 A.2d 1000 (2000).

"Employer."

Where employer was a law partnership, the phrase "any person acting in the interest of such employer, directly or indirectly," necessarily included a partner of the firm, and therefore partners were amenable to suit under this chapter in their individual capacities. Wallace v. Skadden, Arps, Slate, Meagher & Flom, App. D.C., 715 A.2d 873 (1998).

Marriage.

Although the Council of the District of Columbia undoubtedly intended the Human Rights Act to be read broadly to eliminate many proscribed forms of discrimination, because there was no intent to change the ordinary meaning of the word "marriage" the marriage license bureau was not held to be violating the provisions of the Act by its refusal to issue licenses for same-sex unions. Dean v. District of Columbia, App. D.C., 653 A.2d 307 (1995).

"Personal appearance."

Evidence was sufficient for jury to find that employer had a reasonable business purpose for prohibiting its janitorial employees from wearing ponytails at office building which had contracted with employer for janitorial services. Turcios v. United States Servs. Indus., App. D.C., 680 A.2d 1023 (1996).

Written criteria requiring "neat hair style" and "clean shaven face" communicated a general rule that employees were to conform to traditional grooming styles, and supervisor's application of this written policy to forbid ponytails was not an unreasonable or unforeseeable interpretation, and thus combined requirements were sufficient to satisfy the "prescribed standards" element of statutory exception. Turcios v. United States Servs. Indus., App. D.C., 680 A.2d 1023 (1996).

"Business necessity" exception to Human Rights Act, set forth in § 1-2503 (a), was different from, and altogether independent of, exception allowing prescribed standards of personal appearance if applied for a "reasonable business purpose," as set forth in paragraph (22) of this section, and thus standard governing first exception was inapplicable to the second. Turcios v. United States Servs. Indus., App. D.C., 680 A.2d 1023 (1996).

Cited in Whitbeck v. Vital Signs, Inc., 934 F. Supp. 9 (D.D.C. 1996); Underwood v. Archer Management Servs., 857 F. Supp. 96 (D.D.C. 1994).

§ 1-2503. Exceptions.

(a) Any practice which has a discriminatory effect and which would otherwise be prohibited by this chapter shall not be deemed unlawful if it can be established that such practice is not intentionally devised or operated to contravene the prohibitions of this chapter and can be justified by business necessity. Under this chapter, a "business necessity" exception is applicable only in each individual case where it can be proved by a respondent that, without such exception, such business cannot be conducted; a "business necessity" exception cannot be justified by the facts of increased cost to business, business efficiency, the comparative characteristics of one group as opposed to another, the stereotyped characterization of one group as opposed to another, and the preferences of co-workers, employers, customers or any other person. The business necessity exemption is inapplicable to complaints of unlawful discrimination in residential real estate transactions and to complaints alleging violations of the Fair Housing Act, approved April 11, 1968 (42 U.S.C. § 3601 et seq.)(" FHA").

(b) Nothing in this chapter shall be construed to bar any religious or political organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious or political organization, from limiting employment, or admission to or giving preference to persons of the same religion or political persuasion as is calculated by the organization to promote the religious or political principles for which it is established or maintained.

(c) Nothing in this chapter shall be construed to supersede any federal rule, regulation or act.

(d) Nothing in this chapter shall prohibit any religious organization, association, or society or non-profit organization which is operated, supervised or controlled by or in conjunction with a religious organization, association or society from limiting the sales, rental or occupancy of housing accommodations which it owns or operates for other than a commercial purpose to members of the same religion or organization, or from giving preference to these persons, unless the entity restricts its membership on the basis of race, color, or national origin. This chapter does not prohibit a private club, not open to the public, which incident to its primary purpose, provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of these lodgings to its members or from giving preference to its members. (1973 Ed., § 6-2203; Dec. 13, 1977, D.C. Law 2-38, title I, § 103, 24 DCR 6038; Apr. 20, 1999, D.C. Law 12-242, § 2(c), 46 DCR 952; Apr. 12, 2000, D.C. Law 13-91, § 159(b), 47 DCR 520.)

Effect of amendments. — D.C. Law 13-91 validated a previously made technical correction to D.C. Law 12-242.

Legislative history of Law 13-91. — See note to § 1-2502.

Business necessity.

Where there was no documented proof that an employer suffered significant loss from a disabled employee's reduced attendance, where the employer produced no time or attendance records bearing on the issue, and where there was substantial evidence of repeated derogatory remarks by fellow employees, the Human Rights Commission's conclusion that the business necessity reasons advanced for firing the employee were pretextual was justified by the

record. Natural Motion by Sandra, Inc. v. District of Columbia Comm'n on Human Rights, App. D.C., 687 A.2d 215 (1997).

"Business necessity" exception to Human Rights Act, set forth in subsection (a) of this section, was different from, and altogether independent of, exception allowing prescribed standards of personal appearance if applied for a "reasonable business purpose," as set forth in § 1-2502 (22), and thus standard governing first exception was inapplicable to the second. Turcios v. United States Servs. Indus., App. D.C., 680 A.2d 1023 (1996).

Building manager violated Human Rights Act by restricting or impeding repairs to tenant's apartment on the basis of his physical handicap, which was AIDS, and the manager's reliance on statutory "business necessity" exception was not justified by assertion that a plumbing contractor was afraid to enter tenant's apartment. Joel Truitt Management, Inc. v. District of Columbia Comm'n on Human Rights, App. D.C., 646 A.2d 1007 (1994).

Evidence.

Plaintiff introduced sufficient evidence to survive summary judgment on claim of pregnancy discrimination, as there was enough circumstantial evidence to establish a causal nexus between her pregnancy and termination. Pendarvis v. Xerox Corp., 3 F. Supp. 2d 53 (D.D.C. 1998).

Public policy.

The anti-discrimination provisions do not create a special dispensation for pregnant women, but only require that they not be discriminated against nor denied any employment opportunity due to pregnancy. Duncan v. Children's Nat'l Medical Ctr., App. D.C., 702 A.2d 207 (1997), cert. denied, 525 U.S. 912, 119 S. Ct. 257, 142 L. Ed. 2d 211 (1998).

A pregnant employee's decision not to work at a blood bank failed to identify a judicially cognizable public policy that imposed upon the medical center a duty to transfer her to a new position or otherwise to accommodate her concerns. Duncan v. Children's Nat'l Medical Ctr., App. D.C., 702 A.2d 207 (1997), cert. denied, 525 U.S. 912, 119 S. Ct. 257, 142 L. Ed. 2d 211 (1998).

Subchapter II. Prohibited Acts of Discrimination.

§ 1-2511. Equal opportunities.

Damages.

Plaintiff was entitled to recover compensatory damages in the amount of $10,000 for humiliation, embarrassment, and emotional pain and suffering resulting from doctor's refusal to treat her during her pregnancy because she was deaf. Sumes v. Andres, 938 F. Supp. 9 (D.D.C. 1996).

Doctor's services.

Doctor's sole reason for refusing to treat plaintiff during her pregnancy was because she was deaf; doctor could not have known of plaintiff's medical history without examining or questioning her, and thus his claim that he refused to treat her because he believed she was suffering from a condition he was not qualified to treat was merely pretextual. Sumes v. Andres, 938 F. Supp. 9 (D.D.C. 1996).

Hostile environment.

Twelve-day period that health club employee stayed on job before being fired for offensive remark did not create a "hostile environment" justifying damages for co-workers or club member who heard remark, where employer took reasonable steps, within 24 hours, to investigate and require apologies by employee; moreover, environment was at all times "non-hostile" and sole incident was neither threatening nor targeted at plaintiffs. Hodges v. Washington Tennis Serv. Int'l, 870 F. Supp. 386 (D.D.C. 1994).

Peremptory challenges.

District of Columbia Human Rights Act does not curtail or abridge rights of litigating parties to exercise peremptory challenges based on age in the jury selection process. Evans v. United States, App. D.C., 682 A.2d 644 (1996).

§ 1-2512. Unlawful discriminatory practices in employment.

Evidence.

—Age discrimination.

Employer's performance evaluations of other senior vice presidents did not provide evidence to support plaintiff's claim of wrongful age-based termination. Paquin v. FNMA, 12 F. Supp. 2d 15 (D.D.C. 1998), aff'd, 194 F.3d 174 (D.C. Cir. 1999).

Evidence that an employer favored other

racial minorities over Vietnamese did constitute some evidence of unlawful discrimination. Hung Van Dang v. Inn at Foggy Bottom, 85 F. Supp. 2d 39 (D.D.C. 2000).

Plaintiff failed to establish a prima facie case of age discrimination where she was unable to show that her position remained open and was filled by a younger person; moreover, employer articulated a legitimate non-discriminatory reason for plaintiff's termination, and plaintiff failed to show by a preponderance of evidence that such reason was pretextual and that age was the determining factor in employer's decision. Goss v. George Washington Univ., 942 F. Supp. 659 (D.D.C. 1996).

—Gender discrimination.

Employee met her burden of showing, by a preponderance of evidence, that stated justification for her termination was a pretext designed to conceal sex discrimination, where evidence revealed that employer's search for employee's replacement took place prior to her receiving written notice of her termination purportedly due to financial reasons. UMW of Am. v. Moore, App. D.C., 717 A.2d 332 (1998).

Where plaintiff alleged that her employer assigned significant job responsibilities to a male colleague, which purportedly placed him in a better position for increased compensation and further advancement, she alleged a materially adverse employment action sufficient to state a claim for disparate treatment under this chapter. Carpenter v. FNMA, 949 F. Supp. 26 (D.D.C. 1996).

Summary judgment for employer was proper where employee failed to establish a prima facie case of sex discrimination; employee's conclusory allegations of discrimination were insufficient to establish a genuine issue of material fact or to defeat entry of summary judgment. O'Donnell v. Associated Gen. Contractors of Am., Inc., App. D.C., 645 A.2d 1084 (1994).

—Handicap discrimination.

Plaintiff failed to establish a prima facie case of handicap discrimination by her employer where she applied for and received two forms of disability compensation effective six months before her termination; these disability determinations rendered plaintiff unqualified for the position which she held, either as it was or with a reasonable accommodation by her employer. Whitbeck v. Vital Signs, Inc., 934 F. Supp. 9 (D.D.C. 1996).

—Insufficient.

Employer had every right to criticize employee's failure to meet its legitimate business expectations, and evidence of plaintiff's production, as compared to that of a co-worker of a different race and gender, amply supported employer's contention that criticism of plaintiff was justified and business-related. Beckwith v. Career Blazers Learning Ctr., 946 F. Supp. 1035 (D.D.C. 1996).

Defendant automobile dealership was entitled to summary judgment on a claim that the discharge of the plaintiff, who was the retail used car manager, was based on racial discrimination where the dealership asserted that the plaintiff was discharged because he failed to obtain a customer's signature on an important assumption-of-liability form and then forged the customer's signature on such a form; defendant therefore had a legitimate, nondiscriminatory, nonretaliatory reason for its decision to terminate plaintiff's employment. Johnson v. Curtis Dworken Chevrolet, 242 Bankr. 773 (Bankr. D.D.C. 1999).

—Personal appearance.

Evidence easily supported finding of no discrimination based on personal appearance where jury reasonably could have found that nothing employer did adversely affected plaintiff's status as an employee, since his job was not in jeopardy and since he had a reasonable opportunity to continue working for his employer, at a comparable location, without cutting off his ponytail. Turcios v. United States Servs. Indus., App. D.C., 680 A.2d 1023 (1996).

Protections of this section did not encompass transsexuality, and thus employee failed to state a claim for discrimination on basis of "sex" or "sexual orientation"; read liberally, however, complaint was sufficient to state a claim that employee was discharged because of her personal appearance. Underwood v. Archer Management Servs., 857 F. Supp. 96 (D.D.C. 1994).

The plaintiff failed to make out a prima facie case of discrimination based on personal appearance where only one person alleged to have been involved in the decision to terminate the plaintiff was alleged to have made statements about the plaintiff's personal appearance, the comments alleged to have been made were facially complimentary, and there was no evidence that the comments were made snidely or implied discriminatory animus. McManus v. MCI Communications Corp., App. D.C., 748 A.2d 949 (2000).

—Racial discrimination.

Claims of race discrimination in employment brought under subsection (a) of this section are analyzed in fashion similar to claims brought under Title VII of the Civil Rights Act of 1964 (42 U.S.C.S. § 2000(e) et seq.) Hung Van Dang v. Inn at Foggy Bottom, 85 F. Supp. 2d 39 (D.D.C. 2000).

Employer was entitled to summary judgment where employee failed to rebut employer's legitimate, nondiscriminatory reasons for its decisions not to promote her and to eliminate her position, and where employee pointed to no evidence that race played any role in those decisions. Carney v. American Univ., 151 F.3d 1090 (D.C. Cir. 1998).

Plaintiff failed to make out a prima facie case of racial discrimination where her salary, benefits, and job grade remained the same and her job responsibilities were actually enlarged, and

where she failed to show that a similarly situated non-minority employee was given her position; moreover, even if plaintiff had made out a prima facie case, she failed to show that her employer acted with discriminatory intent. King v. Georgetown Univ. Hosp., 9 F. Supp. 2d 4 (D.D.C. 1998).

The alleged lack of courtesy by plaintiff's supervisor, her inquiry into his national origin, and her direction that plaintiff speak English in the workplace did not facially reflect racial animus and were not direct evidence of racial discrimination. Hung Van Dang v. Inn at Foggy Bottom, 85 F. Supp. 2d 39 (D.D.C. 2000).

The plaintiff, who was an African-American woman, failed to make out a prima facie case of racial discrimination leading to her termination where the first person hired to perform her duties was another African-American woman and, although she left the job after several months, there was no proffered evidence that she had not been qualified for the job, that her leaving was not voluntary, or that her hiring had been a subterfuge to create, temporarily, an appearance of a nondiscriminatory African-American successor before replacing the plaintiff with an employee outside her protected class. McManus v. MCI Communications Corp., App. D.C., 748 A.2d 949 (2000).

There was no evidence of race discrimination where nothing in the record indicated that an employer filled plaintiff's position with another employee or accepted applications for her position after she was terminated, and where there was no persuasive evidence that other similarly situated employees found to have committed gross misconduct were dealt with more favorably than the plaintiff. Blackman v. Visiting Nurses Ass'n, App. D.C., 694 A.2d 865 (1997).

Where plaintiff had not pointed to any evidence from which a jury could find the defendant's budget crisis, downsizing, and consequent termination of her position were pretexts for racial discrimination, summary judgment was appropriate. Carney v. American Univ., 960 F. Supp. 436 (D.D.C. 1997).

—Retaliation.

To make out a prima facie case of retaliation, plaintiff must establish: (1) she was engaged in a protected activity, or opposed practices made unlawful by this chapter; (2) employer took an adverse personnel action against her; and (3) a causal connection existed between the two. Howard Univ. v. Green, App. D.C., 652 A.2d 41 (1994).

Employee failed to make out a prima facie case of retaliation where evidence clearly showed that she failed to lodge an explicit complaint of sexual orientation discrimination with her employer; evidence of mere rumors, regardless of how pervasive and long-established, and a taped conversation vaguely referencing such rumors, did not provide a sufficient basis on which jury could reasonably conclude that otherwise work-related complaints rose to the level of activity protected by this chapter. Howard Univ. v. Green, App. D.C., 652 A.2d 41 (1994).

—Sexual harassment.

Employee's complaints of superior's physical advances were isolated and trivial as a matter of law, and verbal advances of an allegedly sexual nature, when viewed in totality of circumstances, failed to establish a prima facie case of sexual harassment. Beckwith v. Career Blazers Learning Ctr., 946 F. Supp. 1035 (D.D.C. 1996).

Federal claims.

Because a federal employee protection plan (EPP) was not a ban on discrimination but an explicit requirement of preference on the basis of a single characteristic, proof of discrimination on any of the bases enumerated in the District's Human Rights Act was neither necessary nor sufficient for a successful EPP first-hire claim, and the one-year limitation period applicable under the human rights statutes was thus not applicable to an EPP claim. Crocker v. Piedmont Aviation, Inc., 49 F.3d 735 (D.C. Cir. 1995), cert. denied, 516 U.S. 865, 116 S. Ct. 180, 133 L. Ed. 2d 118 (1995).

Federal comparison.

Unlike the federal anti-discrimination statute the D.C. Human Rights Act defines particular types of acts as unlawful discriminatory practices and does not limit the class of liable persons to employers. Martini v. FNMA, 977 F. Supp. 464 (D.D.C. 1997).

Hostile work environment.

Evidence was sufficient to support verdict for plaintiff on claim of age discrimination based on hostile work environment, where age-related comments were unwelcome and were sufficiently severe and pervasive to alter the conditions of his working environment. Daka, Inc. v. Breiner, App. D.C., 711 A.2d 86 (1998).

Employers failed to establish that their ad hoc responses to plaintiff's complaints were part of a system of measures calculated to encourage victims of harassment to come forward, and therefore statements regarding racial discrimination in company manual did not preclude plaintiff's claims of hostile environment. Hunter v. Ark Restaurants Corp., 3 F. Supp. 2d 9 (D.D.C. 1998).

Given frequency and pervasiveness of supervisor's alleged harassment, a reasonable jury could infer discrimination based on plaintiff's race, and plaintiff satisfied her burden in establishing a hostile work environment which contributed to her constructive discharge. Villines v. United Bhd. of Carpenters & Joiners, 999 F. Supp. 97 (D.D.C. 1998).

Twelve-day period that health club employee stayed on job before being fired for offensive remark did not create a "hostile environment" justifying damages for co-workers or club member who heard remark, where employer took

reasonable steps, within 24 hours, to investigate and require apologies by employee; moreover, environment was at all times "non-hostile" and sole incident was neither threatening nor targeted at plaintiffs. Hodges v. Washington Tennis Serv. Int'l, 870 F. Supp. 386 (D.D.C. 1994).

Although under the totality of circumstances, employee made a sufficient prima facie showing that employers tolerated a sexually hostile and abusive work environment, her claim was time-barred by the one year statute of limitations governing claims under this chapter. Norman v. Gannett Co., 852 F. Supp. 46 (D.D.C. 1994).

Jurisdiction.

Because the district court's jurisdiction over plaintiff's claims under the District's Human Rights Act was the discretionary exercise of pendant jurisdiction, the dismissal of plaintiff's federal claims deprived the court of jurisdiction over their municipal law claims. Johnson v. Greater Southeast Community Hosp. Corp., 903 F. Supp. 140 (D.D.C. 1995).

Plaintiffs were able to bring Human Rights Act claim to federal court only because it was pendent to their federal claims, and therefore it would be within district court's discretion whether or not to dismiss claim if it dismissed the federal claims. Fair Emp. Council of Greater Wash., Inc. v. BMC Mktg. Corp., 28 F.3d 1268 (D.C. Cir. 1994).

Proof of discrimination.

There are three steps in proving discrimination under the District of Columbia Human Rights Act: (1) the plaintiff must establish a prima facie case of discrimination; (2) if the plaintiff is able to make out a prima facie case, the burden then shifts to the employer to articulate a legitimate, nondiscriminatory reason for the allegedly discriminatory or retaliatory adverse employment action; and (3) if the plaintiff successfully shows that a discriminatory or retaliatory motive played a motivating part in an adverse employment action, the employer can nevertheless avoid liability by demonstrating by a preponderance of the evidence that it would still have taken the same action absent discriminatory or retaliatory motive. Johnson v. Curtis Dworken Chevrolet, 242 Bankr. 773 (Bankr. D.D.C. 1999).

Reasonable accommodation.

A reasonable jury could have found the requested accommodation of a motorized cart reasonable where the plaintiff's doctor stated that she could work with assistance. Whitbeck v. Vital Signs, Inc., 116 F.3d 588 (D.C. Cir. 1997).

Plaintiff's receipt of Social Security and private disability benefits was not inconsistent with her claim that she could perform her job with reasonable accommodation, since the inquiry into an individual's eligibility for disability benefits focuses on that person's ability to do work generally available and does not address the possible effect of accommodation on ability to work. Whitbeck v. Vital Signs, Inc., 116 F.3d 588 (D.C. Cir. 1997).

Employer was not required, even if a reasonable accommodation had been requested by plaintiff, to create a new part-time position or to modify in the manner requested the duties of plaintiff's sales representative position. Whitbeck v. Vital Signs, Inc., 934 F. Supp. 9 (D.D.C. 1996).

Standing.

Individual gender discrimination testers, as well as the Fair Employment Council, had standing to bring claims for alleged violations of this chapter. Molovinsky v. Fair Emp. Council of Greater Wash., Inc., App. D.C., 683 A.2d 142 (1996).

Supervisors.

Plaintiff's supervisor could not be held liable in his individual capacity for violating provisions of this chapter. Hunter v. Ark Restaurants Corp., 3 F. Supp. 2d 9 (D.D.C. 1998).

The fact that the plaintiff's supervisor attended meetings with an officer of the organization to discuss plaintiff's altered medical leave form and the discrepancies surrounding her leave was insufficient, in and of itself, to create a causal link between the supervisor's alleged discriminatory animus and the officer's eventual decision to terminate the plaintiff, especially when that officer stated without contradiction that the decision to terminate was hers alone. Blackman v. Visiting Nurses Ass'n, App. D.C., 694 A.2d 865 (1997).

Employer's prompt and effective remedial actions were sufficient to negate any potential liability for sexual harassment, even assuming that the supervisor's actions could be imputed to employer. Gregg v. Hay-Adams Hotel, 942 F. Supp. 1 (D.D.C. 1996).

Cited in Mungin v. Katten Muchin & Zavis, 116 F.3d 1549 (D.C. Cir. 1997); Willoughby v. Potomac Elec. Power Co., 100 F.3d 999 (D.C. Cir. 1996), cert. denied, 520 U.S. 1197, 117 S. Ct. 1553, 137 L. Ed. 2d 701 (1997).

§ 1-2515. Unlawful discriminatory practices in real estate transactions.

Evidence.

—Sufficient.

In an action in which the plaintiff alleged that the defendants discriminated against him when he applied for housing because of his sexual orientation and his medical disability, the defendants were not entitled to summary

judgment where the plaintiff advanced evidence suggesting that the defendants' proffered reasons for rejecting the plaintiff as a tenant were pretext, and also established that material disputed facts existed which could not be resolved on summary judgment. Neithamer v. Brenneman Property Servs., 81 F. Supp. 2d 1 (D.D.C. 1999).

Repairs.

Building manager violated Human Rights Act by restricting or impeding repairs to tenant's apartment on the basis of his physical handicap, which was AIDS, and manager's reliance on statutory "business necessity" exception was not justified by assertion that a plumbing contractor was afraid to enter tenant's apartment. Joel Truitt Management, Inc. v. District of Columbia Comm'n on Human Rights, App. D.C., 646 A.2d 1007 (1994).

§ 1-2519. Unlawful discriminatory practices in public accommodations.

(a) *General.* — It shall be an unlawful discriminatory practice to do any of the following acts, wholly or partially for a discriminatory reason based on the race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, disability, matriculation, political affiliation, source of income, or place of residence or business of any individual:

(1) To deny, directly or indirectly, any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodations;

(2) To print, circulate, post, or mail, or otherwise cause, directly or indirectly, to be published a statement, advertisement, or sign which indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation will be unlawfully refused, withheld from or denied an individual; or that an individual's patronage of, or presence at, a place of public accommodation is objectional, unwelcome, unacceptable, or undesirable.

(b) *Subterfuge.* — It is further unlawful to do any of the above said acts for any reason that would not have been asserted but for, wholly or partially, a discriminatory reason based on the race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, disability, matriculation, political affiliation, source of income, or place of residence or business of any individual. (1973 Ed., § 6-2241; Dec. 13, 1977, D.C. Law 2-38, title II, § 231, 24 DCR 6038; June 28, 1994, D.C. Law 10-129, § 2(e), 41 DCR 2583; Apr. 20, 1999, D.C. Law 12-242, § 2(f), 46 DCR 952; Apr. 12, 2000, D.C. Law 13-91, § 133, 47 DCR 520.)

Effect of amendments. — D.C. Law 13-91 validated a previously made technical correction in (a).

Legislative history of Law 13-91. — Law 13-91, the "Technical Amendments Act of 1999," was introduced in Council and assigned Bill No. 13-435. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

Federal comparison.

Requirements of this section mirror those of the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. Paralyzed Veterans of Am. v. Ellerbe Becket Architects & Eng'rs, P.C., 950 F. Supp. 393 (D.D.C. 1996), aff'd sub nom. Paralyzed Veterans of Am. v. D.C. Arena L.P., 117 F.3d 579 (D.C. Cir. 1997), cert. denied, 523 U.S. 1003, 118 S. Ct. 1184, 140 L. Ed. 2d 315 (1998).

Wheelchair accessibility.

Arena design failed to comply with requirements of this section regarding accessible seating for wheelchair users; although seating bowl

complied with integration element required by Department of Justice standards, it failed to comply with sightline and dispersal elements. Paralyzed Veterans of Am. v. Ellerbe Becket Architects & Eng'rs, P.C., 950 F. Supp. 393 (D.D.C. 1996), aff'd sub nom. Paralyzed Veterans of Am. v. D.C. Arena L.P., 117 F.3d 579 (D.C. Cir. 1997), cert. denied, 523 U.S. 1003, 118 S. Ct. 1184, 140 L. Ed. 2d 315 (1998).

Cited in Paralyzed Veterans of Am. v. Ellerbe Becket Architects & Eng'rs, P.C., 950 F. Supp. 389 (D.D.C. 1996), recons. denied, 950 F. Supp. 393 (D.D.C. 1996), aff'd, 117 F.3d 579 (D.C. Cir. 1997), cert. denied, 523 U.S. 1003, 118 S. Ct. 1184, 140 L. Ed. 2d 315 (1998).

§ 1-2522. Posting of notice.

Cited in East v. Graphic Arts Indus. Joint Pension Trust, App. D.C., 718 A.2d 153 (1998); East v. Graphic Arts Indus. Joint Pension Trust, 107 F.3d 911 (D.C. Cir. 1997).

§ 1-2525. Coercion or retaliation.

Election of remedies.

Where plaintiff filed a complaint with the Office of Human Rights, where the matter was fully investigated and the agency reached a conclusion on the merits, and where the plaintiff never withdrew his complaint, the plaintiff was barred from filing a lawsuit alleging violations of the Human Rights Act. Hogue v. Roach, 967 F. Supp. 7 (D.D.C. 1997).

Federal comparison.

The elements of a retaliation claim under this chapter are the same as under federal employment discrimination laws. Hunter v. Ark Restaurants Corp., 3 F. Supp. 2d 9 (D.D.C. 1998).

District of Columbia law, pursuant to this chapter, concurs with federal law, consistently employing and affirming three-part test set forth in McDonnell-Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973). Paquin v. FNMA, 935 F. Supp. 26 (D.D.C. 1996).

Retaliation.

—Not shown.

Employee failed to carry her burden of proving causation on claim of retaliation for reporting sexual harassment; nor did her allegations of pretext counter employer's legitimate reasons for issuing written warnings to her. Gregg v. Hay-Adams Hotel, 942 F. Supp. 1 (D.D.C. 1996).

Employer did not unlawfully retaliate where actual date of plaintiff's termination was more than a month before he filed a claim with the EEOC; nor did employer's withdrawal of separation package and refusal to further negotiate constitute retaliation. Paquin v. FNMA, 935 F. Supp. 26 (D.D.C. 1996).

—Prima facie case.

Plaintiff did not present a prima facie case of retaliation where he failed to allege facts indicating that he suffered a demonstrably adverse employment consequence from any of employer's allegedly retaliatory actions. Hunter v. Ark Restaurants Corp., 3 F. Supp. 2d 9 (D.D.C. 1998).

Plaintiff met her prima facie burden of establishing that her employer retaliated against her for filing informal complaints with management concerning supervisor's alleged racial harassment; a reasonable jury could infer a causal link between her filing of complaints and employer's alleged adverse action against her. Villines v. United Bhd. of Carpenters & Joiners, 999 F. Supp. 97 (D.D.C. 1998).

Plaintiff failed to make out a prima facie case of retaliation for participating in a march, where his participation was not related to terms and conditions of his employment; march was not a "statutorily protected activity," as it was not a protest against unlawful discriminatory employment conditions he was experiencing, but rather a day of national atonement by black men. Beckwith v. Career Blazers Learning Ctr., 946 F. Supp. 1035 (D.D.C. 1996).

Fact that plaintiff filed lawsuit under this chapter did not allow him to remove property from his employer's premises after hours without challenge, nor did it license him to violate company dress codes and reporting requirements, or to act in an insubordinate manner, and his allegation that others were permitted laxity in dress and reporting for work on time was not supported by evidence. Beckwith v. Career Blazers Learning Ctr., 946 F. Supp. 1035 (D.D.C. 1996).

—Summary judgment.

Summary judgment was not granted to the defendants in an action in which the plaintiff alleged that the defendants discriminated against him when he applied for housing because of his sexual orientation and his medical disability and that, when he asked if discrimination played a factor in the decision to deny his application, the defendant shouted at him, "If you try to sue me, I have a pack of blood-sucking lawyers who will place countersuits against you for libel and drive you into the ground," since the material fact of what transpired during the conversation was in dispute. Neithamer v. Brenneman Property Servs., 81 F. Supp. 2d 1 (D.D.C. 1999).

Cited in Johnson v. Curtis Dworken Chevrolet, 242 Bankr. 773 (Bankr. D.D.C. 1999).

§ 1-2526. Aiding or abetting.

Firm partners.

Partners of law firm were properly joined as defendants in claims brought under this chapter, because if firm unlawfully discriminated against plaintiff, as alleged, then partners who carried out allegedly discriminatory acts aided and abetted employer's discrimination, in violation of this section. Wallace v. Skadden, Arps, Slate, Meagher & Flom, App. D.C., 715 A.2d 873 (1998).

§ 1-2532. Discriminatory effects of practices.

Intent.

It is not necessary to show discriminatory intent if the practice at issue has a discriminatory effect. Ramirez v. District of Columbia, F. Supp. 2d (March 27, 2000).

Subchapter III. Procedures.

§ 1-2541. Powers of Office and Commission; annual report by Mayor.

Proper forum.

No justification is discernible for limiting disability claims for emotional distress to Department of Employment Services (DOES) processing; other like claims based on sexual harassment can proceed directly to court, and DOES cannot offer special expertise making it a more suitable forum. Estate of Underwood v. National Credit Union Admin., App. D.C., 665 A.2d 621 (1995).

§ 1-2543. Establishment of procedure for complaints filed against District government.

Exhaustion of administrative remedies.

Former District of Columbia firefighter was not entitled to compensatory damages or attorney's fees, since D.C. government employees, unlike non-government employees, are required to exhaust administrative remedies available to them under this chapter. Kennedy v. District of Columbia, App. D.C., 654 A.2d 847 (1995).

This chapter does not generally require a plaintiff to exhaust his administrative remedies, although there is a statutory exhaustion requirement for D.C. government employees. Ramirez v. District of Columbia, F. Supp. 2d (March 27, 2000).

§ 1-2544. Filing of complaints and mediation.

Limitations.

—Applicability.

Because a federal employee protection plan (EPP) was not a ban on discrimination but an explicit requirement of preference on the basis of a single characteristic, proof of discrimination on any of the bases enumerated in the District's Human Rights Act was neither necessary nor sufficient for a successful EPP first-hire claim, and the one-year limitation period applicable under this chapter was thus not applicable to an EPP claim. Crocker v. Piedmont Aviation, Inc., 49 F.3d 735 (D.C. Cir. 1995), cert. denied, 516 U.S. 865, 116 S. Ct. 180, 133 L. Ed. 2d 118 (1995).

—Claim barred.

Plaintiff failed to establish a viable claim based on a continuing violation theory, where she failed to establish that any discriminatory acts occurred within the one year limitations period for claims brought pursuant to this chapter. Lempres v. CBS, Inc., 916 F. Supp. 15 (D.D.C. 1996).

Comments by a supervisor that he was a victim of a sexual harassment claim and that the plaintiff had been transferred after a confrontation with an employee over the sexual harassment policy were not made in the pres-

ence of the plaintiff and did not constitute discrimination or retaliation against the plaintiff; furthermore, the claim was time barred. Nelson-Cole v. Borg-Warner Sec. Corp., 881 F. Supp. 71 (D.D.C. 1995).

Constructive discharge action was barred by one-year statute of limitations where, thirteen months prior to filing suit, employee submitted memorandum to employer announcing his decision to retire due to employer's discriminatory conduct toward him, and where employee failed to create a genuine issue of material fact tending to show that he decided to retire any time subsequent to submission of memorandum. Hancock v. Bureau of Nat'l Affairs, Inc., App. D.C., 645 A.2d 588 (1994).

Although under totality of circumstances, employee made a sufficient prima facie showing that employers tolerated a sexually hostile and abusive work environment, her claim was time-barred by one year statute of limitations governing claims under this chapter. Norman v. Gannett Co., 852 F. Supp. 46 (D.D.C. 1994).

—Tolling.

Doctrine of equitable tolling was not available to plaintiff who failed to file her action in court within a reasonable time after she obtained, or by due diligence could have obtained, information necessary to file her complaint, notwithstanding employer's failure to comply with notice-posting requirements of this chapter. East v. Graphic Arts Indus. Joint Pension Trust, App. D.C., 718 A.2d 153 (1998).

Where plaintiff alleged only one discriminatory act, the failure to close on a purchase agreement contract, he could not argue that seller's action constituted a continuing violation that tolled the statute of limitations. Molovinsky v. Monterey Coop., App. D.C., 689 A.2d 531 (1996).

Cited in Villines v. United Bhd. of Carpenters & Joiners, 999 F. Supp. 97 (D.D.C. 1998); Willoughby v. Potomac Elec. Power Co., 100 F.3d 999 (D.C. Cir. 1996), cert. denied, 520 U.S. 1197, 117 S. Ct. 1553, 137 L. Ed. 2d 701 (1997); Webb v. District of Columbia, 864 F. Supp. 175 (D.D.C. 1994); Paul v. Howard Univ., App. D.C., 754 A.2d 297 (2000).

§ 1-2545. Investigation.

Due process.

Plaintiff's due process interests were not violated when Office of Human Rights, after investigation, decided not to pursue her discrimination claim; District's statutory scheme contained adequate due process safeguards, and there was no indication that those provisions were not followed. Long v. District of Columbia, 3 F. Supp. 2d 1477 (D.D.C. 1998), aff'd, 194 F.3d 174 (D.C. Cir. 1999).

§ 1-2546. Conciliation.

(a) If, in the judgment of the Office, the circumstances so warrant, it may, at any time after the filing of the complaint, endeavor to eliminate such unlawful discriminatory practice by conference, conciliation, or persuasion.

(b) If the Office determines that there exists probable cause to believe that the respondent has engaged or is engaging in an unlawful practice, the parties shall attempt to conciliate the complaint. The Office shall grant the parties up to 60 days within which to reach a conciliation agreement. If the parties fail to execute a conciliation agreement within the time allowed by the Office, the Office shall certify the case to the Commission for a public hearing. The terms of a conciliation agreement may require a respondent to refrain, in the future, from committing specified discriminatory practices, and to take such affirmative action as, in the judgment of the Office, will effectuate the purposes of this chapter; and may include consent, by the respondent, to the entry in court of a consent decree, embodying the terms of the conciliation agreement.

(c) Upon agreement of all parties to a complaint and upon notice to all parties thereto, a conciliation agreement shall be deemed an order of the Commission, and shall be enforceable as such. Except for the terms of the conciliation agreement, employees of the Office shall not make public, without the written consent of the respondent, information concerning conciliation efforts.

(d) Repealed.

(e) The Office shall make public, unless the complainant and respondent agree otherwise and the Director determines that disclosure is not required to further the purpose of this chapter, conciliation agreements alleging unlawful discrimination in residential real estate transactions or violations of the FHA. (1973 Ed., § 6-2286; Dec. 13, 1977, D.C. Law 2-38, title III, § 306, 24 DCR 6038; Apr. 9, 1997, D.C. Law 11-198, § 402, 43 DCR 4569; Oct. 23, 1997, D.C. Law 12-39, § 2(b), 44 DCR 4856; Apr. 20, 1999, D.C. Law 12-242, § 2(j), 46 DCR 952; Apr. 12, 2000, D.C. Law 13-91, § 159(c), 47 DCR 520.)

Effect of amendments. — D.C. Law 13-91 validated a previously made technical correction to D.C. Law 12-242.

Legislative history of Law 13-91. — Law 13-91, the "Technical Amendments Act of 1999," was introduced in Council and assigned Bill No. 13-435. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

§ 1-2553. Decision and order.

Attorney's fees.

A former governmental employee who had failed to exhaust the administrative remedies available to him was not entitled to compensatory damages or attorney's fees under the Human Rights Act on his claim for emotional trauma arising out of his employer's alleged discriminatory treatment. Kennedy v. District of Columbia, App. D.C., 654 A.2d 847 (1995).

Where the work done by an attorney was reasonably done in pursuit of the ultimate result, where she prevailed on one of the five counts, and where the court did not determine that the other counts were frivolous or raised in bad faith, the discretion of the court in awarding fees should have been exercised in light of the relationship between the fees and the overall success, without penalizing the attorney for raising and failing to prevail on an alternative theory of recovery. Goos v. National Ass'n of Realtors, 68 F.3d 1380 (D.C. Cir. 1995).

As prevailing parties in a default judgment against their employer, employees were entitled to attorney's fees and costs under this chapter, and employer's request for an evidentiary hearing on fees was denied as unnecessary. Shepherd v. ABC, 862 F. Supp. 505 (D.D.C. 1994).

Back pay.

Employer showed by a preponderance of the evidence that employee would have been fired in general layoff five months after his discharge, and that he was not likely to be one of the post-layoff re-hires; therefore, employee was not entitled to back pay after date of layoff. Shepherd v. ABC, 862 F. Supp. 486 (D.D.C. 1994).

Emotional distress.

Because employees' claims did not rise to a trauma-inducing level, their claims for damages for post-traumatic stress disorder were denied, although they were entitled to awards of $75,000 and $100,000, respectively, for emotional distress. Shepherd v. ABC, 862 F. Supp. 486 (D.D.C. 1994).

Exhaustion of administrative remedies.

Former District of Columbia firefighter was not entitled to compensatory damages or attorney's fees, since D.C. government employees, unlike non-government employees, were required to exhaust administrative remedies available to them under this chapter. Kennedy v. District of Columbia, App. D.C., 654 A.2d 847 (1995).

Punitive damages.

Plaintiffs were entitled to punitive damages of $50,000 and $75,000, respectively, where they were continually harassed in their jobs and treated worse than non-black employees, and where defendant's behavior amounted to willful and egregious conduct. Shepherd v. ABC, 862 F. Supp. 486 (D.D.C. 1994).

Reinstatement.

Employee was not entitled to reinstatement to a higher position that survived a general layoff five months after his discharge, where employer showed by a preponderance of evidence that, even if he had lasted a full year, employee was not likely to be promoted to the higher position — not because of racism but because he was a poor candidate for promotion. Shepherd v. ABC, 862 F. Supp. 486 (D.D.C. 1994).

§ 1-2556. Private cause of action.

Arbitration.

There is no provision in this chapter that precludes an employer and employee from voluntarily agreeing to arbitrate employment discrimination claims. Benefits Communication Corp. v. Klieforth, App. D.C., 642 A.2d 1299 (1994).

Attorney's fees.

Where the work done by an attorney was reasonably done in pursuit of the ultimate result, where she prevailed on one of the five counts, and where the court did not determine that the other counts were frivolous or raised in bad faith, the discretion of the court in awarding fees should have been exercised in light of the relationship between the fees and the overall success, without penalizing the attorney for raising and failing to prevail on an alternative theory of recovery. Goos v. National Ass'n of Realtors, 68 F.3d 1380 (D.C. Cir. 1995).

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Damages.

—Compensatory.

Trial court did not err in upholding compensatory damages award of $300,000 in a case involving termination of employee based on sex discrimination; emotional distress could properly be considered, and there was ample evidence to support award for employee's lost income. UMW of Am. v. Moore, App. D.C., 717 A.2d 332 (1998).

—Punitive.

Evidence was insufficient to show that employer's conduct was accompanied by requisite degree of malice or evil motive to justify an award of punitive damages. UMW of Am. v. Moore, App. D.C., 717 A.2d 332 (1998).

Punitive damages are available in all discrimination cases under this chapter, subject only to general principles governing any award of punitive damages. Daka, Inc. v. Breiner, App. D.C., 711 A.2d 86 (1998).

Allegations in support of punitive damages were sufficient to defeat summary judgment, where plaintiff alleged that her supervisor knew that she was pregnant, knew that her absences were excused, lied about his reasons for terminating her, and that supervisor's conduct was ratified by defendant company. Pendarvis v. Xerox Corp., 3 F. Supp. 2d 53 (D.D.C. 1998).

Plaintiffs were entitled to punitive damages of $50,000 and $75,000, respectively, where they were continually harassed in their jobs and treated worse than non-black employees, and where defendant's behavior amounted to willful and egregious conduct. Shepherd v. ABC, 862 F. Supp. 486 (D.D.C. 1994).

Election of remedies.

Where plaintiff filed a complaint with the Office of Human Rights, where the matter was fully investigated and the agency reached a conclusion on the merits, and where the plaintiff never withdrew his complaint, the plaintiff was barred from filing a lawsuit alleging violations of the Human Rights Act. Hogue v. Roach, 967 F. Supp. 7 (D.D.C. 1997).

Emotional distress.

Because employees' claims did not rise to a trauma-inducing level, their claims for damages for post-traumatic stress disorder were denied, although they were entitled to awards of $75,000 and $100,000, respectively, for emotional distress. Shepherd v. ABC, 862 F. Supp. 486 (D.D.C. 1994).

Preemption.

The worker's compensation statute cannot preempt the trial court's jurisdiction over a statutory claim of on-the-job discrimination, including sexual harassment, under the D.C. Human Rights Act. Estate of Underwood v. National Credit Union Admin., App. D.C., 665 A.2d 621 (1995).

Reinstatement.

Employee was not entitled to reinstatement to a higher position that survived a general layoff five months after his discharge, where employer showed by a preponderance of evidence that, even if he had lasted a full year, employee was not likely to be promoted to the higher position — not because of racism but because he was a poor candidate for promotion. Shepherd v. ABC, 862 F. Supp. 486 (D.D.C. 1994).

Standing.

Individual gender discrimination testers, as well as the Fair Employment Council, had standing to bring claims for alleged violations of this chapter. Molovinsky v. Fair Emp. Council of Greater Wash., Inc., App. D.C., 683 A.2d 142 (1996).

A corporation which leased restaurant premises from the defendant property owner had

standing to to sue the property owner for damages caused by the property owner's discrimination against oriental persons to whom the corporation sought to assign its lease. Executive Sandwich Shoppe, Inc. v. Carr Realty Corp., App. D.C., 749 A.2d 724 (2000).

Standing under the District of Columbia Human Rights Act is not limited to the intended target of discrimination; any party injured as a result of such discrimination has standing to sue under this chapter. Executive Sandwich Shoppe, Inc. v. Carr Realty Corp., App. D.C., 749 A.2d 724 (2000).

Cited in Martini v. FNMA, 977 F. Supp. 482 (D.D.C. 1997); Whitbeck v. Vital Signs, Inc., 934 F. Supp. 9 (D.D.C. 1996).

Subchapter IV. Office of Human Rights.

§ 1-2571. Establishment of the Office of Human Rights.

(a) Pursuant to § 1-227(b), there is hereby established, in the Executive Branch of the government of the District of Columbia, an Office of Human Rights under the supervision of a Director, who shall carry out the functions and authorities assigned to the Office. The Office of Human Rights ("Office") is established as a separate agency as of October 1, 1999.

(b) The Director shall have full authority over the Office and all functions and personnel assigned thereto, including the power to redelegate to other employees and officials of the Office such powers and authority as in the judgment of the Director are warranted in the interests of efficiency and sound administration. (Oct. 20, 1999, D.C. Law 13-38, § 202, 46 DCR 6373.)

Emergency legislation. — For temporary addition of subchapter IV, which consists of §§ 1-2571 through 1-2576, see §§ 202-207 of the Service Improvement and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

Legislative history of Law 13-38. — Law 13-38, the "Service Improvement and Fiscal Year 2000 Budget Support Act of 1999," was introduced in Council and assigned Bill No. 13-161. The Bill was adopted on first, amended first, and second readings on May 11, 1999, June 8, 1999, and June 22, 1999, respectively. Signed by the Mayor on July 8, 1999, it was assigned Act No. 13-111 and transmitted to both Houses of Congress for its review. D.C. Law 13-38 became effective on October 20, 1999.

Office of Human Rights Establishment Act of 1999. — Section 201 of D.C. Law 13-38 provides that Subtitle A of Title II of the act may be cited as the "Office of Human Rights Establishment Act of 1999."

§ 1-2572. Purpose.

The purpose of the Office is to secure an end to unlawful discrimination in employment, housing, public accommodations, and educational institutions for any reason other than that of individual merit. The Office shall seek to eradicate discrimination on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, physical handicap, source of income, and place of residence or busines. (Oct. 20, 1999, D.C. Law 13-38, § 203, 46 DCR 6373.)

Emergency legislation. — For temporary addition of subchapter IV, see note to § 1-2571.

Legislative history of Law 13-38. — See note to § 1-2571.

§ 1-2573. Functions.

The functions of the Office shall be to:

(1) Educate the public, including District residents and employers, about the Human Rights Act of 1977 (D.C. Code, § 1-2501 et seq.) ("Human Rights Act");

(2) Undertake investigations and public hearings on racial, religious, or ethnic group tensions, prejudice, intolerance, bigotry, disorder, and on any form of unlawful discrimination pursuant to the Human Rights Act;

(3) Receive, review, and investigate complaints of unlawful discrimination in employment, housing, public accommodations, or educational institutions;

(4) Receive and investigate complaints of violations of the District of Columbia Family and Medical Leave Act of 1990 (D.C. Code, § 36-1301 et seq.) and the Parental Leave Act of 1994 (D.C. Code, § 36-1601 et seq.) and take appropriate enforcement action regarding these complaints;

(5) Mediate complaints of unlawful discrimination in employment, housing, public accommodations, or educational institutions to help parties to a complaint reach a voluntary settlement;

(6) Conciliate complaints of unlawful discrimination in employment, housing, public accommodations, or educational institutions, after the Office has made a finding of probable cause to believe that an act of unlawful discrimination has occurred, to help the parties to a complaint reach a voluntary settlement;

(7) Certify a complaint to the Office of the Corporation Counsel for legal action needed, in the Director's judgment, to preserve the status quo or to prevent irreparable harm to a party to the complaint; and

(8) Forward to the Commission on Human Rights, for a hearing, decision, and order, any complaint that has resulted in a finding of probable cause by the Office. (Oct. 20, 1999, D.C. Law 13-38, § 204, 46 DCR 6373.)

Emergency legislation. — For temporary addition of subchapter IV, see note to § 1-2571.

Legislative history of Law 13-38. — See note to § 1-2571.

§ 1-2574. Transfers.

All positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available to the Department of Human Rights and Local Business Development for the human rights functions set out in Reorganization Plan No. 1 of 1989, effective Nobember 1, 1989, are hereby transferred to the Office. (Oct. 20, 1999, D.C. Law 13-38, § 205, 46 DCR 6373.)

Emergency legislation. — For temporary addition of subchapter IV, see note to § 1-2571.

Legislative history of Law 13-38. — See note to § 1-2571.

§ 1-2575. Organization.

(a) There are hereby established the following 5 primary organizational functions in the Office:

(1) The Office of the Director, which sets overall policy and performance targets for the Office, supervises and evaluates staff, administers the budget, and promotes conciliation after a determination of probable cause has been reached.

(2) Education and Research, which studies patterns of discrimination in employment, public accommodations, and educational institutions, and educates District residents, employers, community groups, and other concerned parties about the Human Rights Act and federal anti-discrimination laws in order to prevent unlawful discrimination.

(3) Intake, which counsels prospective complainants on the Office's functions and statutory responsibilities, evaluates the complainants' allegation of unlawful discrimination, and completes the forms and procedures necessary for the filing of a complaint;

(4) Mediation, which trains and oversees the activities of mediators who assist the parties to a complaint in trying to reach a voluntary settlement; and

(5) Investigations, which solicits and evaluates evidence provided by the complainant and respondent to prepare a written determination about whether there is probable cause to believe that the respondent has violated the Human Rights Act.

(b) The Director, in the performance of his or her duties and functions, is authorized to restructure the organizational components of the Office as he or she deems necessary to improve the quality of services. (Oct. 20, 1999, D.C. Law 13-38, § 206, 46 DCR 6373.)

Emergency legislation. — For temporary addition of subchapter IV, see note to § 1-2571.

Legislative history of Law 13-38. — See note to § 1-2571.

§ 1-2576. Abolishment of the Department of Human Rights and Local Business Development.

Pursuant to § 1-227(b), the Council hereby abolishes the Department of Human Rights and Local Business Development, established under Reorganization Plan No. 1 of 1989, effective November 1, 1989. The Department of Human Rights and Local Business Development is abolished as of October 1, 1999. (Oct. 20, 1999, D.C. Law 13-38, § 207, 46 DCR 6373.)

Emergency legislation. — For temporary addition of subchapter IV, see note to § 1-2571.

Legislative history of Law 13-38. — See note to § 1-2571.

CHAPTER 27. PUBLIC DEFENDER SERVICE.

§ 1-2702. Persons who may be represented; appointment of private attorneys; determination of financial eligibility.

Nonjudicial personnel.

The Public Services Agency more closely approximates an arm of the judiciary than does the Public Defender Service (PDS), whose primary responsibility and loyalty is to the persons it is authorized by statute to represent, and the refusal of the Office of Employee Appeals to read the phrase "nonjudicial personnel" of the Courts broadly enough to include PDS employees was neither plainly wrong nor unreasonable. Public Defender Serv. v. Saint-Preux, App. D.C., 691 A.2d 1160 (1997).

CHAPTER 28. SOIL AND WATER CONSERVATION.

Sec.
1-2804. Same — Composition.

§ 1-2801. Findings; declaration of policy.

Emergency legislation. — For temporary amendment of the District of Columbia Air Pollution Control Act of 1984, see § 2 of the Air Quality Regulations Emergency Amendment Act of 2000 (D.C. Act 13-471, November 7, 2000, 47 DCR 9605).

§ 1-2804. Same — Composition.

(a) The Soil and Water Conservation District, reestablished by § 1-2803.1, shall be governed by 7 members.

(b) Five members, at least 4 of whom shall be directors of appropriate agencies or departments of the District of Columbia government, shall be appointed by and serve at the pleasure of the Mayor. Two members shall be appointed by the Council of the District of Columbia upon the recommendation of the Chairman of the Council of the District of Columbia from among its members.

(c) Each member of the Water and Soil Conservation District may designate a person to serve and act in the absence of the appointed member.

(d) The members shall serve without compensation. Members shall be reimbursed for reasonable and necessary expenses incurred in the performance of their duties in implementing the provisions of this chapter. (Sept. 14, 1982, D.C. Law 4-143, § 5, 29 DCR 3118; May 23, 1986, D.C. Law 6-117, § 2, 33 DCR 2442; Oct. 9, 1987, D.C. Law 7-39, § 3(a), 34 DCR 5331; Apr. 30, 1988, D.C. Law 7-104, § 8(a), 35 DCR 147; Apr. 12, 2000, D.C. Law 13-91, § 130, 47 DCR 520.)

Effect of amendments. — D.C. Law 13-91 substituted "§ 1-2803.1" for "§ 1-2803" in (a).

Legislative history of Law 13-91. — Law 13-91, the "Technical Amendments Act of 1999," was introduced in Council and assigned Bill No. 13-435. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

CHAPTER 29. PUBLIC RECORDS MANAGEMENT.

Sec.
1-2906. Maintenance of public records.

§ 1-2906. Maintenance of public records.

(a)(1) Any record created or received by the District in the course of official business is the property of the District and, except as provided in paragraph (2) of this subsection, shall not be destroyed, sold, transferred, or disposed of in any manner.

(2)(A) A record may be destroyed, sold, transferred, or disposed of as prescribed by law, by records retention schedules, or by other authorization approved by the Committee.

(B) Any records retention schedule or procedure which is in effect on September 5, 1985, shall remain in effect until it is amended or repealed pursuant to this chapter.

(b) It shall be the responsibility of each agency to develop:

(1) Records containing adequate documentation of its organization, functions, policies, decisions, procedures, and essential transactions; and

(2) A continuing program for the economical and efficient management of its records in compliance with the instructions and directives issued by the Administrator with respect to the organization, retention, disposal, storage, photographing, and microphotographing of its records.

(c) An employee at each agency shall be designated as the records management officer of the agency, who shall develop and carry out the records management program of the agency and provide liaison with the Administrator.

(d) Any inactive public record of the District which is deemed to have continuing historical or other significance shall be transferred to the District of Columbia Archives to be properly preserved, arranged, described, and made available for reference purposes. (Sept. 5, 1985, D.C. Law 6-19, § 7, 32 DCR 3590; Apr. 12, 2000, D.C. Law 13-91, § 131, 47 DCR 520.)

Effect of amendments. — D.C. Law 13-91 deleted "pursuant to § 1-2902(d)" following "Administrator" in (b)(2).

Legislative history of Law 13-91. — Law 13-91, the "Technical Amendments Act of 1999," was introduced in Council and assigned Bill No. 13-435. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

§ 1-2907. Confidentiality safeguarded.

Cited in Salazar v. District of Columbia, 954 F. Supp. 278 (D.D.C. 1996).

CHAPTER 30. SPOUSE EQUITY.

§ 1-3003. Compliance with court orders.

When applicable.

The legislative history of subsection (d) of this section shows that the applicability of the Spouse Equity Act is restricted to former spouses whose divorce decrees were entered on or after the effective date of the Act; thus, subsection (d) prohibits the Mayor from awarding survivor annuities in compliance with pre-Act decrees. District of Columbia v. Gallagher, App. D.C., 734 A.2d 1087 (1999).