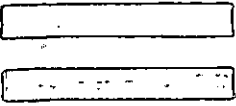


Date Printed: 02/09/2009

---

JTS Box Number: IFES\_51  
Tab Number: 21  
Document Title: DISTRICT OF COLUMBIA CODE: 1981 EDITION -  
1999 REPLACEMENT VOLUME 2A  
Document Date: 1999  
Document Country: USA  
Document Language: ENG  
IFES ID: EL00774





D.C.  
CODE

1981  
Edition

1999  
REPLACEMENT  
VOLUME  
2A

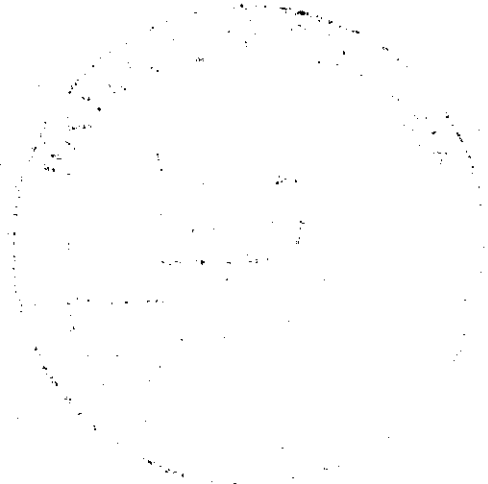
TITLE 1  
Chapters  
11-30

Administration

LEXIS  
LAW PUBLISHING

# District of Columbia Code

1981 Edition





# **DISTRICT OF COLUMBIA CODE**

**ANNOTATED**

---

**1981 EDITION**

---

**With Provision for Subsequent Pocket Parts**

---

CONTAINING THE LAWS, GENERAL AND PERMANENT IN THEIR NATURE,  
RELATING TO OR IN FORCE IN THE DISTRICT OF COLUMBIA (EXCEPT  
SUCH LAWS AS ARE OF APPLICATION IN THE DISTRICT OF  
COLUMBIA BY REASON OF BEING GENERAL AND  
PERMANENT LAWS OF THE UNITED STATES), AS OF  
APRIL 27, 1999, AND NOTES  
TO DECISIONS THROUGH  
MARCH 1, 1999

---

**VOLUME 2A**

**1999 REPLACEMENT**

---

**TITLE 1—ADMINISTRATION  
CHAPTERS 11-30**

---

Prepared and Published Under Authority of the Council of the District  
of Columbia as supervised by the Office of the General Counsel,  
Charlotte M. Brookins-Hudson, General Counsel.  
Brian K. Flowers, Legislative Counsel.  
Benjamin F. Bryant, Jr., Codification Counsel.  
Karen R. Westbrook, Codification Assistant.

Edited and Annotated by the Editorial Staff of the Publishers

---

LEXIS Law Publishing  
CHARLOTTESVILLE, VIRGINIA  
1999

**F. Clifton White Resource Center**  
International Foundation  
for Election Systems  
1101 15th Street, NW  
Washington, DC 20005

6/99



COPYRIGHT © 1981 — 1999  
By  
THE DISTRICT OF COLUMBIA

---

All rights reserved.

ISBN 0-327-08422-7



4164911

"Michie" and the Open Book and Gavel logo are trademarks of  
LEXIS Law Publishing, a division of Reed Elsevier, Inc.



This package contains:

**DISTRICT OF COLUMBIA CODE**  
**1999 CUMULATIVE SUPPLEMENT**  
**1999 REPLACEMENT VOLUMES 2 and 2A**  
**1999 INDEX VOLUME 12**

The 1999 Supplement pamphlets replace the corresponding 1998 Supplement pamphlets. The 1999 Replacement Volumes 2 and 2A replace 1992 Replacement Volumes 2 and 2A and their 1998 Cumulative Supplements. The 1999 Index Volume 12 replaces 1998 Index Volume 12.

The 1999 Supplement pamphlets update the D.C. Code annotations by including notes taken from District of Columbia cases appearing in the following sources:

Atlantic Reporter, 2d Series: through 721 A.2d 1293  
Supreme Court Reporter: through 119 S. Ct. 720  
Federal Reporter, 3d Series: through 161 F.3d 23  
Federal Supplement: through 23 F. Supp. 2d 152  
Bankruptcy Reporter: through 229 Bankr. 34  
D.C. Law Review: through 4 D.C.L. Rev. 97

Also included are annotations from selected opinions of the Superior Court of the District of Columbia published in the Daily Washington Law Reporter. Please note that Superior Court opinions are not binding precedent.

1999 Replacement Volumes 2 and 2A contain all relevant 1999 Supplement material, and therefore do not require separate 1999 Supplement pamphlets.

You should retain Volume 11 (Tables Volume) and its 1998 Cumulative Supplement. Your 1999 Replacement Volume 11 will be shipping separately. This replacement will incorporate all relevant 1999 Supplement material.

You may now discard or recycle the other 1998 materials, or you may wish to retain them for historical reference.

Your complete District of Columbia Code should now contain the following volumes:

Volume 1 (1991)	Volume 6 (1996)
Volume 2 (1999) (no supplement in this shipment)	Volume 6A (1996)
	Volume 7 (1998)
Volume 2A (1999) (no supplement in this shipment)	Volume 7A (1997)
	Volume 8 (1998)
Volume 3 (1994)	Volume 9 (1996)
Volume 3A (1994)	Volume 10 (1997)
Volume 4 (1995)	Volume 11 (1990) (no supplement in this shipment)
Volume 4A (1995)	Volume 12 (1999 —
Volume 5 (1997)	in this shipment)
Volume 5A (1996)	

General information on the D.C. Code is found in the User's Guide in 1991 Replacement Volume 1. For further information or assistance, please call us or fax us at the toll-free numbers listed below or contact us at the email and internet addresses listed below.

June 1999

POST OFFICE BOX 7587 • CHARLOTTESVILLE, VA 22906-7587  
(804) 972-7600 (800) 446-3410 FAX: (800) 643-1280  
Email: [llp.customer.support@lexis-nexis.com](mailto:llp.customer.support@lexis-nexis.com)



## DISTRICT OF COLUMBIA CODE 1999 REPLACEMENT VOLUME 2A

---

### *NOTICE*

This 1999 Replacement Volume 2A replaces 1992 Replacement Volume 2A and its 1998 Cumulative Supplement.

This 1999 Replacement Volume 2A contains all relevant 1999 Supplement material, and therefore does not require a separate 1999 Supplement pamphlet. **PLACE THIS CARD IN THE POCKET OF VOLUME 2A** as a reminder that there is no 1999 Supplement pamphlet for this volume.

POST OFFICE BOX 7587 • CHARLOTTESVILLE, VA 22906-7587  
(804) 972-7600 (800) 446-3410  
website: <http://www.lexislawpublishing.com>  
email: [llp.customer.support@lexis-nexis.com](mailto:llp.customer.support@lexis-nexis.com)  
FAX: (800) 643-1280

# **COUNCIL OF THE DISTRICT OF COLUMBIA**

Linda W. Cropp, *Chairman*

Sandra Allen  
Sharon Ambrose  
Harold Brazil  
David A. Catania  
Kevin P. Chavous  
Jack Evans

Jim Graham  
Charlene Drew Jarvis  
Phil Mendelson  
Vincent B. Orange, Jr.  
Kathleen Patterson  
Carol Schwartz

---

## **OFFICE OF THE GENERAL COUNSEL**

Under Whose Direction This  
Volume Has Been Prepared

Charlotte M. Brookins-Hudson, *General Counsel*  
Brian K. Flowers, *Legislative Counsel*  
Benjamin F. Bryant, Jr., *Codification Counsel*  
Karen R. Westbrook, *Codification Assistant*



## **USER'S GUIDE**

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the District of Columbia Code, a User's Guide has been included in Volume 1 of the Code. This guide contains comments and information on the many features found within the District of Columbia Code intended to increase the usefulness of the Code to the user.



# TITLES OF DISTRICT OF COLUMBIA CODE

---

## PART I.—GOVERNMENT OF DISTRICT

### Title

1. Administration.
2. District Boards and Commissions.
3. Public Care Systems.
4. Police and Fire Departments.
5. Building Restrictions and Regulations.
6. Health and Safety.
7. Highways, Streets, Bridges.
8. Parks and Playgrounds.
9. Public Buildings and Grounds.
10. Weights, Measures, and Markets.

## PART II.—JUDICIARY AND JUDICIAL PROCEDURE

- \*11. Organization and Jurisdiction of the Courts.
- \*12. Right to Remedy.
- \*13. Procedure Generally.
- \*14. Proof.
- \*15. Judgments and Executions; Fees and Costs.
- \*16. Particular Actions, Proceedings and Matters.
- \*17. Review.

## PART III.—DECEDENTS' ESTATES AND FIDUCIARY RELATIONS

- \*18. Wills.
- \*19. Descent and Distribution.
- \*20. Probate and Administration of Decedents' Estates.
- \*21. Fiduciary Relations and the Mentally Ill.

## PART IV.—CRIMINAL LAW AND PROCEDURE

22. Criminal Offenses.
- \*23. Criminal Procedure.
24. Prisoners and Their Treatment.

## PART V.—GENERAL STATUTES

25. Alcoholic Beverages.

---

\*Title has been enacted as law.



## Title

- 26. Banks and Other Financial Institutions.
- 27. Cemeteries and Crematories.
- \*28. Commercial Instruments and Transactions.
- 29. Corporations.
- 30. Domestic Relations.
- 31. Education and Cultural Institutions.
- 32. Eleemosynary, Curative, Correctional, and Penal Institutions.
- 33. Food and Drugs.
- 34. Hotels and Lodging Houses.
- 35. Insurance.
- 36. Labor.
- 37. Libraries.
- 38. Liens.
- 39. Military.
- 40. Motor Vehicles and Traffic.
- 41. Partnerships.
- 42. Personal Property.
- 43. Public Utilities.
- 44. Railroads and Other Carriers.
- 45. Real Property.
- 46. Social Security.
- †47. Taxation and Fiscal Affairs.
- 48. Trademarks and Trade Names.
- 49. Compilation and Construction of Code.

---

\*Title has been enacted as law.

† Title has been enacted as law, except Charter Provisions (Title IV of the District of Columbia Self-Government and Governmental Reorganization Act).

# Table of Contents

## Title 1

### Administration

*Chapters 1 through 10 appear in Volume 2*

#### CHAPTER

1. Creation of District
2. Self-Government
3. Mayor, Council, and Other Officers
4. Delegate to the House of Representatives
5. Officers and Employees Generally
6. Merit System
7. District of Columbia Employees Retirement Program Management
8. Notaries Public
9. Surveyor
10. Inspections
- 10A. Presidential Inaugural Ceremonies

*Chapters 11 through 30 appear in this Volume*

	PAGE
11. Contracts .....	1
11A. Procurement .....	55
11B. Office of the Chief Technology Officer .....	150
12. Claims Against District .....	153
13. Elections .....	165
14. Election Campaigns; Lobbying; Conflict of Interest .....	240
15. Administrative Procedure .....	283
16. Codification and Publication of Acts, Resolutions, Rules and Orders .....	339
17. Official Correspondence .....	345
18. Presidential Inaugural Ceremonies .....	350
19. Submission of State Energy Plans .....	356
20. National Capital Planning Commission .....	373
21. Washington Metropolitan Region Development .....	388
22. Business and Economic Development .....	391
23. Latino Community Development .....	500
24. National Capital Region Transportation .....	508
25. Human Rights .....	625
26. Youth Services .....	683
26A. Commission on Youth Affairs .....	691
27. Public Defender Service .....	693
28. Soil and Water Conservation .....	700
29. Public Records Management .....	708
30. Spouse Equity .....	716

# TITLE 1. ADMINISTRATION.

## Chapter

- 11. Contracts..... §§ 1-1101 to 1-1177.7.
- 11A. Procurement..... §§ 1-1181.1 to 1-1192.6.
- 11B. Office of the Chief Technology Officer..... §§ 1195.1 to 1195.5.
- 12. Claims Against District..... §§ 1-1201 to 1-1225.
- 13. Elections..... §§ 1-1301 to 1-1334.
- 14. Election Campaigns; Lobbying; Conflict of Interest.. §§ 1-1401 to 1-1481.
- 15. Administrative Procedure..... §§ 1-1501 to 1-1542.
- 16. Codification and Publication of Acts, Resolutions,  
    Rules, and Orders..... §§ 1-1601 to 1-1621.
- 17. Official Correspondence..... §§ 1-1701 to 1-1710.
- 18. Presidential Inaugural Ceremonies..... §§ 1-1801 to 1-1809.
- 19. Submission of State Energy Plans..... §§ 1-1901 to 1-1913.
- 20. National Capital Planning Commission..... §§ 1-2001 to 1-2011.
- 21. Washington Metropolitan Region Development..... §§ 1-2101 to 1-2105.
- 22. Business and Economic Development..... §§ 1-2201 to 1-2295.29.
- 23. Latino Community Development..... §§ 1-2301 to 1-2346.
- 24. National Capital Region Transportation..... §§ 1-2401 to 1-2477.
- 25. Human Rights..... §§ 1-2501 to 1-2557.
- 26. Youth Services..... §§ 1-2601 to 1-2611.
- 26A. Commission on Youth Affairs..... [Repealed].
- 27. Public Defender Service..... §§ 1-2701 to 1-2708.
- 28. Soil and Water Conservation..... §§ 1-2801 to 1-2814.
- 29. Public Records Management..... §§ 1-2901 to 1-2914.
- 30. Spouse Equity..... §§ 1-3001 to 1-3005.

## CHAPTER 11. CONTRACTS.

### *Subchapter I. General Provisions.*

- | Sec.                                                                                                                                                                                         | Sec.                                                                                                                           |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|
| 1-1101 to 1-1103. [Repealed].                                                                                                                                                                | 1-1121. [Repealed].                                                                                                            |
| 1-1104. Bonds required from public contrac-<br>tors; amount; waiver.                                                                                                                         | 1-1122. Sewerage agreement with Virginia.                                                                                      |
| 1-1105. Rights of laborers and materialmen to<br>sue on payment bonds; prior no-<br>tice of claim required in certain<br>cases; time limitations; suit to be<br>brought in name of District. | 1-1123, 1-1124. [Repealed].                                                                                                    |
| 1-1106. Certified copy of bond and contract to<br>be furnished on application of la-<br>borers and materialmen; copy<br>prima facie evidence of original.                                    | 1-1125. Reciprocal police mutual aid agree-<br>ments — Authorized.                                                             |
| 1-1107. Bond not required for contracts less<br>than \$25,000.                                                                                                                               | 1-1126. Same — Required provisions.                                                                                            |
| 1-1108. [Repealed].                                                                                                                                                                          | 1-1127. Same — Personnel benefits.                                                                                             |
| 1-1109. Retents.                                                                                                                                                                             | 1-1128. Same — Supervision of non-District<br>police in District; enforcement of<br>District laws by non-District po-<br>lice. |
| 1-1110 to 1-1117. [Repealed].                                                                                                                                                                | 1-1129. [Repealed].                                                                                                            |
| 1-1118. Insurance of District property.                                                                                                                                                      | 1-1130. Special rules regarding certain con-<br>tracts [Charter Provision].                                                    |
| 1-1119. Payment of fire insurance.                                                                                                                                                           | 1-1131. [Repealed].                                                                                                            |
| 1-1120. Sewerage agreement with Maryland.                                                                                                                                                    | 1-1131.1. Services between United States gov-<br>ernment and District government.                                              |
|                                                                                                                                                                                              | 1-1132. Same — Manner of payment; reim-<br>bursement for costs of demonstra-<br>tions.                                         |
|                                                                                                                                                                                              | 1-1133. Personal financial interest in contract<br>or transaction prohibited.                                                  |

## § 1-1101

### ADMINISTRATION

Sec.

- 1-1134. Automatic data processing — Definitions.
- 1-1135. Same — Duties of Mayor.
- 1-1136. [Repealed].

#### *Subchapter II. Minority Contracting.*

- 1-1141. Findings.
- 1-1142. Definitions.
- 1-1143. Minority Business Opportunity Commission — Established; composition; appointment; term of office; qualifications; vacancies; removal; oath of office; compensation.
- 1-1144. Same — Regulations; disclosure of interest in pending measure; meetings; quorum; voting; appointment of Chairperson; staff; records.
- 1-1145. Same — Reports.
- 1-1146. Allocation of agency contracts to local minority enterprises; quarterly agency reports on contracts; Council review of goals.
- 1-1147. Assistance programs for minority contractors.
- 1-1148. Certificates of registration.
- 1-1149. Functions of the Commission.
- 1-1150. Advance, partial, or progress payments.
- 1-1150.1. Rules proposed by Commission.
- 1-1151. Severability.

#### *Subchapter II-A. Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises. [Expired.]*

- 1-1152. Findings.
- 1-1152.1. Definitions.
- 1-1152.2. District government contracting with local business enterprises; quarterly agency reports on contracts; Council review of goals.
- 1-1152.3. Assistance Programs for local business enterprise contractors, disadvantaged business enterprise contractors, and small business enterprise contractors.
- 1-1152.4. Certificate of registration.
- 1-1152.5. Functions of the Commission.
- 1-1152.6. Rules and regulations by Mayor.

Sec.

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

- 1-1153.1. Definitions.
- 1-1153.2. District government contracting with local business enterprises; quarterly agency reports on contracts; Council review of goals.
- 1-1153.3. Assistance programs for local business enterprise contractors, disadvantaged business enterprise contractors, and small business enterprise contractors.
- 1-1153.4. Certificate of registration.
- 1-1153.5. Functions of the Commission.
- 1-1153.6. Rules.
- 1-1153.7. Applicability date.

#### *Subchapter III. First Source Employment.*

- 1-1161. Definitions.
- 1-1162. First Source Register created.
- 1-1163. Employment agreements required.
- 1-1164. Reports.
- 1-1165. Rules.

#### *Subchapter IV. Quick Payment Provisions.*

- 1-1171. Definitions.
- 1-1172. Rules and regulations governing interest penalty payments by District agencies; computation and payment of penalties.
- 1-1173. Interest penalty for failure to pay discounted price within specified period.
- 1-1174. Filing of claims; disputed payments.
- 1-1175. Required reports.
- 1-1176. Determination of receipt and payment dates; construction of rental contracts.

#### *Subchapter V. Employees of District Contractors and Instrumentality Whistleblower Protection.*

- 1-1177.1. Definitions.
- 1-1177.2. Prohibitions.
- 1-1177.3. Enforcement.
- 1-1177.4. Disciplinary action; fine.
- 1-1177.5. Election of remedies.
- 1-1177.6. Posting of notice.
- 1-1177.7. Applicability.

### *Subchapter I. General Provisions.*

## **§ 1-1101. Right of Mayor to contract.**

Repealed.

(June 11, 1878, 20 Stat. 103, ch. 180, § 3; 1973 Ed., § 1-801; Feb. 21, 1986, D.C. Law 6-85, § 1103(b), 32 DCR 7396.)

**Cross references.** — As to present provisions concerning procurement, see Chapter 11A of this title.

**Legislative history of Law 6-85.** — Law 6-85 was introduced in Council and assigned Bill No. 6-191, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on

November 5, 1985 and November 19, 1985, respectively. Signed by the Mayor on December 3, 1985, it was assigned Act No. 6-110 and transmitted to both Houses of Congress for its review.

**Cited in** *In re K.E.W.*, 123 WLR 1769 (Super. Ct. 1995).

## § 1-1102. Contracts in which Mayor personally interested to be void.

Repealed.

(R.S., D.C., § 82; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 2; 1973 Ed., § 1-802; Feb. 21, 1986, D.C. Law 6-85, § 1103(j), 32 DCR 7396.)

**Cross references.** — As to procurement provisions related to contract formation, see subchapter III of Chapter 11A of this title.

**Legislative history of Law 6-85.** — See note to § 1-1101.

## § 1-1103. Contract requirements.

Repealed.

(R.S., D.C., § 80; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 2; 1973 Ed., § 1-803; Feb. 21, 1986, D.C. Law 6-85, § 1103(j), 32 DCR 7396.)

**Cross references.** — As to procurement provisions related to contract formation, see subchapter III of Chapter 11A of this title.

**Legislative history of Law 6-85.** — See note to § 1-1101.

## § 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 he, through the District of Columbia Minority Business Opportunity Commission, may 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.)

**Section references.** — This section is referred to in § 1-1149.

**Legislative history of Law 1-95.** — See note to § 1-1141.

**Legislative history of Law 10-140.** — Law 10-140, the "Bond Surety Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-358, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on April 12, 1994, and May 3, 1994, respectively. Signed by the Mayor on May 18, 1994, it was assigned Act No. 10-245 and transmitted to both Houses of Congress for its review. D.C. Law 10-140 became effective on July 23, 1994.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Definitions applicable.** — Section 6 of the Act of August 3, 1968, Pub. L. 90-445, provided that, as used in that Act, the term "person" and the masculine pronoun would include all persons whether individuals, associations, copartnerships, or corporations.

**Sovereign immunity.** — The District has no immunity from suit by a subcontractor where District officials fail to comply with this section by failing to require the prime contractor to post a payment bond. *Campbell v. Cumbari Assocs.*, 115 WLR 1729 (Super. Ct. 1987).

The District was not liable to a subcontractor under a third-party beneficiary theory for its failure to insist that the contractor obtain a payment bond. *District of Columbia v. Campbell*, App. D.C., 580 A.2d 1295 (1990).

**District may not recover for its own negligence.** — Where provision of construction contract and performance bond required the contractor to indemnify the District of Columbia only for losses sustained as a result of negligence on the part of the contractor, the District could not recover for damages resulting either from its own negligence or from acts or omissions in which it was concurrently negligent. *District of Columbia v. C.F. & B., Inc.*, 442 F. Supp. 251 (D.D.C. 1977).

**Subrogation of surety.** — Where the only claimants to monies held by a government agency are the surety and a defaulting contractor, the surety who has performed under a public works performance bond agreement, upon full satisfaction of its surety obligation, is subrogated to all of the rights and remedies which the government might have had against

the principal had the government been forced to complete the project itself. District of Columbia v. Aetna Ins. Co., App. D.C., 462 A.2d 428 (1983).

Cited in Hartford Accident & Indem. Co. v.

District of Columbia, App. D.C., 441 A.2d 969 (1982); District of Columbia ex rel. Am. Combustion, Inc. v. Transamerica Ins. Co., 797 F.2d 1041 (D.C. Cir. 1986).

**§ 1-1105. Rights of laborers and materialmen to sue on payment bonds; prior notice of claim required in certain cases; time limitations; suit to be brought in name of District.**

(a) Every person who has furnished labor or material in the prosecution of the work provided for in such contract, in respect of which a payment bond is furnished under this subchapter and who has not been paid in full therefor before the expiration of a period of 90 days after the day on which the last of the labor was done or performed by him or material was furnished or supplied by him for which such claim is made, shall have the right to sue on such payment bond for the amount, or the balance thereof, unpaid at the time of institution of such suit and to prosecute said action to final judgment and execution for the sum or sums justly due him: Provided, that any person having direct contractual relationship with a subcontractor but no contractual relationship, express or implied, with the contractor furnishing the payment bond, shall have a right of action upon the payment bond upon giving written notice to the contractor within 90 days from the date on which such person did or performed the last of the labor, or furnished or supplied the last of the material for which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such notice shall be served by mailing the same by registered mail, postage prepaid, in an envelope addressed to the contractor at any place he maintains an office or conducts his business, or his residence, or in any manner in which the United States Marshal for the District of Columbia is authorized by law to serve summons.

(b) Every suit instituted under this section shall be brought in the name of the District of Columbia for the use of the person suing, in the Superior Court of the District of Columbia, irrespective of the amount in controversy in such suit, but no such suit shall be commenced after the expiration of 1 year after the day on which the last of the labor was performed or material was supplied by him. The District of Columbia shall not be liable for the payment of any costs or expenses of any such suit. (Aug. 3, 1968, 82 Stat. 628, Pub. L. 90-455, § 2; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(c)(3); 1973 Ed., § 1-804b.)

**Section references.** — This section is referred to in § 11-921.

**Definitions applicable.** — See note to § 1-1104.

**Section does not deprive District Court of diversity jurisdiction.** — Requirement of this section that every materialman's suit

should be brought in the Superior Court does not deprive the District Court of diversity jurisdiction. District of Columbia ex rel. John Driggs Co. v. Ranger Constr. Co., 394 F. Supp. 801 (D.D.C. 1974).

Although this section provides that suits brought under it shall be brought in D.C. court

this by itself is not enough to defeat diversity jurisdiction. All state law claims properly brought in federal court under diversity jurisdiction are cognizable in state court. *District of Columbia ex rel. American Combustion, Inc. v. Transamerica Ins. Co.*, 797 F.2d 1041 (D.C. Cir. 1986).

The fact that the action was brought in the name of the District of Columbia does not defeat diversity jurisdiction. *District of Columbia ex rel. American Combustion, Inc. v. Transamerica Ins. Co.*, 797 F.2d 1041 (D.C. Cir. 1986).

**Surety's liability for increased costs for labor or material due to delay.** — A surety is liable to a subcontractor for increased costs for labor or material actually incurred due to delay, to the extent such delay is not attributable to the subcontractor. *Hartford Accident & Indem. Co. v. District of Columbia*, App. D.C., 441 A.2d 969 (1982).

Cited in *Eckert v. Fitzgerald*, 550 F. Supp. 88 (D.D.C. 1982).

## § 1-1106. Certified copy of bond and contract to be furnished on application of laborers and materialmen; copy prima facie evidence of original.

The Mayor is authorized and directed to furnish, to any person making application therefor who submits an affidavit that he has supplied labor or materials for such work and payment therefor has not been made or that he is being sued on any such bond, a certified copy of such bond and the contract for which it was given, which copy shall be prima facie evidence of the contents, execution, and delivery of the original. Applicants shall pay for such certified copies such fees as the Mayor fixes to cover the cost of preparation thereof. (Aug. 3, 1968, 82 Stat. 628, Pub. L. 90-455, § 3; 1973 Ed., § 1-804c.)

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat.

818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Definitions applicable.** — See note to § 1-1104.

## § 1-1107. Bond not required for contracts less than \$25,000.

In all cases where the Mayor of the District of Columbia contracts for work or material involving a sum not exceeding \$25,000 it shall not be necessary for said Mayor to require a bond with said contract. (June 28, 1906, 34 Stat. 546, ch. 3575; June 26, 1912, 37 Stat. 168, ch. 182; Aug. 3, 1968, 82 Stat. 629, Pub. L. 90-455, § 4; 1973 Ed., § 1-805; Aug. 14, 1973, 87 Stat. 305, Pub. L. 93-89, title V, § 501; Mar. 29, 1977, D.C. Law 1-95, § 11(b), 23 DCR 9532b.)

**Section references.** — This section is referred to in § 1-1149.

**Legislative history of Law 1-95.** — See note to § 1-1141.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts



Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of

Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Definitions applicable.** — See note to § 1-1104.

## § 1-1108. Formal contracts with bond not required for contracts less than \$2,000.

Repealed.

(June 26, 1912, 37 Stat. 168, ch. 182; Aug. 3, 1968, 82 Stat. 629, Pub. L. 90-455, § 4; 1973 Ed., § 1-806; Feb. 21, 1986, D.C. Law 6-85, § 1103(e), 32 DCR 7396.)

**Cross references.** — As to bonds and construction procurement, see subchapter V of Chapter 11A of this title.

**Legislative history of Law 6-85.** — See note to § 1-1101.

## § 1-1109. Retents.

On all contracts made by the District of Columbia for construction work there shall be withheld, until completion and acceptance of the work, a retent of 10 per centum of the total amount of any payments made thereunder as a guaranty fund that the terms of such contracts shall be strictly and faithfully performed: Provided, however, that whenever 50 per centum of the work required under a contract for construction work has been completed and payments therefor have been made, the Mayor of the District of Columbia, in his sole discretion, may authorize subsequent payments to be made to the contractor without withholding from such subsequent payments 10 per centum thereof as required by this section, or the said Mayor may authorize retention from such subsequent payments of less than 10 per centum thereof, and whenever the work is substantially complete, the Mayor, if he considers the amount retained to be in excess of the amount adequate for the protection of the District of Columbia, at his discretion may release to the contractor all or a portion of such excess amount; and the said Mayor in his sole discretion, may further authorize payment in full, including retained percentages, for each separate building or public work on which the price is stated separately in the contract upon completion and acceptance of such building or work. (Mar. 3, 1887, 24 Stat. 501, ch. 355; Mar. 31, 1906, 34 Stat. 94, ch. 1356, § 1; Aug. 3, 1949, 63 Stat. 493, ch. 386; Aug. 3, 1968, 82 Stat. 629, Pub. L. 90-455, § 5; 1973 Ed., § 1-807.)

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Definitions applicable.** — See note to § 1-1104.

**Purpose of retent.** — The 10 percent withheld is to insure not only the completion of the actual work but also the restoration of property damaged by an act or omission of contractor. *Kenny Constr. Co. v. District of Columbia*, 262 F.2d 926 (D.C. Cir. 1959).

**Cited in** *District of Columbia v. Aetna Ins. Co.*, App. D.C., 462 A.2d 428 (1983); *District of Columbia v. Pierce Assocs.*, App. D.C., 527 A.2d 306 (1987).

## § 1-1110. Advertisement for purchases and contracts required; exceptions.

Repealed.

(R.S. § 3709; Aug. 2, 1946, 60 Stat. 809, ch. 744, § 9(a); June 30, 1949, 63 Stat. 403, ch. 288, title VI, § 602(f); Sept. 5, 1950, 64 Stat. 583, ch. 849, §§ 6(a), (b), 8(c); Aug. 28, 1958, 72 Stat. 967, Pub. L. 93-356, § 1; Mar. 29, 1977, D.C. Law 1-95, § 11(c), 23 DCR 9532b; April 12, 1997, D.C. Law 11-259, § 405, 44 DCR 1423.)

**Legislative history of Law 11-259.** — See note to § 1-1135.

## § 1-1111. Cost of advertising.

Repealed.

(May 30, 1908, 35 Stat. 493, ch. 227; 1973 Ed., § 1-809; Feb. 21, 1986, D.C. Law 6-85, § 1103(f), 32 DCR 7396.)

**Cross references.** — As to present provisions concerning procurement, see Chapter 11A of this title.

**Legislative history of Law 6-85.** — See note to § 1-1101.

## § 1-1112. Appropriations for advertising and publication of notices.

Repealed.

(1973 Ed., § 1-809a; Oct. 26, 1973, 87 Stat. 509, Pub. L. 93-140, § 25 (d); Feb. 21, 1986, D.C. Law 6-85, § 1103(a), 32 DCR 7396.)

**Cross references.** — As to present provisions concerning procurement, see Chapter 11A of this title.

**Legislative history of Law 6-85.** — See note to § 1-1101.

**§ 1-1113. Separate contracts for material and labor.**

Repealed.

(July 5, 1884, 23 Stat. 125, ch. 227; 1973 Ed., § 1-810; Feb. 21, 1986, D.C. Law 6-85, § 1103(i), 32 DCR 7396.)

**Cross references.** — As to procurement provisions concerning contract formation, see subchapter III of Chapter 11A of this title.

**Legislative history of Law 6-85.** — See note to § 1-1101.

**§ 1-1114. Operation of District Quarry.**

Repealed.

(Mar. 3, 1905, 33 Stat. 892, ch. 1406; 1973 Ed., § 1-811; April 12, 1997, D.C. Law 11-259, § 406, 44 DCR 1423.)

**Legislative history of Law 11-259.** — See note to § 1-1135.

**§ 1-1115. Purchasing sites for schools and public buildings; use of agents; enlargement of school buildings.**

Repealed.

(Mar. 2, 1889, 25 Stat. 802, ch. 370; June 6, 1900, 31 Stat. 568, ch. 789; 1973 Ed., § 1-812; Feb. 21, 1986, D.C. Law 6-85, §§ 1103(g), (h).)

**Cross references.** — As to present provisions concerning procurement, see Chapter 11A of this title.

**Legislative history of Law 6-85.** — See note to § 1-1101.

**§ 1-1116. Testing of building materials by Bureau of Standards.**

Repealed.

(Mar. 4, 1913, 37 Stat. 945, ch. 150; 1973 Ed., § 1-813; Feb. 21, 1986, D.C. Law 6-85, § 1103(d), 32 DCR 7396.)

**Cross references.** — As to procurement provisions concerning specifications, see subchapter IV of Chapter 11A of this title.

**Legislative history of Law 6-85.** — See note to § 1-1101.

**§ 1-1117. Authorization to test materials in laboratory of Department of Transportation.**

Repealed.

(June 29, 1932, 47 Stat. 354, ch. 308; 1973 Ed., § 1-814; Feb. 21, 1986, D.C. Law 6-85, § 1103(c), 32 DCR 7396.)

**Cross references.** — As to procurement provisions concerning specifications, see subchapter IV of Chapter 11A of this title.

**Legislative history of Law 6-85.** — See note to § 1-1101.

**Transfer of functions.** — The functions of the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

## § 1-1118. Insurance of District property.

After February 25, 1885, property belonging to the District of Columbia may be insured in advance for periods of 5 years or less. (Feb. 25, 1885, 23 Stat. 313, ch. 145; 1973 Ed., § 1-816.)

## § 1-1119. Payment of fire insurance.

No District of Columbia appropriation shall be used for the payment of premiums or other cost of fire insurance. (June 28, 1944, 58 Stat. 533, ch. 300, § 12; 1973 Ed., § 1-816a.)

## § 1-1120. Sewerage agreement with Maryland.

For the protection of streams flowing through United States government parks and reservations in the District of Columbia from pollution by sewage discharged therein from sewerage systems of Maryland towns and villages bordering said District, the Mayor is authorized to enter into an agreement with the proper authorities of the State of Maryland for the drainage of such sewerage systems into and through the sewerage system of the District of Columbia; and the said Mayor is further authorized to permit connections of Maryland sewers with the District of Columbia sewerage system at or near the District line whenever, in his judgment, the sanitary conditions of streams flowing into and through such United States government parks and reservations in the District of Columbia are such as to demand the elimination of such pollution: Provided, that all cost of construction of such sewers to and connection with the sewerage system of the District of Columbia shall be paid by the proper authorities of the State of Maryland, and that said State shall enter into such agreement with the Mayor and shall guarantee the protection of the District of Columbia sewerage system from unauthorized connections thereto, and shall reimburse the District of Columbia for the actual cost of pumping and handling such sewerage by annual payments for such service as determined by the Mayor in such agreement; all such sums collected therefor to be paid into the Treasury of the United States through the Director of the Department of Finance and Revenue to the credit of the District of Columbia. (Sept. 1, 1916, 39 Stat. 717, ch. 433, § 9; 1973 Ed., § 1-817.)

**Section references.** — This section is referred to in § 43-1622.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia.

These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Office of Collector of Taxes abolished.** — The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office

of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969. The collection functions of the Director of the Department of Finance and Revenue were transferred to the District of Columbia Treasurer by § 47-316 on March 5, 1981.

## § 1-1121. Sludge removal.

Repealed.

(Mar. 24, 1950, 64 Stat. 35, ch. 74, § 1; 1973 Ed., § 1-817a; April 12, 1997, D.C. Law 11-259, § 407, 44 DCR 1423.)

**Legislative history of Law 11-259.** — See note to § 1-1135.

## § 1-1122. Sewerage agreement with Virginia.

(a) For the protection of the Potomac River and its tributary streams within the metropolitan area of the District of Columbia from pollution by sewage or other liquid wastes originating in Virginia, and for the protection of the health of the residents of the District of Columbia and of the employees of the United States government residing in such metropolitan area, the Mayor of the District of Columbia is authorized in his discretion, from time to time, to enter into and renew agreements, for such periods as he deems advisable, with the proper authorities of the Commonwealth of Virginia, including county, municipal, and other governmental units thereof, for the drainage of such sewage or other liquid wastes into the sewerage system of the District of Columbia for treatment and disposal: Provided, that to the extent and in the manner determined by such agreements, the proper authorities of such Commonwealth, county, municipal, or other governmental units shall pay part or all of the costs of construction, expansion, relocation, replacement, repair, maintenance, and operation (including administrative expenses, interest, and amor-

tization) of such sewers and other facilities as may be necessary or appropriate to convey and treat such sewage or other liquid wastes either separately or with sewage or other liquid wastes originating in said District or elsewhere. All payments or reimbursements made to the District of Columbia pursuant to this section and the agreements entered into hereunder shall be made to the Mayor and shall be deposited in the Treasury of the United States to the credit of the District of Columbia Sewage Works Fund.

(b) As used in this section, the terms "Mayor of the District of Columbia" and "Mayor" mean the Mayor of the District of Columbia or his designated agents. (Aug. 21, 1958, 72 Stat. 702, Pub. L. 85-703, §§ 1, 2; 1973 Ed., § 1-817c.)

**Cross references.** — As to water pollution control, see subchapter III of Chapter 9 of Title 6.

As to Dulles International Airport sewage project, see §§ 43-1621 to 43-1624.

**Section references.** — This section is referred to in § 43-1622.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

## § 1-1123. Auction of property unfit for service; proceeds.

Repealed.

(Mar. 3, 1883, 22 Stat. 470, ch. 95, § 1; 1973 Ed., § 1-818; April 12, 1997, D.C. Law 11-259, § 408, 44 DCR 1423.)

**Legislative history of Law 11-259.** — See note to § 1-1135.

## § 1-1124. Exchange of equipment in payment for new equipment.

Repealed.

(June 26, 1912, 37 Stat. 147, ch. 182; 1973 Ed., § 1-819; April 12, 1997, D.C. Law 11-259, § 409, 44 DCR 1423.)

**Legislative history of Law 11-259.** — See note to § 1-1135.

## § 1-1125. Reciprocal police mutual aid agreements — Authorized.

The Mayor of the District of Columbia is hereby authorized in his discretion to enter into and renew reciprocal agreements, for such period as he deems advisable, with any county, municipality, or other governmental unit in the

States of Maryland and Virginia, in order to establish and carry into effect a plan to provide mutual aid, through the furnishing of policemen and other agents and employees, together with all necessary equipment. (Oct. 17, 1968, 82 Stat. 1150, Pub. L. 90-587, § 1; July 29, 1970, 84 Stat. 667, Pub. L. 91-358, title VIII, § 801; 1973 Ed., § 1-820.)

**Change in government.** — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia

Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

### **§ 1-1126. Same — Required provisions.**

The District of Columbia shall not enter into any such agreement unless the agreement provides that each of the parties to such agreement shall:

(1) Waive any and all claims against all the other parties thereto which may arise out of their activities outside their respective jurisdictions under such agreement;

(2) Indemnify and save harmless the other parties to such agreement from all claims by third parties for property damage or personal injury which may arise out of the activities of the other parties to such agreement outside their respective jurisdictions under such agreement. (Oct. 17, 1968, 82 Stat. 1150, Pub. L. 90-587, § 2; 1973 Ed., § 1-821.)

### **§ 1-1127. Same — Personnel benefits.**

The policemen and other officers, agents, and employees of the District, when acting hereunder or under other lawful authority beyond the territorial limits of the District, shall have all of the pension, relief, disability, workmen's compensation, and other benefits enjoyed by them while performing their respective duties within the District of Columbia. (Oct. 17, 1968, 82 Stat. 1150, Pub. L. 90-587, § 3; 1973 Ed., § 1-822.)

### **§ 1-1128. Same — Supervision of non-District police in District; enforcement of District laws by non-District police.**

The Mayor of the District of Columbia shall be responsible for directing the activities of all policemen and other officers and agents coming into the District pursuant to any such reciprocal agreement, and the Mayor is empowered to authorize all policemen and other officers and agents from outside the District to enforce the laws applicable in the District to the same extent as if they were duly authorized officers and members of the Metropolitan Police force of the District of Columbia. (Oct. 17, 1968, 82 Stat. 1150, Pub. L. 90-587, § 4; 1973 Ed., § 1-823.)

**Change in government.** — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia

Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

## § 1-1129. Contracts for inspection, maintenance and repair of fixed equipment.

Repealed.

(Oct. 12, 1968, 82 Stat. 1004, Pub. L. 90-573, § 1; 1973 Ed., § 1-824; April 12, 1997, D.C. Law 11-259, § 410, 44 DCR 1423.)

**Legislative history of Law 11-259.** — See note to § 1-1135.

## § 1-1130. Special rules regarding certain contracts [Charter Provision].

(a) *Contracts extending beyond one year.* — No contract involving expenditures out of an appropriation which is available for more than 1 year shall be made for a period of more than 5 years unless, with respect to a particular contract, the Council, by a two-thirds vote of its members present and voting, authorizes the extension of such period for such contract. Such contracts shall be made pursuant to criteria established by act of the Council.

(b) *Contracts exceeding certain amount.*

(1) *In general.* — No contract involving expenditures in excess of \$1,000,000 during a 12-month period may be made unless the Mayor submits the contract to the Council for its approval and the Council approves the contract (in accordance with criteria established by act of the Council).

(2) *Deemed approval.* — For purposes of paragraph (1), the Council shall be deemed to approve a contract if—

(A) during the 10-day period beginning on the date the Mayor submits the contract to the Council, no member of the Council introduces a resolution approving or disapproving the contract; or

(B) during the 45-calendar day period beginning on the date the Mayor submits the contract to the Council, the Council does not disapprove the contract.

(c) *Multiyear contracts.* — (1) The District may enter into multiyear contracts to obtain goods and services for which funds would otherwise be available for obligation only within the fiscal year for which appropriated.

(2) If the funds are not made available for the continuation of such a contract into a subsequent fiscal year, the contract shall be cancelled or terminated, and the cost of cancellation or termination may be paid from—

(A) appropriations originally available for the performance of the contract concerned;



(B) appropriations currently available for procurement of the type of acquisition covered by the contract, and not otherwise obligated; or

(C) funds appropriated for those payments.

(3) No contract entered into under this subsection shall be valid unless the Mayor submits the contract to the Council for its approval and the Council approves the contract (in accordance with criteria established by act of the Council). The Council shall be required to take affirmative action to approve the contract within 45 days. If no action is taken to approve the contract within 45 calendar days, the contract shall be deemed disapproved.

(d) *Exemption for certain contracts.* — The requirements of this section shall not apply with respect to any of the following contracts:

(1) Any contract entered into by the Washington Convention Center Authority for preconstruction activities, project management, design, or construction.

(2) Any contract entered into by the District of Columbia Water and Sewer Authority established pursuant to the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, other than contracts for the sale or lease of the Blue Plains Wastewater Treatment Plant.

(3) At the option of the Council, any contract for a highway improvement project carried out under title 23, United States Code. (1973 Ed., § 1-825; Dec. 24, 1973, 87 Stat. 803, Pub. L. 93-198, title IV, § 451; Apr. 17, 1995, 109 Stat. 151, Pub. L. 104-8, § 304(a); Apr. 26, 1996, 110 Stat. 1321 [210], Pub. L. 104-134, § 134; Sept. 9, 1996, 110 Stat. 2376, Pub. L. 104-194, § 144; Aug. 5, 1997, 111 Stat. 781, Pub. L. 105-33, § 11704(a).)

**Section references.** — This section is referred to in § 1-1181.5d.

**Charter provisions.** — This section of the D.C. Code is § 451 of the District Charter as enacted by Title IV of the District of Columbia Self-Government and Governmental Reorganization Act, December 24, 1973, 87 Stat. 820, Pub. L. 93-198. The District of Columbia Self-Government and Governmental Reorganization Act is set out in its entirety in Volume 1.

**Effect of amendments.** — Section 11704(a) of Pub. L. 105-33, 111 Stat. 781, added (d).

**Emergency act amendments.** — For temporary approval of a multiyear contract with the United States of America for potable water from the Washington Aqueduct, see § 2 of the Multiyear Water Purchase Agreement Emergency Amendment Act of 1997 (D.C. Act 12-116, July 28, 1997, 44 DCR 4504).

**References in text.** — The "Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996," referred to in (d)(2), is D.C. Law 11-111, which is codified primarily as § 43-1661 et seq.

**415 12th Street, N.W. lease approval.** — For temporary approval of the lease agreement between the District of Columbia government and Laszlo N. Tauber, M.D., and Associates for 415 12th Street, N.W., and for exemption of the lease from the formal competitive procurement

requirements applicable to leases where the District government will be the predominant user of the building, see §§ 2 and 3 of the 415 12th Street, N.W., Lease Conditional Approval Emergency Act of 1995 (D.C. Act 11-140, July 19, 1995, 42 DCR 5606).

**800 Ninth Street, S.W. lease approval.** — For temporary approval of a lease agreement between the District of Columbia government and NBL Associates Limited Partnership for 800 Ninth Street, S.W., and for exemption of this lease from the formal competitive procurement requirements applicable to leases where the District will be the predominant user of the building, see §§ 2 and 3 of the 800 Ninth Street, S.W., Lease Approval Emergency Act of 1995 (D.C. Act 11-141, October 6, 1995, 42 DCR 5704).

**Applicability of § 304 of Pub. Law 104-8.** — Section 304(c) of Pub. Law 104-8, 109 Stat. 152, provided that the amendments made by that section shall apply to contracts made on or after the date of the enactment of the Act, April 17, 1995.

**Definitions applicable.** — The definitions contained in § 1-202 apply to this section.

**Application of § 11704(a) of Pub. L. 105-33.** — Section 11704(b) of Title XI of Pub. L. 105-33, 111 Stat. 786, the National Capital Revitalization and Self-Government Improve-

ment Act of 1997, provided that the amendment made by § 11704(a) shall apply with respect to contracts entered into on or after the date of the

enactment of this title. Title XI of Pub. L. 105-33 was approved August 5, 1997.

**§ 1-1131. Agreements for furnishing services between United States and District — Permitted; delegation of functions; costs.**

Repealed.

(1973 Ed., § 1-826; Dec. 24, 1973, 87 Stat. 822, Pub. L. 93-198, title VII, § 731; Sept. 13, 1982, 96 Stat. 1081, Pub. L. 97-258, § 5(b).)

**Cross references.** — As to compensation for services furnished by Civil Service Commission, see § 1-515.

As to reenactment of this provision, see § 1-1131.1 and 31 U.S.C. § 1537.

As to federal control of Metropolitan Police force in emergencies, see § 4-102.

As to authority of Board of Education to enter into contracts with the governments of the United States and the District of Columbia to render and receive services, see § 31-1535.

**§ 1-1131.1. Services between United States government and District government.**

(a) To prevent duplication and to promote efficiency and economy, an officer or employee of:

(1) The United States government may provide services to the District of Columbia government; and

(2) The District of Columbia government may provide services to the United States government.

(b)(1) Services under this section shall be provided under an agreement:

(A) Negotiated by officers and employees of the 2 governments; and

(B) Approved by the Director of the Office of Management and Budget and the Mayor of the District of Columbia.

(2) Each agreement shall provide that the cost of providing the services shall be borne in the way provided in subsection (c) of this section by the government to which the services are provided at rates or charges based on the actual cost of providing the services.

(3) To carry out an agreement made under this subsection, the agreement may provide for the delegation of duties and powers of officers and employees of:

(A) The District of Columbia government to officers and employees of the United States government; and

(B) The United States government to officers and employees of the District of Columbia government.

(c) In providing services under an agreement made under subsection (b) of this section:

(1) Costs incurred by the United States government may be paid from appropriations available to the District of Columbia government officer or employee to whom the services were provided; and

(2) Costs incurred by the District of Columbia government may be paid from amounts available to the United States government officer or employee to whom the services were provided.

(d) When requested by the Director of the United States Secret Service Division, the Chief of the Metropolitan Police shall assist the Secret Service and the United States Secret Service Uniformed Division on a non-reimbursable basis in carrying out their protective duties under § 202 of Title 3 of the United States Code and § 3056 of Title 18 of the United States Code. (Sept. 13, 1982, 96 Stat. 934, Pub. L. 97-258, § 1 [Chapter 15, subchapter III, § 1537].)

**Cross references.** — As to services between United States government and District government, see 31 U.S.C. § 1537.

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

(a) Subject to § 1-1131.1, 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).)

### **§ 1-1133. Personal financial interest in contract or transaction prohibited.**

Any officer or employee of the District who is convicted of a violation of § 208 of Title 18, United States Code, shall forfeit his office or position. (1973 Ed., § 1-828; Dec. 24, 1973, 87 Stat. 822, Pub. L. 93-198, title VII, § 732.)

### **§ 1-1134. Automatic data processing — Definitions.**

For the purposes of §§ 1-1134 to 1-1136, the term:

(1) "Automatic data processing" means the use of computers for the dissemination, storage, retrieval, and reporting of information associated with an administrative or managerial function.

(2) "Automated data system" means a set of logically related computer programs designed to accomplish specific objectives or functions.

(3) "Computer" means an electromechanical device capable of accepting information and data, performing logical and arithmetical operations, and reporting the results.

(4) "Hardware" means input and output devices, arithmetic and control circuits, and memory devices.

(5) "Information systems" means a single network or networks of steps for processing information that is associated with a particular operation or a set of related operations.

(6) "Information systems technology" means the applied science associated with the development of networks for the processing of information.

(7) "Software" means the procedures, instructions, code sets, assemblers, compilers, and all other associated supporting processes required to run a computer program on the equipment itself. (Mar. 15, 1985, D.C. Law 5-168, § 2, 32 DCR 721.)

**Emergency act amendments.** — For temporary establishment of an Office of the Chief Technology Officer, see § 1412 of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and see § 1412 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

Section 2101 of D.C. Act 12-564 provides for the application of the act.

**Legislative history of Law 5-168.** — Law 5-168, the "District of Columbia Automatic Data Processing Act of 1984," was introduced in Council and assigned Bill No. 5-330, which was referred to the Committee on Government Operations. The Bill was adopted on first and

second readings on December 4, 1984 and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-233 and transmitted to both Houses of Congress for its review.

**References in text.** — Section 1-1136, referred to in the introductory language, was repealed by D.C. Law 11-259, § 305(b), 44 DCR 1423, effective April 12, 1997.

**Establishment of Office of the Chief Technology Officer.** — Section 1812 of D.C. Law 12-175 established, in the Executive Branch of the government of the District of Columbia, an Office of the Chief Technology Officer under the supervision of a Chief Technology Officer, who shall carry out the functions and authorities assigned to that office.

## § 1-1135. Same — Duties of Mayor.

(a) The Mayor shall:

(1) Provide direction and coordination for the District's automated data systems, information systems, automated data and word processing resources, and telecommunications systems;

(2) Reduce the duplication of data collection, storage, and reporting;

(3) Ensure, to the maximum extent possible, compatibility of all new acquisitions of automatic data processing related, word processing, and telecommunications equipment with existing equipment and information systems;

(4) Remain abreast of new developments in automatic data processing, word processing, telecommunications, and information systems technology, and the extent to which these developments can benefit the needs of the District;

(5) Perform evaluations and feasibility studies prior to the District's adoption of new information systems technology to ascertain the costs and benefits that will accrue to the District; and

(6) Establish and maintain an inventory of all data and word processing and telecommunications equipment, including hardware, software, and appropriate documentation for all major information systems.

(b) The Mayor shall establish, maintain, and provide to all departments and agencies under the Mayor:

(1) Consistent policies, principles, standards, and guidelines for the acquisition, utilization, operation, and maintenance of automatic data processing, word processing, and telecommunications equipment and related information systems technology;

(2) Consistent policies, principles, standards, and guidelines for data and information collection, storage and reporting that facilitate the sharing of information among agencies and reduce duplicative efforts;

(3) Scientific and technical advisory services relating to automatic data processing, word processing, telecommunications, automatic data systems, and information systems, including the development of specifications for and the selection of all hardware, software, and the types and configurations of computers and related equipment that are needed;

(4) Consistent policies, principles, standards, and guidelines for the recruitment, classification, and training of persons in positions associated with automatic data processing and information systems technology;

(5) A multiyear comprehensive plan for meeting the needs of the District government regarding automatic data processing and information systems technology;

(6) Consistent policies, principles, standards, and guidelines for the security, protection, and preservation of automated data systems, automatic data processing equipment, and information systems, including contingency or backup plans for disaster and emergency recovery;

(7) Consistent policies, principles, standards, and guidelines for ensuring compatibility in the acquisition of automatic data processing related resources with existing resources and data systems and information systems; and

(8) Consistent standards and requirements for agency audits of all major automated data systems and information systems.

(c) Repealed. (Mar. 15, 1985, D.C. Law 5-168, § 4, 32 DCR 721; Apr. 12, 1997, D.C. Law 11-259, § 305(a), 44 DCR 1423.)

**Section references.** — This section is referred to in § 1-1134.

**Effect of amendments.** — Section 305(a) of D.C. Law 11-259 deleted "To carry out the purposes of §§ 1-1134 to 1-1136" from the beginning of the introductory language of (a), and repealed (c).

**Legislative history of Law 5-168.** — See note to § 1-1134.

**Legislative history of Law 11-259.** — Law 11-259, the "Procurement Reform Amendment Act of 1996," was introduced in Council and

assigned Bill No. 11-705, which was referred to the Committee on Government Operation. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on January 3, 1997, it was assigned Act No. 11-526 and transmitted to both Houses of Congress for its review. D.C. Law 11-259 became effective on April 9, 1997.

**Delegation of authority pursuant to Law 5-168.** — See Mayor's Order 86-150, September 1, 1986.

## § 1-1136. Same — Delegation of certain Mayoral authority.

Repealed.

(Mar. 15, 1985, D.C. Law 5-168, § 4, 32 DCR 721; Apr. 12, 1997, D.C. Law 11-259, § 305(b), 44 DCR 1423.)

**Legislative history of Law 11-259.** — See note to § 1-1135.

*Subchapter II. Minority Contracting.*

**§ 1-1141. Findings.**

The Council finds that:

(1) A persistent pattern of racial discrimination in our society has prevented minority business enterprises from gaining a fair share of contracts and subcontracts for construction, supplies, and materials in both the public and private sector;

(2) The inability of minority business enterprises to prosper and participate fully is particularly unacceptable in the District of Columbia, where there is a great disparity between the number of minority business enterprises operating in the community and the number of such enterprises participating in public contracting;

(3) In addition to other impediments, difficulties in the financing and bonding markets have kept minority business enterprises from full participation in public contracting in the District of Columbia;

(4) As a result of this discrimination, minority group residents of the District of Columbia have not only been deprived of equal business opportunities, but have also been deprived of numerous employment opportunities;

(5) The District of Columbia government is committed to a policy of equal employment opportunity, and carries out affirmative action programs to fulfill that policy, in the allocation of District of Columbia government contracts; and

(6) The minority contracting programs established according to this subchapter will work to achieve the goal of equal opportunity, to overcome the effects of past discrimination in the allocation of contracts, and the financing and bonding of minority business enterprises. (1973 Ed., § 1-851; Mar. 29, 1977, D.C. Law 1-95, § 2, 23 DCR 9532b.)

**Cross references.** — As to equal opportunity for local, small, and disadvantaged business enterprises, see § 1-1153.1 et seq.

As to minority contracting requirements for cable television systems, see § 43-1842.

**Section references.** — This section is referred to in §§ 26-810, 26-917, and 47-351.11.

**Legislative history of Law 1-95.** — Law 1-95 was introduced in Council and assigned Bill No. 1-323, which was referred to the Committee on Employment and Economic Development. The Bill was adopted on first and second readings on September 15, 1976 and October 12, 1976, respectively. Signed by the Mayor on November 15, 1976, it was assigned Act No. 1-174 and transmitted to both Houses of Congress for its review.

**Establishment of Department of Human Rights and Minority Business Development.** — See Mayor's Order 89-247, November 1, 1989.

**Redesignation of the Minority Business Opportunity Commission, the Department of Human Rights and Minority Business Development, and the Minority Business Development Administration.** — See Mayor's Order 97-169, September 25, 1997 (44 DCR 5863).

**The District violated plaintiff's Fifth Amendment right to equal protection** of the laws by enforcing the Minority Contracting Act in a manner that deprived plaintiff of the equal opportunity to compete for city road construction contracts. *O'Donnell Constr. Co. v. District of Columbia*, 963 F.2d 420 (D.C. Cir. 1992).

**Companies having only superficial level of minority ownership and control** may not take improper advantage of sheltered market programs. *American Combustion, Inc. v. Minority Bus. Opportunity Comm'n*, App. D.C., 441 A.2d 660 (1982).

**Standard of review.** — The District of Columbia Council does not share Congress' remedial powers derived from U.S. Const., Amend. XIV, § 5, so that the more deferential standard of review which applies to a minority set-aside program enacted by Congress does not apply to this chapter. *O'Donnell Constr. Co. v. District of Columbia*, 963 F.2d 420 (D.C. Cir. 1992).

The District must identify past discrimination, public or private, with some specificity

before it may use race-conscious relief. *O'Donnell Constr. Co. v. District of Columbia*, 963 F.2d 420 (D.C. Cir. 1992).

**Cited in** *M.B.E., Inc. v. Minority Bus. Opportunity Comm'n*, App. D.C., 485 A.2d 152 (1984); *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, App. D.C., 560 A.2d 517 (1989); *District of Columbia v. Group Ins. Admin.*, App. D.C., 633 A.2d 2 (1993).

## § 1-1142. Definitions.

For the purposes of this subchapter:

(1) The term "minority" means Black Americans, Native Americans, Asian Americans, Pacific Islander Americans, and Hispanic Americans, who by virtue of being members of the foregoing groups, are economically and socially disadvantaged because of historical discrimination practiced against these groups by institutions within the United States of America.

(2) The term "minority business enterprise" means a business enterprise of which more than 50 percent of the ownership and control is held by individuals who are members of a minority, and of which more than 50 percent of the net profit or loss accrues to members of a minority.

(3) The term "local business enterprise" means a minority business enterprise with its principal office physically located in the District of Columbia, and which is licensed pursuant to § 47-2801 et seq. or subject to the tax levied under § 47-1810.1 et seq.: Provided, that such term includes any minority business enterprise deemed by the Commission to be a local business enterprise pursuant to § 1-1149(13).

(4) The term "joint venture" means a combination of contractors performing a specific job in which minority business enterprises participate and share a percentage of the net profit or net loss.

(5) The term "Commission" means the District of Columbia Minority Business Opportunity Commission established by § 1-1143.

(6) The term "agency" means an agency, department, office, or instrumentality of the District of Columbia government.

(7) The term "sheltered market" means a process whereby contracts or subcontracts are designated, before solicitation of bids, for limited competition from minority business enterprises on either a negotiated or competitive bid process. (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.)

**Section references.** — This section is referred to in §§ 26-810, 26-917, and 40-1702.

**Legislative history of Law 1-95.** — See note to § 1-1141.

**Legislative history of Law 3-91.** — Law 3-91 was introduced in Council and assigned Bill No. 3-252, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on June 3, 1980 and June 17, 1980, respec-

tively. Signed by the Mayor on July 9, 1980, it was assigned Act No. 3-213 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 4-167.** — See note to § 1-1150.1.

**References in text.** — Section 47-2801 et seq., referred to in (3), was repealed by D.C. Law 12-86, § 101(c), 45 DCR 1172, effective April 29, 1998.

**Cited in** *American Combustion, Inc. v. Mi-*

minority Bus. Opportunity Comm'n, App. D.C., 441 A.2d 660 (1982); M.B.E., Inc. v. Minority Bus. Opportunity Comm'n, App. D.C., 485 A.2d 152 (1984); O'Donnell Constr. Co. v. District of Columbia, 963 F.2d 420 (D.C. Cir. 1992).

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

(a) There is hereby established for the District of Columbia a District of Columbia Minority Business Opportunity Commission (hereinafter in this subchapter referred to as the "Commission") to oversee the implementation of minority participation in public contracting. The Commission shall exercise the powers set forth in § 1-1149 to foster local minority business opportunities consistent with ensuring that the interests of the District of Columbia government are protected.

(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.)



**Cross references.** — As to the Minority Enterprise Small Business Investment Company, see § 1-2221.

**Section references.** — This section is referred to in §§ 1-633.7, 1-1142, 1-1462, 26-810, and 26-917.

**Legislative history of Law 1-95.** — See note to § 1-1141.

**Legislative history of Law 3-91.** — See note to § 1-1142.

**Legislative history of Law 6-15.** — Law 6-15 was introduced in Council and assigned Bill No. 6-141, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 14, 1985 and May 28, 1985, respectively. Signed by the Mayor on June 7, 1985, it was assigned Act No. 6-30 and transmitted to both Houses of Congress for its review.

**§ 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 this subchapter, 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 this subchapter.

(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 this subchapter.

(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.)

**Section references.** — This section is referred to in §§ 26-810 and 26-917.

**Effect of amendments.** — D.C. Law 12-268 substituted “the members participating at the meeting” for “those present” in the last sentence of (c); and inserted (c-1).

**Temporary amendment of section.** — Section 9 of D.C. Law 11-267 substituted “the members participating at the meeting” for “those present” in the last sentence in (c); and added (c-1).

Section 11(b) of D.C. Law 11-267 provides for expiration of the act after 255 days of its having taken effect or upon the effective date of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Act of 1997, whichever occurs first.

Section 9 of D.C. Law 12-102 substituted “the members participating at the meeting” for “those present” in the last sentence in (c); and added (c-1).

Section 11(b) of D.C. Law 12-102 provides that the act shall expire after 225 days of its having taken effect.

**Emergency act amendments.** — For temporary amendment of section, see § 9 of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-65, April 3, 1997, 44 DCR 2437), and see § 9 of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Congressional Review Emergency Act of 1998 (D.C. Act 12-347, May 6, 1998, 45 DCR 2988).

Section 11 of D.C. Act 12-65 provides for the application of the act.

Section 11 of D.C. Act 12-347 provides for the application of the act.

**Legislative history of Law 1-95.** — See note to § 1-1141.

**Legislative history of Law 3-91.** — See note to § 1-1142.

**Legislative history of Law 11-267.** — See note to § 1-1152.6.

**Legislative history of Law 12-102.** — Law 12-102, the “Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Temporary Act of 1998,” was introduced in Council and assigned Bill No. 12-476. The Bill was adopted on first and second readings on December 4, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 27, 1998, it was assigned Act No. 12-278 and transmitted to both Houses of Congress for its review. D.C. Law 12-102 became effective on April 30, 1998.

**Legislative history of Law 12-268.** — Law 12-268, the “Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Act of 1998,” was introduced in Council and assigned Bill No. 12-616, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 24, 1998, it was assigned Act No. 12-580 and transmitted to both Houses of Congress for its review. D.C. Law 12-268 became effective on April 27, 1999.

## § 1-1145. Same — Reports.

The Commission shall submit a report every 6 months to the Mayor and to the Council reviewing the performance of agencies in meeting the goals established under this subchapter. Such report shall:

(1) Be attested by the affidavits of the Chairman, the Vice-Chairman, and include a copy of the roster of registered contractors and joint ventures;

(2) State the degree to which each agency has met the goals in § 1-1146, and identify agencies which have failed to comply with the provisions of this subchapter;

(3) Recommend amendments to this subchapter which the Commission believes necessary to accomplish its purposes, including higher goals than those set forth in § 1-1146; and

(4) Summarize its general activities during the reporting period. (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.)

**Section references.** — This section is referred to in §§ 26-810 and 26-917.

**Legislative history of Law 3-91.** — See note to § 1-1142.

**Legislative history of Law 1-95.** — See note to § 1-1141.

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

(a) Each agency of the District of Columbia, including those agencies which contract a portion of their procurement through the Department of General Services shall, unless otherwise determined by the Commission in § 1-1149:

(1) Allocate its construction contracts in order to reach the goal of 35 percent (or such other goal as may be determined by the Commission under the provisions set forth below) of the dollar volume of all construction contracts to be let to local minority business enterprises;

(2) Allocate its procurement of goods and services other than construction in order to reach the goal of 35 percent (or such other goal as may be determined by the Commission under the provisions set forth below) of the dollar volume to local minority business enterprises; and

(3) Provide quarterly reports to the Commission specifying, with respect to the contracts and subcontracts subject to the provisions of this subchapter within 30 days after the end of a quarter:

(A) The means by which it intends to implement the programs provided in § 1-1147 during the next 12 months;

(B) The dollar percentage of all contracts and subcontracts it has let during the quarter which were let to minority contractors and other minority business enterprises;

(C) The dollar volume of contracts and subcontracts let during the quarter to minority business enterprises;

(D) The degree to which the agency has met the goals set forth in this section, and an explanation of any failure to meet those goals; and

(E) A description of its past and current activities under § 1-1147.

(b) Upon receipt of the semiannual report from the Commission, the Council shall review the goals set forth under this section and consider appropriate amendments to this subchapter. (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.)

**Section references.** — This section is referred to in §§ 1-1145, 1-1147, 1-1149, 26-810, and 26-917.

**Legislative history of Law 1-95.** — See note to § 1-1141.

**Legislative history of Law 4-167.** — See note to § 1-1150.1.

**Transfer of functions.** — The functions of the Department of General Services were transferred, in part, to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984, and transferred, in part, to the Department of Administrative Ser-

vices by Reorganization Plan No. 5 of 1983, effective March 1, 1984.

**The District violated plaintiff's Fifth Amendment right to equal protection of the laws by enforcing the Minority Contracting Act in a manner that deprived plaintiff of the equal opportunity to compete for city road construction contracts.** O'Donnell Constr. Co. v. District of Columbia, 963 F.2d 420 (D.C. Cir. 1992).

**Racial classifications.** — The Minority Contracting Act's 35 percent goal serves as a requirement, and the means devised to satisfy

the requirement are racial classifications; under the Equal Protection Clause of the Fourteenth Amendment, a local government may not use racial classifications to remedy past racial discrimination unless it can demonstrate a compelling interest for doing so, which must rest on evidence at least approaching a prima facie case of racial discrimination in the relevant industry. *O'Donnell Constr. Co. v. District of Columbia*, 963 F.2d 420 (D.C. Cir. 1992).

**Allocation of construction contracts un-**

**supported.** — No strong basis in the evidence was found for the use of a 35 percent goal, enforced through sheltered markets and subcontracting set asides. *O'Donnell Constr. Co. v. District of Columbia*, 963 F.2d 420 (D.C. Cir. 1992).

**Cited in** *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, App. D.C., 560 A.2d 517 (1989); *District of Columbia v. Group Ins. Admin.*, App. D.C., 633 A.2d 2 (1993).

## § 1-1147. Assistance programs for minority contractors.

(a) To achieve the goals set forth in § 1-1146, programs designed to assist local minority contractors shall be established under regulations issued by the Commission pursuant to § 1-1149(14). Such programs shall be implemented by each agency within 60 days after issuance of such regulations. Minority contractors shall not be limited to bidding or negotiating only on contracts within these programs.

(b) The Commission shall include among these programs a sheltered market approach to contracts. Only certified minority business enterprises are eligible to participate in any sheltered market program established pursuant to this subsection.

(c) The prime contractor shall perform at least 50 percent of the contracting effort, excluding the cost of materials, goods and supplies, with his own organization and resources, and if he subcontracts, 50 percent of the subcontracting effort excluding the cost of materials, goods and supplies shall be with certified minority business enterprises. The contract shall contain a certified statement to this effect. Waivers of the above requirements must be given in writing by the contracting officer with the approval and consent of the Minority Business Opportunity Commissioner.

(d) For construction contracts of up to \$1,000,000, the prime contractor shall perform at least 50 percent of the on-site work with his own work force, excluding the cost for materials, goods, supplies and equipment. The prime contractor shall award at least 50 percent of his subcontracts to certified minority business enterprises. The bid document shall contain a certification form to be signed by all bidders to this effect. Waivers of the above requirements must be given in writing by the contracting officer with the approval and consent of the Minority Business Opportunity Commission. (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.)

**Section references.** — This section is referred to in §§ 1-1146, 1-1148, 1-1149, 26-810, and 26-917.

**Legislative history of Law 1-95.** — See note to § 1-1141.

**Legislative history of Law 3-91.** — See note to § 1-1142.

**Allocation of construction contracts unsupported.** — No strong basis in the evidence was found for the use of a 35 percent goal,

enforced through sheltered markets and subcontracting set asides. *O'Donnell Constr. Co. v. District of Columbia*, 963 F.2d 420 (D.C. Cir. 1992).

The District never identified with any precision whether the sheltered market approach was a remedy narrowly tailored to remedy prior discrimination. *O'Donnell Constr. Co. v. District of Columbia*, 963 F.2d 420 (D.C. Cir. 1992).

**§ 1-1148. Certificates of registration.**

(a) Notwithstanding any other provision of law, no firm shall be permitted to participate in the program established under § 1-1147 unless it has been issued a certificate of registration under the provisions of this subchapter. Eligibility criteria for certification, under this subchapter, shall include the following:

(1) Written evidence that the applicant is a bona fide, minority business enterprise;

(2) Written evidence that the applicant is a local entity;

(3) Written evidence of the applicant's financial standing;

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

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

(b) Any firm desiring to be registered as a bona fide minority business enterprise in the District of Columbia shall make and file with the Commission a written application on such form as may be prescribed by the Commission. Any joint venture desiring to be registered as a joint venture in the District of Columbia shall make and file with the Commission a written application on such form as may be prescribed by the Commission. The Commission shall require the applicant to furnish evidence of eligibility under this subchapter, ability, character and financial position, which may be the applicant's last financial statement as of a date not more than 90 days prior thereto, on a form prescribed by the Commission which will include an affidavit regarding the correctness of such statement. If at any time the information previously submitted changes wherein a firm or joint venture can no longer satisfy the requirements of this subchapter, the applicant shall immediately report such change to the Commission. The use of information submitted to the Commission shall be governed by the terms set forth in existing law. If the application is satisfactory to the Commission, the Commission shall issue to the applicant a certificate to engage in the sheltered market program established under § 1-1147.

(c) A certificate of registration shall expire 2 years from the date of approval. An application for renewal of a certificate must be submitted 90 days prior to the expiration date or as the Commission determines.

(d) The Commission may revoke or suspend the certificate of any firm or joint venture registered hereunder 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 which affect the requirement for certification;

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

(5) Willful violation of any provision of this subchapter, or regulations adopted pursuant thereto.

(e) Any person may prefer charges of a violation of this subchapter against any applicant for registration, or contractor registered hereunder. Such charges shall be in writing and sworn to by the complainant and submitted to the Commission. Such charges, unless dismissed without hearing by the Commission as unfounded or trivial, shall be heard and determined within 3 months after the date on which they were preferred. A time and place for such hearing shall be fixed by the Commission. A copy of the charges together with the notice of the time and place of hearing shall be served on the accused personally or by certified or registered mail 30 days before the fixed date for the hearing. At the hearing the accused shall have the right to appear personally by representative and to cross-examine witnesses against him, and to present evidence and witnesses in his defense. In connection with any such hearing, the Commission shall have the power to issue subpoenas requiring the attendance of witnesses and the production of records, papers and other documents. If after such hearing the Commission shall find that the charges are upheld, the Commission shall revoke the registration of the accused, or take such other action as it deems appropriate.

(f) 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 such reissuance. The Commission may consider whether the firm should be required to submit satisfactory proof that conditions within the company which lead to the violation have been corrected. (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.)

**Section references.** — This section is referred to in §§ 26-810 and 26-917.

**Legislative history of Law 1-95.** — See note to § 1-1141.

**Legislative history of Law 3-91.** — See note to § 1-1142.

**Scope of revocation power.** — The revocation provision of subsection (d) of this section gives the Commission the power to suspend or revoke certification for conduct which, although improper, might not render a contractor otherwise ineligible for certification. *American Combustion, Inc. v. Minority Bus. Opportunity Comm'n*, App. D.C., 441 A.2d 660 (1982).

**Increasing minority involvement to meet certification requirements after successful bid.** — To permit a contractor to bid on a project and then, only if successful, tighten up its minority involvement to meet certification standards frustrates the overall purpose of the Minority Contracting Act. *American Combustion, Inc. v. Minority Bus. Opportunity Comm'n*, App. D.C., 441 A.2d 660 (1982).

**Revocation must be based on properly-noticed charge.** — Where the Commission never provided the business with notice that it

planned to consider charges based solely on certain grounds for revocation, those grounds cannot serve as the basis for decision; the only basis for revocation is on properly-noticed charge. *M.B.E., Inc. v. Minority Bus. Opportunity Comm'n*, App. D.C., 485 A.2d 152 (1984).

**Discretion to revoke retroactively.** — When the Commission finds a violation under subsection (d) of this section, it has discretion to revoke the certificate retroactively to the date on which the grounds for revocation first arose. *M.B.E., Inc. v. Minority Bus. Opportunity Comm'n*, App. D.C., 485 A.2d 152 (1984).

**Focus for finding willfulness in subsection (d)(5) of this section** is on the intentional performance of a prohibited act — without regard to motive or erroneous advice — not on a specific intention to violate the law: So that if a person intentionally does an act which is prohibited, irrespective of evil motive or reliance on erroneous advice, or acts with careless disregard of statutory requirements, the violation is willful. *M.B.E., Inc. v. Minority Bus. Opportunity Comm'n*, App. D.C., 485 A.2d 152 (1984).

**§ 1-1149. 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 minority business enterprises and joint ventures will be eligible for certification under this subchapter and establish criteria to identify those minority business enterprises and joint ventures which will be given priority consideration for government contracts. In establishing priority criteria, preference shall be given to those minority businesses with principal offices located in the District of Columbia and licensed pursuant to § 47-2801 et seq. or subject to taxes levied under § 47-1810.1 et seq.;

(3) Review the procurement plans of each agency of the District of Columbia government and determine, if it deems appropriate, which contracts, or parts thereof, shall be reserved for the programs established under § 1-1147. Where an agency has failed to meet the goals set forth in § 1-1146, the Commission shall reserve portions of the agency's contracts to be performed in accordance with the programs established under § 1-1147, so that such agency's failings shall be timely remedied;

(4) Consider agency requests for adjustment of goals in particular instances, provided, that the Commission report to the Mayor and the Council each time it acts upon such requests, and submit to the Council on a semiannual basis recommendations for changes of the goals under § 1-1146, on an agency basis if appropriate, and accompanied by necessary supporting data;

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

(6) May recommend any agency to 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) May recommend any agency to make advance payments to a certified contractor or to subdivide a contract into smaller parts where the Commission has determined that such payments of such subdivisions are necessary to achieve the purposes of this subchapter;

(8) Review bids in the sheltered market arrangements established under § 1-1147 and may authorize agencies to refuse to let a contract where the Commission determines that bids for a particular contract are excessive;

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

(10) Review minority contracting problems and make further recommendations that increase minority contractor's participation with the District of Columbia government. Such recommendations shall include, but not be limited to, 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 advising the Mayor on methods to be utilized to ensure minority participation;

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

(12) May recommend that any agency subdivide contracts into smaller parts where the Commission has determined that subdivision of such contracts is necessary to achieve the purposes of this subchapter. Subdivision may be recommended in order to fall within the \$25,000 bond exemption provided by § 1-1107 where feasible;

(13) May determine according to regulations adopted by the Commission that a minority business enterprise without a principal office physically located in the District of Columbia is a local business enterprise.

(A) These regulations shall include, but not be limited to, the following factors:

(i) Whether the applicant's principal place of business is located in the Washington Standard Metropolitan Statistical Area (SMSA);

(ii) The location(s) of the assets of the business enterprise;

(iii) The number and percentage of the applicant's employees who reside in the District of Columbia;

(iv) The place of residence of the owners of the business enterprise; and

(v) The percentage of total sales or other revenues derived from the transaction of business in the District of Columbia.

(B) In addition, these regulations shall require that each minority business enterprise, in order to be a local business enterprise according to this section, be licensed pursuant to § 47-2801 et seq. or subject to the tax levied under § 47-1810.1 et seq.; and

(14) Issue regulations to implement this subchapter. (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.)

**Section references.** — This section is referred to in §§ 1-1142, 1-1143, 1-1146, 1-1147, 26-810, and 26-917.

**Legislative history of Law 1-95.** — See note to § 1-1141.

**Legislative history of Law 3-91.** — See note to § 1-1142.

**Legislative history of Law 4-167.** — See note to § 1-1150.1.

**Legislative history of Law 5-159.** — Law 5-159 was introduced in Council and assigned Bill No. 5-540, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 20, 1984 and December 4, 1984, respectively. Signed by the Mayor on December 10, 1984, it was assigned Act No. 5-224 and transmitted to both Houses of Congress for its review.

**References in text.** — Section 47-2801, referred to in (2) and in (13)(B), was repealed by

D.C. Law 12-86, § 101(c), 45 DCR 1172, effective April 29, 1998.

**The District of Columbia Minority Contracting Act is unconstitutional,** and the District is permanently enjoined from enforcing the Act as presently authorized, as the District cannot simply rely on broad expressions of purpose or general allegations of historical or societal racism; its legislation must rest on evidence at least approaching a prima facie case of racial discrimination in the relevant industry and must also be narrowly tailored to achieve its end. *O'Donnell Constr. Co. v. District of Columbia*, 815 F. Supp. 473 (D.D.C. 1992).

**Cited in** *American Combustion, Inc. v. Minority Bus. Opportunity Comm'n*, App. D.C., 441 A.2d 660 (1982); *O'Donnell Constr. Co. v. District of Columbia*, 963 F.2d 420 (D.C. Cir. 1992).



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

(a) The Office of Contracting and Procurement may:

(1) Make advance, partial, progress or other payments under contracts for property or services; and

(2) Insert in bid solicitations for procurement of property or services, a provision limiting to minority business concerns, advance or progress payments.

(b) Payments made under subsection (a) of this section may not exceed the unpaid contract price.

(c) Advance payments under subsection (a) of this section may be made only upon adequate security and a determination by the Director of the Office of Contracting and Procurement, upon recommendation by the Commission, that to do so would be in the public interest. Such security may be in the form of a lien in favor of the government on the property contracted for, on the balance in an account in which such payments are deposited, and on such of the property acquired for performance of the contract as the parties may agree. This lien shall be paramount to all other liens imposed by the District of Columbia government. (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.)

**Section references.** — This section is referred to in §§ 26-810 and 26-917.

**Effect of amendments.** — Section 306 of D.C. Law 11-259 rewrote the introductory language in (a); deleted "made by the agency" following "services" in (a)(1); and substituted

"by the Director of the Office of Contracting and Procurement" for "by the agency head" in (c).

**Legislative history of Law 1-95.** — See note to § 1-1141.

**Legislative history of Law 11-259.** — See note to § 1-1135.

## § 1-1150.1. Rules proposed by Commission.

The rules proposed by the Commission shall be transmitted to the Chairman of the Council and shall become effective after a 45-day (excluding Saturdays, Sundays, holidays, and days on which the Council is in recess according to its rules) period of review by the Council of the District of Columbia. During the 45-day period of review the Council may approve or disapprove, in whole, the rules by resolution. The 45-day period of review shall not include Saturdays, Sundays, legal holidays, and days that pass during a recess of the Council. (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.)

**Section references.** — This section is referred to in §§ 26-810 and 26-917.

**Legislative history of Law 1-95.** — See note to § 1-1141.

**Legislative history of Law 4-167.** — Law 4-167 was introduced in Council and assigned Bill No. 4-437, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first, amended first, and second readings on July 20, 1982, September 21, 1982 and October 5, 1982, respectively. Signed by the Mayor on October 22, 1982, it

was assigned Act No. 4-242 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 6-15.** — See note to § 1-1143.

**Proposed rules approved.** — Pursuant to Resolution 5-387, the "Minority Business Opportunity Commission Rules Approval Resolution of 1983", effective October 18, 1983, the Council approved the proposed rules of the District of Columbia Minority Business Opportunity Commission transmitted by the Mayor on July 1, 1983.

Cited in *Wilson v. Dixon*, 120 WLR 33 (Super. Ct. 1992); *Wilson v. Kelly*, App. D.C., 615 A.2d 229 (1992).

## § 1-1151. Severability.

If any provision of this subchapter, or any section, sentence, clause, phrase or word or the application thereof, in any circumstance is held invalid, the validity of the remainder of the subchapter and of the application of any other provision section, sentence, clause, phrase, or word shall not be affected. (1973 Ed., § 1-861; Mar. 29, 1977, D.C. Law 1-95, § 13, 23 DCR 9532b.)

**Section references.** — This section is referred to in §§ 26-810 and 26-917.

**Legislative history of Law 1-95.** — See note to § 1-1141.

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

## § 1-1152. Findings.

Expired.

(Sept. 15, 1992, D.C. Law 9-152, § 2, 39 DCR 5023; Mar. 17, 1993, D.C. Law 9-217, § 2, 40 DCR 143.)

**Temporary reenactment and amendment of the provisions of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Act of 1992.** — Section 2-8 of D.C. Law 11-267 reenacted and amended, on a temporary basis, the provisions of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Act of 1992 to establish new size standards for small business enterprise categories, to require an assessment every 3 years of the continued need for the local, small, and disadvantaged programs, to establish a 2 tier set-aside program for small business enterprises, to establish affiliated interest standards for small and disadvantaged business enterprises, and to amend the Minority Contracting Act of 1976 to authorize board members participation at Minority Business Opportunity Commission meetings by conference telephone.

Section 11(b) of D.C. Law 11-267 provided that this act shall expire after 225 days of its having taken effect or upon the effective date of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Act of 1997, whichever occurs first.

Section 2-8 of D.C. Law 12-102 reenacted and amended, on a temporary basis, the provisions of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Act of 1992 to establish new size standards for small business enterprise categories, to require an assessment every 3 years of the continued need

for the local, small, and disadvantaged programs, to establish a 2 tier set-aside program for small business enterprises, to establish affiliated interest standards for small and disadvantaged business enterprises, and to amend the Minority Contracting Act of 1976 to authorize board members participation at Minority Business Opportunity Commission meetings by conference telephone.

Section 11(b) of D.C. Law 12-102 provides that the act shall expire after 225 days of its having taken effect or upon the effective date of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Act of 1997 whichever occurs first.

**Emergency act amendments.** — For temporary reenactment and amendment, on an emergency basis, of the provisions of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Act of 1992, see §§ 2-8 of the Equal opportunity for Local, Small, and Disadvantaged Business Enterprises Congressional Review Emergency Act of 1997 (D.C. Act 12-65, April 3, 1997, 44 DCR 2437), and see §§ 2-8 of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Congressional Review Emergency Act of 1998 (D.C. Act 12-347, May 6, 1998, 45 DCR 2988).

Section 11 of D.C. Act 12-65 provides for the application of the act.

Section 11 of D.C. Act 12-347 provides for the application of the act.

**Legislative history of Law 11-267.** — Law 11-267, the “Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Temporary Act of 1996,” was introduced in Council and assigned Bill No. 11-995. The Bill was adopted on first and second readings on December 3, 1996, and January 7, 1997, respectively. Signed by the Mayor on January 24, 1997, it was assigned Act No. 11-534 and transmitted to both Houses of Congress for its review. D.C. Law 11-267 became law on May 8, 1997.

**Legislative history of Law 12-102.** — See note to § 1-1144.

**Expiration of Law 9-217.** — Section 9(b) of

D.C. Law 9-217 provided that the act shall expire 2 years from the date of its taking effect. D.C. Law 9-217 became effective on March 17, 1993.

Section 2 of D.C. Law 11-114 provided for the temporary repeal of the expiration provision of D.C. Law 9-217.

Section 4(b) of D.C. Law 11-114 provides that the act shall expire after the 225th day of its having taken effect or on the effective date of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Act of 1996, whichever occurs first. D.C. Law 11-114 became effective on May 1, 1996.

## § 1-1152.1. Definitions.

Expired.

(Sept. 15, 1992, D.C. Law 9-152, § 3, 39 DCR 5023; Mar. 17, 1993, D.C. Law 9-217, § 3, 40 DCR 143.)

**Expiration of Law 9-217.** — See note to § 1-1152.

## § 1-1152.2. District government contracting with local business enterprises; quarterly agency reports on contracts; Council review of goals.

Expired.

(Sept. 15, 1992, D.C. Law 9-152, § 4, 39 DCR 5023; Mar. 17, 1993, D.C. Law 9-217, § 4, 40 DCR 143.)

**Expiration of Law 9-217.** — See note to § 1-1152.

## § 1-1152.3. Assistance Programs for local business enterprise contractors, disadvantaged business enterprise contractors, and small business enterprise contractors.

Expired.

(Sept. 15, 1992, D.C. Law 9-152, § 5, 39 DCR 5023; Mar. 17, 1993, D.C. Law 9-217, § 5, 40 DCR 143.)

**Expiration of Law 9-217.** — See note to § 1-1152.

## § 1-1152.4. Certificate of registration.

Expired.

## **§ 1-1152.5**

### **ADMINISTRATION**

(Sept. 15, 1992, D.C. Law 9-152, § 6, 39 DCR 5023; Mar. 17, 1993, D.C. Law 9-217, § 6, 40 DCR 143.)

**Expiration of Law 9-217.** — See note to § 1-1152.

## **§ 1-1152.5. Functions of the Commission.**

Expired.

(Sept. 15, 1992, D.C. Law 9-152, § 7, 39 DCR 5023; Mar. 17, 1993, D.C. Law 9-217, § 7, 40 DCR 143.)

**Expiration of Law 9-217.** — See note to § 1-1152.

## **§ 1-1152.6. Rules and regulations by Mayor.**

Expired.

(Sept. 15, 1992, D.C. Law 9-152, § 8, 39 DCR 5023; Mar. 17, 1993, D.C. Law 9-217, § 8, 40 DCR 143.)

**Expiration of Law 9-217.** — See note to § 1-1152.

### *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.

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

(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.

(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.

(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

Every 3 years following April 27, 1999, the Commission shall submit to the Mayor and Council the results of an independent evaluation of the local, small,

and disadvantaged business enterprise programs. The 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. The 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 Commission to economic outcomes for similar firms that are not certified by the Commission. (Apr. 27, 1999, D.C. Law 12-268, § 2, 46 DCR 969.)

**Cross references.** — As to minority contracting, see § 1-1141 et seq.

**Emergency act amendments.** — For temporary addition of subchapter II-B, see §§ 2-9 of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Second Emergency Act of 1997 (D.C. Act 12-221, December 29, 1997, 44 DCR 103) and §§ 2-8 and

§ 10 of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Emergency Act of 1998 (D.C. Act 12-565, January 12, 1999, 46 DCR 700).

Section 11 of D.C. Act 12-221 provides for the application of the act.

**Legislative history of Law 12-268.** — See note to § 1-1144.

## **§ 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 Commission, shall:

(1) Allocate its construction contracts in order to reach a goal of 50%, or such other goal as may be determined by the Commission 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 Commission 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 Commission 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 Commission, 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. (Apr. 27, 1999, D.C. Law 12-268, § 3, 46 DCR 969.)

**Emergency act amendments.** — See note to § 1-1153.1.

**Legislative history of Law 12-268.** — See note to § 1-1144.

**§ 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 bid preference mechanism for local business enterprises and disadvantaged business enterprises and a two-tier small business set-aside program at the contract level, which shall include a separate set-aside program for small business enterprises with gross revenues of \$1,000,000 or less, which shall provide that a business becomes ineligible for participation in this set-aside program when the business has gross revenues in excess of \$1,000,000 for 2 consecutive years, and a separate set-aside program for all small business enterprises, and for local and disadvantaged business enterprises at the subcontracting level. In evaluating bids and proposals, agencies shall award preferences, in the form of points, in the case of proposals, or a percentage reduction in price, in the case of bids, as follows:

- (A) Five points or 5% for local business enterprises;
- (B) Five points or 5% for disadvantaged business enterprises; and
- (C) Two points or 2% for businesses located in enterprise zones.

(2) A bid or proposal may be entitled to any or all of the above preferences for which it is qualified.

(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 of the Local Business Development Administration.

(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 of the Local Business Development Administration. (Apr. 27, 1999, D.C. Law 12-268, § 4, 46 DCR 969.)

**Emergency act amendments.** — See note to § 1-1153.1. **Legislative history of Law 12-268.** — See note to § 1-1144.

### § 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 or has self-certified pursuant to regulations issued pursuant to this subchapter. 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.

(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 than \$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.)

**Emergency act amendments.** — See note to § 1-1153.1.

**Legislative history of Law 12-268.** — See note to § 1-1144.

## **§ 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) 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. Where an agency has failed to meet the goals set forth in § 1-1153.2, the Commission 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 shall be timely remedied;

(4) Consider an agency request for adjustment of goals in particular instances, provided, that the Commission report to the Mayor and the Council, on a semi-annual basis, recommendations for changes of the goals under § 1-1153.2, on an agency basis if appropriate, and accompanied by necessary supporting data;

(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) Review bids in the small business enterprise set-aside arrangements established under § 1-1153.3 and may authorize agencies to refuse to let a contract where the Commission determines that bids for a particular contract are excessive;

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

(10) Review contracting problems and make further recommendations that increase small, local, and disadvantaged contractor participation with the District government. Recommendations shall include, but not be limited to, 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 advising the Mayor on methods to be utilized to ensure participation;

(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 than 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.

(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.)

**Emergency act amendments.** — See note to § 1-1153.1.

**Legislative history of Law 12-268.** — See note to § 1-1144.

## § 1-1153.6. Rules.

The Mayor shall issue rules to implement this subchapter, including rules that establish a procedure to provisionally certify, self-certify, or to challenge the certifications that a business enterprise is a small, local, or disadvantaged business enterprise. (Apr. 27, 1999, D.C. Law 12-268, § 7, 46 DCR 969.)

**Emergency act amendments.** — See note to § 1-1153.1.

**Legislative history of Law 12-268.** — See note to § 1-1144.

## § 1-1153.7. Applicability date.

This subchapter shall apply as of December 11, 1998. (Apr. 27, 1999, D.C. Law 12-268, § 10, 46 DCR 969.)

**Emergency act amendments.** — See note to § 1-1153.1.

**Legislative history of Law 12-268.** — See note to § 1-1144.

*Subchapter III. First Source Employment.*

**§ 1-1161. Definitions.**

For the purposes of this subchapter, the term:

(1) “Beneficiary” means the signator to a contract executed by the Mayor which involves any District of Columbia government funds, or funds which, in accordance with a federal grant or otherwise, the District of Columbia government administers, or the applicant for any street or alley closing pursuant to Chapter 4 of Title 7, and which details the number and description of all jobs created by a government-assisted project for which the beneficiary is required to use the First Source Register.

(2) “Employment agreement” means the contract referred to in paragraph (1) of this section.

(3) “All jobs” means any managerial, nonmanagerial, professional, non-professional, technical or nontechnical position including: clerical and sales occupations, service occupations, processing occupations, machine trade occupations, bench work occupations, structural work occupations, agricultural, fishery, forestry, and related occupations, and any other occupations as the Department of Employment Services may identify in the Dictionary of Occupational Titles, United States Department of Labor.

(4) “First Source Register” means the Department of Employment Services Automated Applicant Files, which consists of the names of unemployed District residents registered with the Department of Employment Services.

(5) “Government-assisted project” means any project funded in whole or in part with District of Columbia funds, or funds which, in accordance with a federal grant or otherwise, the District of Columbia government administers, and on which the District of Columbia is signatory to any agreement of a contractual nature, including leasing agreements of real property for 1 year or more, or the initial project, development, or construction facilitated by any street or alley closing pursuant to Chapter 4 of Title 7.

(6) “Unemployed District resident” means:

(A) Any unemployed resident of the District of Columbia who does not receive unemployment compensation benefits pursuant to Chapter 1 of Title 46, and who lives within the boundaries of the advisory neighborhood commission in which the government-assisted project is located;

(B) Any unemployed resident of the District of Columbia who does not receive unemployment compensation benefits pursuant to Chapter 1 of Title 46; or

(C) Any other unemployed resident of the District of Columbia. (June 29, 1984, D.C. Law 5-93, § 2, 31 DCR 2545; Mar. 15, 1985, D.C. Law 5-175, § 2, 32 DCR 746; Mar. 17, 1993, D.C. Law 9-210, § 2(a), 40 DCR 19.)

**Section references.** — This section is referred to in §§ 1-1163 and 1-2295.15.

**Legislative history of Law 5-93.** — Law 5-93, the “First Source Employment Agreement

Act of 1984," was introduced in Council and assigned Bill No. 5-341, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on April 10, 1984 and April 30, 1984, respectively. Signed by the Mayor on May 9, 1984, it was assigned Act No. 5-134 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 5-175.** — Law 5-175 was introduced in Council and assigned Bill No. 5-542, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on December 4, 1984 and December 18, 1984, respectively. Signed by the Mayor on

January 11, 1985, it was assigned Act No. 5-240 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 9-210.** — Law 9-210, the "First Source Employment Agreement Act of 1984 Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-75, which was referred to the Committee on Labor. The Bill was adopted on first and second readings on November 4, 1992, and December 1, 1992, respectively. Signed by the Mayor on December 21, 1992, it was assigned Act No. 9-339 and transmitted to both Houses of Congress for its review. D.C. Law 9-210 became effective on March 17, 1993.

## § 1-1162. First Source Register created.

(a) The Mayor shall maintain a First Source Register. The First Source Register is the Department of Employment Services Automated Applicant File, which consists of the names of unemployed District residents registered with the Department of Employment Services.

(b) In compiling and maintaining the First Source Register the Mayor shall contact community organizations, advisory neighborhood commissions, civic and citizen associations, and project area committees for names of unemployed District residents. (June 29, 1984, D.C. Law 5-93, § 3, 31 DCR 2545; Mar. 17, 1993, D.C. Law 9-210, § 2(b), 40 DCR 19.)

**Legislative history of Law 5-93.** — See note to § 1-1161.

**Legislative history of Law 9-210.** — See note to § 1-1161.

**Delegation of authority pursuant to Law 5-93.** — See Mayor's Order 86-66, April 22, 1986.

## § 1-1163. Employment agreements required.

(a) The Mayor shall include for every government-assisted project a requirement that the beneficiary enter into an employment agreement with the District of Columbia government which states that:

(1) The first source for finding employees to fill all jobs created by the government-assisted project will be the First Source Register; and

(2) The first source for finding employees to fill any vacancy occurring in all jobs covered by an employment agreement will be the First Source Register.

(b) In selecting unemployed District residents from the First Source Register for interviews for all jobs covered by each employment agreement, the Mayor shall:

(1) Give first preference to unemployed District residents pursuant to § 1-1161(6)(A); and

(2) Give second preference to unemployed District residents pursuant to § 1-1161(6)(B). (June 29, 1984, D.C. Law 5-93, § 4, 31 DCR 2545; Mar. 17, 1993, D.C. Law 9-210, § 2(c), 40 DCR 19.)

## § 1-1164

### ADMINISTRATION

**Section references.** — This section is referred to in § 1-2238.

**Legislative history of Law 5-93.** — See note to § 1-1161.

**Legislative history of Law 9-210.** — See note to § 1-1161.

**Delegation of authority pursuant to Law 5-93.** — See Mayor's Order 86-66, April 22, 1986.

## § 1-1164. Reports.

The Mayor shall submit a semiannual report to the Council of the District of Columbia on January 31st and July 31st of each year. The report shall include, for each preceding 6-month period:

(1) The number of government-assisted projects for which employment agreements were executed;

(2) The number of jobs that result from employment agreements;

(3) The number of District residents actually employed in government-assisted projects; and

(4) The number of names of unemployed District residents on the First Source Register. (June 29, 1984, D.C. Law 5-93, § 5, 31 DCR 2545; Mar. 14, 1985, D.C. Law 5-159, § 5, 32 DCR 30; Mar. 17, 1993, D.C. Law 9-210, § 2(d), 40 DCR 19.)

**Legislative history of Law 5-93.** — See note to § 1-1161.

**Legislative history of Law 5-159.** — See note to § 1-1149.

**Legislative history of Law 9-210.** — See note to § 1-1161.

**Delegation of authority pursuant to Law 5-93.** — See Mayor's Order 86-66, April 22, 1986.

## § 1-1165. Rules.

The Mayor shall issue rules to carry out the purposes of this subchapter not later than 60 days after June 29, 1984. (June 29, 1984, D.C. Law 5-93, § 6, 31 DCR 2545.)

**Legislative history of Law 5-93.** — See note to § 1-1161.

**Delegation of authority pursuant to Law**

**5-93.** — See Mayor's Order 86-66, April 22, 1986.

### *Subchapter IV. Quick Payment Provisions.*

## § 1-1171. Definitions.

For the purposes of this subchapter, the term:

(1) "Business concern" means any person engaged in a trade or business and nonprofit entities operating as contractors.

(1A) "Contractor" means any entity that has a direct contract with a District agency, as that term is defined in paragraph (3) of this section.

(2) "Designated payment office" means the place named in the contract for forwarding the invoice for payment or, in certain instances, for approval.

(3) "District agency" means any office, department, division, board, commission, or other agency of the District government, including, unless other-

wise provided, an independent agency, required by law or by the Mayor or the Council to administer any law or any rule adopted under the authority of a law. For the purposes of this definition, the term "independent agency" means any agency of government not subject to the administrative control of the Mayor and includes, but is not limited to, the Superior Court of the District of Columbia, District of Columbia Court of Appeals, Council of the District of Columbia, Board of Elections and Ethics, Armory Board, Zoning Commission, Convention Center Board of Directors, District of Columbia Board of Education, and Public Service Commission.

(4) "Proper invoice" means an invoice which contains or is accompanied by substantiating documentation required by regulation or contract.

(5) "Subcontractor" means any entity that furnishes labor, material, equipment, or services to a contractor in performance of the contractor's contract with a District agency. (Mar. 15, 1985, D.C. Law 5-164, § 2, 32 DCR 555; Mar. 20, 1992, D.C. Law 9-81, § 2(a), 39 DCR 681; Apr. 12, 1997, D.C. Law 11-259, § 307(a), 44 DCR 1423.)

**Effect of amendments.** — Section 307(a) of D.C. Law 11-259 substituted "including, unless otherwise provided, an independent agency" for "other than an independent agency" in (3); and substituted "required by regulation or contract" for "(A) the Mayor may require by regulation, and (B) the District agency involved may require by regulation or contract" in (4).

**Legislative history of Law 5-164.** — Law 5-164, the "District of Columbia Government Quick Payment Act of 1984," was introduced in Council and assigned Bill No. 5-120, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 4, 1984 and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-229 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 9-81.** — Law

9-81, the "District of Columbia Government Quick Payment Act of 1984 Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-156, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 3, 1991, and January 7, 1992, respectively. Signed by the Mayor on January 28, 1992, it was assigned Act No. 9-139 and transmitted to both House of Congress for its review. D.C. Law 9-81 became effective on March 20, 1992.

**Legislative history of Law 11-259.** — See note to § 1-1135.

**Delegation of authority under D.C. Law 5-164.** — See Mayor's Order 85-119, July 18, 1985.

**Cited in** District of Columbia v. Pierce Assocs., App. D.C., 527 A.2d 306 (1987).

## § 1-1172. Rules and regulations governing interest penalty payments by District agencies; computation and payment of penalties.

(a)(1) In accordance with rules and regulations issued by the Mayor of the District of Columbia ("Mayor"), each agency of the District of Columbia government ("District"), under the direct control of the Mayor, which acquires property or services from a business concern but which does not make payment for each complete delivered item of property or service by the required payment date shall pay an interest penalty to the business concern in accordance with this section on the amount of the payment which is due.

(2) Each rule or regulation issued pursuant to paragraph (1) of this subsection shall:

(A) Specify that the required payment date shall be:

(i) The date on which payment is due under the terms of the contract for the provision of the property or service; or

(ii) 30 calendar days, excluding legal holidays, after receipt of a proper invoice for the amount of the payment due, if a specific date on which payment is due is not established by contract;

(B)(i) Specify, in the case of any acquisition of meat or of a meat food product, a required payment date which is not later than 7 calendar days, excluding legal holidays, after the date of delivery of the meat or meat food product; and

(ii) Specify, in the case of any acquisition of a perishable agricultural commodity, a required payment date which is not later than 10 calendar days, excluding legal holidays, after the date of delivery of the perishable agricultural commodity pursuant to this subchapter;

(C) Specify separate required payment dates for contracts under which property or services are provided in a series of partial executions or deliveries, to the extent that the contract provides for separate payment for partial execution or delivery; and

(D) Require that, within 15 days after the date on which any invoice is received, District agencies notify the business concern in writing of any defect in the invoice or delivered goods, property or services or impropriety of any kind which would prevent the running of the time period specified in subparagraph (A)(ii) of this paragraph.

(b)(1) Interest penalties on amounts due to a business concern under this subchapter shall be due and payable to the concern for the period beginning on the day after the required payment date and ending on the date on which payment of the amount is made, except that no interest penalty shall be paid if payment for the complete delivered item of property or service concerned is made on or before: (A) the 3rd day after the required payment date, in the case of meat or a meat product, described in subsection (a)(2)(B)(i) of this section; (B) the 5th day after the required payment date, in the case of an agricultural commodity, described in subsection (a)(2)(B)(ii) of this section; or (C) the 15th day after the required payment date in the case of any other item. Interest, computed at a rate of not less than 1%, shall be determined by the Mayor by regulation.

(1A) Each contract executed pursuant to Chapter 11A of Title 1 shall include in the solicitation a description of the contractor's rights and responsibilities under the chapter.

(1B) Paragraphs (1) and (1A) of this subsection shall apply to claims arising after October 7, 1998.

(2) Any amount of an interest penalty which remains unpaid at the end of any 30-day period shall be added to the principal amount of the debt and thereafter interest penalties shall accrue on the added amount.

(c) This section does not authorize the appropriation of additional funds for the payment of interest penalties required by this section. A District agency shall pay any interest penalty required by this section out of funds made available for the administration or operation of the program for which the penalty was incurred.



(d) Any contract awarded by a District agency shall include:

(1) A payment clause that obligates the contractor to take one of the 2 following actions within 7 days of receipt of any amount paid to the contractor by the District agency for work performed by any subcontractor under a contract:

(A) Pay the subcontractor for the proportionate share of the total payment received from the District agency that is attributable to the subcontractor for work performed under the contract; or

(B) Notify the District agency and the subcontractor, in writing, of the contractor's intention to withhold all or part of the subcontractor's payment with the reason for the nonpayment;

(2) An interest clause that obligates the contractor to pay interest to the subcontractor or supplier as provided in subsection (b)(1) and (2) of this section; and

(3) A clause that obligates the contractor to include in any subcontract a provision that requires each subcontractor to include the payment and interest clauses required under paragraphs (1) and (2) of this subsection in a contract with any lower-tier subcontractor or supplier.

(e)(1) A contractor's obligation to pay an interest charge to a subcontractor pursuant to subsection (d)(2) of this section shall not constitute an obligation of the District agency.

(2) A contract modification shall not be made for the purpose of providing reimbursement for any interest charge pursuant to subsection (d)(2) of this section.

(3) A cost reimbursement claim shall not include any amount for reimbursement for any interest charge pursuant to subsection (d)(2) of this section.

(f)(1) A dispute between a contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under the provisions of this subchapter does not constitute a dispute to which the District of Columbia is a party. The District of Columbia may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(2) This subsection shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to a contractor or subcontractor in the event of a dispute involving late payment or nonpayment by a prime contractor or deficient subcontract performance or nonperformance by a subcontractor. (Mar. 15, 1985, D.C. Law 5-164, § 3, 32 DCR 555; Mar. 20, 1992, D.C. Law 9-81, § 2(b), 39 DCR 681; Mar. 26, 1999, D.C. Law 12-175, § 902(a), 45 DCR 7193; Apr. 20, 1999, D.C. Law 12-264, § 7(a), 46 DCR 2118.)

**Section references.** — This section is referred to in §§ 1-1173 and 1-1174.

**Effect of amendments.** — D.C. Law 12-175 rewrote (b).

D.C. Law 12-264, in (b)(1B), substituted "after October 7, 1998" for "after the effective date of the Quick Payment Amendment Act of 1998."

**Temporary amendment of section.** — Section 2(a) of D.C. Law 12-159 rewrote (b).

Section 4(b) of D.C. Law 12-159 provided that the act shall expire after 225 days of its having taken effect or on the effective date of the Quick Payment Amendment of 1998, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 2(a) of the Quick Payment Emergency Amendment Act of 1998 (D.C. Act 12-379, June 5, 1998, 45 DCR 4468).

**Legislative history of Law 5-164.** — See note to § 1-1171.

**Legislative history of Law 9-81.** — See note to § 1-1171.

**Legislative history of Law 12-159.** — Law 12-159, the "Quick Payment Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-647. The Bill was adopted on first and second readings on May 5, 1998, and June 2, 1998, respectively. Signed by the Mayor on June 19, 1998, it was assigned Act No. 12-393 and transmitted to both Houses of Congress for its review. D.C. Law 12-159 became effective on October 7, 1998.

**Legislative history of Law 12-175.** — Law 12-175, the "Fiscal Year 1999 Budget Support Act of 1998," was introduced in Council and assigned Bill No. 12-618, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 5, 1998, and June 2, 1998, respectively. Signed by

the Mayor on June 23, 1998, it was assigned Act No. 12-399 and transmitted to both Houses of Congress for its review. D.C. Law 12-175 became effective on March 26, 1999.

**Legislative history of Law 12-264.** — Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

**Issuance of rules and regulations under Law 5-164.** — Section 8(b) of D.C. Law 5-164 provided that the rules and regulations required under the act shall be issued not later than 120 days after March 15, 1985.

**Cited in** General Ry. Signal Co. v. Washington Metro. Area Transit Auth., 875 F.2d 320 (D.C. Cir. 1989), cert. denied, 494 U.S. 1056, 110 S. Ct. 1524, 108 L. Ed. 2d 764 (1990); McCray v. District of Columbia, 121 WLR 997 (Super. Ct. 1993).

## § 1-1173. Interest penalty for failure to pay discounted price within specified period.

(a) If a business concern offers a District agency a discount from the amount otherwise due under a contract for property or services in exchange for payment within a specified period of time, the District agency may make payment in an amount equal to the discounted price only if payment is made within the specified period of time.

(b) Each District agency which violates subsection (a) of this section shall pay an interest penalty on any amount which remains unpaid in violation of subsection (a) of this section. The interest penalty shall accrue on the unpaid amount in accordance with the regulations issued pursuant to § 1-1172, except that the required payment date with respect to the unpaid amount shall be the last day of the specified period of time described in subsection (a) of this section. (Mar. 15, 1985, D.C. Law 5-164, § 4, 32 DCR 555.)

**Section references.** — This section is referred to in § 1-1174.

**Legislative history of Law 5-164.** — See note to § 1-1171.

## § 1-1174. Filing of claims; disputed payments.

(a)(1) Claims for interest penalties which a District agency has failed to pay in accordance with the requirements of §§ 1-1172 and 1-1173 shall be filed with the contracting officer for a decision. Interest penalties under this subchapter shall not continue to accrue: (A) after the filing of an appeal for the penalties with the Contract Appeals Board; or (B) for more than one year.

(2) The contracting officer shall issue a decision within 60 days from the receipt of any claim submitted under this subchapter.

(3) Within 90 days from the receipt of a decision of the contracting officer, the contractor may appeal the decision to the Contract Appeals Board.

(4) The contractor shall file a claim for interest penalties and any amendments to such claim within 90 days after the principal is paid, except that if the contractor notifies the contracting officer in writing of the contractor's intent to file a claim within the 90-day period, the contractor shall be allowed 180 days after the principal is paid to file such claim.

(b) Except as provided in § 1-1173 with respect to disputes concerning discounts, this subchapter shall not be construed to require interest penalties on payments which are not made by the required payment date by reason of a dispute between a District agency and a business concern over the amount of that payment or other allegations concerning compliance with a contract. Claims concerning any dispute, and any interest which may be payable with respect to the period while the dispute is being resolved, shall be subject to the ruling of the Contract Appeals Board.

(c)(1) With respect to any claim arising from a payment between March 15, 1985, and October 7, 1998, the contractor shall file a claim for interest penalties and any amendments to such claim with the contracting officer within 180 days of October 7, 1998.

(2) The 180 days specified in paragraph (1) of this subsection shall be extended to 270 days to file a claim if the contractor notifies the contracting officer in writing of the contractor's intent to file a claim for interest penalties within 180 days of October 7, 1998.

(3) A claim filed by a contractor may be amended at any time prior to the issuance of a decision by the contracting officer.

(d) Subsection (a) of this section shall apply to claims arising after October 7, 1998. (Mar. 15, 1985, D.C. Law 5-164, § 5, 32 DCR 555; Mar. 26, 1999, D.C. Law 12-175, § 902(b), 45 DCR 7193; Apr. 20, 1999, D.C. Law 12-264, § 7(b), 46 DCR 2118.)

**Effect of amendments.** — D.C. Law 12-175 rewrote (a) and added (c) and (d).

D.C. Law 12-264, in (c)(1) and (2), substituted "October 7, 1998" for "the effective date of the Quick Payment Amendment Act of 1998"; and in (d), substituted "after October 7, 1998" for "after the effective date of the Quick Payment Amendment Act of 1998."

**Temporary amendment of section.** — Section 2(b) of D.C. Law 12-159 rewrote (a) and added (c) and (d).

Section 4(b) of D.C. Law 12-159 provides that this act shall expire after 225 days of its having taken effect or on the effective date of the Quick Payment Amendment Act of 1998, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 2(b) of the Quick Payment Emergency Amendment Act of 1998 (D.C. Act 12-379, June 5, 1998, 45 DCR 4469).

**Legislative history of Law 5-164.** — See note to § 1-1171.

**Legislative history of Law 12-159.** — See note to § 1-1172.

**Legislative history of Law 12-175.** — See note to § 1-1172.

**Legislative history of Law 12-264.** — See note to § 1-1172.

## § 1-1175. Required reports.

(a) Each district agency shall file with the Mayor and the Director of the Office of Contracting and Procurement a detailed report on any interest

penalty payments made pursuant to this subchapter during the preceding fiscal year.

(b) The report shall include the numbers, amounts, and frequency of interest penalty payments, and the reasons the payments were not avoided by prompt payment, and shall be delivered to the Mayor and the Director of the Office of Contracting and Procurement within 60 days after the conclusion of each fiscal year.

(c) The Director of the Office of Contracting and Procurement shall submit to the Mayor and the Council within 120 days after the conclusion of each fiscal year a report on District agency compliance with the requirements of this subchapter. The report shall include a summary of the report submitted by each District agency pursuant to this section and an analysis of the progress made in reducing interest penalty payments by that agency from previous years. (Mar. 15, 1985, D.C. Law 5-164, § 6, 32 DCR 555; Apr. 12, 1997, D.C. Law 11-259, § 307(b), 44 DCR 1423.)

**Effect of amendments.** — Section 307(b) of D.C. Law 11-259 inserted “and the Director of the Office of Contracting and Procurement” in (a) and (b); and substituted “Director of the Office of Contracting and Procurement shall submit to the Mayor and the Council” for “Mayor shall submit to the Council” in (c).

**Legislative history of Law 5-164.** — See note to § 1-1171.

**Legislative history of Law 11-259.** — See note to § 1-1135.

## **§ 1-1176. Determination of receipt and payment dates; construction of rental contracts.**

(a) An invoice shall be deemed to have been received by an agency on (1) the date on which the agency’s designated payment office actually receives a proper invoice, or (2) the date on which the agency accepts the property or service concerned, whichever is later.

(b)(1) District agencies shall mail or otherwise deliver checks to a business concern on or about the same day that the checks are dated.

(2) If a District agency makes a payment by check on or about same day as the date of the check, then the payment shall be considered made on the date on which a check for payment is dated.

(c) A contract for the rental of real or personal property is a contract for the acquisition of that property. (Mar. 15, 1985, D.C. Law 5-164, § 7, 32 DCR 555.)

**Legislative history of Law 5-164.** — See note to § 1-1171.

### *Subchapter V. Employees of District Contractors and Instrumentality Whistleblower Protection.*

## **§ 1-1177.1. Definitions.**

For purposes of this subchapter, the term:

(1) “Contract” means any contract for goods or services between the

District government and another entity but excludes any collective bargaining agreement.

(2) "Contributing factor" means any factor which, alone or in connection with other factors, tends to affect in any way the outcome of the decision.

(3) "Employee" means:

(A) Any person who is a former or current employee of or an applicant for employment by an instrumentality of the District government not covered by Chapter 6 of Title 1; or

(B) Any person who is a former or current employee of any entity that has a contract with the District government to supply goods or services and who is engaged in performing such contract.

(4) "Illegal order" means a directive to violate or to assist in violating a federal, state, or local law, rule, or regulation.

(5) "Instrumentality" means a quasi-governmental entity that operates in part with District funds, including, but not limited to, the District of Columbia Water and Sewer Authority, established by § 43-1672(a); the Health and Hospitals Public Benefits Corporation, established by Chapter 2A of Title 32; the Public Service Commission, established by § 43-401; the Washington Convention Center Authority established by § 9-805; the Committee to Promote the District of Columbia; the National Capital Revitalization Corporation, established by § 1-2295.2; and the Washington Metropolitan Area Transit Authority, established by subchapter IV of Chapter 24 of Title 1.

(6) "Prohibited personnel action" includes but is not limited to: recommended, threatened, or actual termination, demotion, suspension, or reprimand; involuntary transfer, reassignment or detail; referral for psychiatric or psychological counseling; failure to hire or promote or take other favorable personnel action; or in any other manner retaliating against an employee because that employee has made a protected disclosure or refuses to comply with an illegal order, as those terms are defined in this section.

(7) "Protected disclosure" means any disclosure of information, not specifically prohibited by statute, by an employee to a supervisor or to a public body that the employee reasonably believes evidences:

(A) Gross mismanagement in connection with the administration of a public program or the execution of a public contract;

(B) Gross misuse or waste of public resources or funds;

(C) Abuse of authority in connection with the administration of a public program or the execution of a public contract;

(D) A violation of a federal, state, or local law, rule, or regulation, or of a term of a contract between the District government and a District government contractor which is not of a merely technical or minimal nature; or

(E) A substantial and specific danger to the public health and safety.

(8) "Public body" means:

(A) The United States Congress, the Council, any state legislature, the District of Columbia Office of the Inspector General, the Office of the District of Columbia Auditor, the District of Columbia Financial Responsibility and Management Assistance Authority, or any member or employee of one of these bodies;

(B) The federal, the District of Columbia, or any state or local judiciary, any member or employee of these judicial branches, or any grand or petit jury;

(C) Any federal, District of Columbia, state, or local regulatory, administrative, or public agency or authority or instrumentality of one of these agencies or authorities;

(D) Any federal, District of Columbia, state, or local law enforcement agency, prosecutorial office, or police or peace officer;

(E) Any federal, District of Columbia, state, or local department of an executive branch of government; or

(F) Any division, board, bureau, office, committee, commission or independent agency of any of the public bodies described in subparagraphs (A) through (E) of this paragraph.

(9) "Supervisor" means any individual employed by a District instrumentality or by a District government contractor who has authority to do the following:

(A) To hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to evaluate their performance, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of authority is not of a merely routine or clerical nature, but requires the use of independent judgment; or

(B) To effectively recommend or to take remedial or corrective action for the violation of a law, rule, regulation or contract term that an employee may allege or report pursuant to this subchapter.

(10) "Whistleblower" means an employee who makes or is perceived to have made a protected disclosure as that term is defined in this section. (Oct. 7, 1998, D.C. Law 12-160, § 202, 45 DCR 5147.)

**Emergency act amendments.** — For temporary addition of subchapter V, see §§ 202-208 of the Whistleblower Reinforcement Emergency Amendment Act of 1998 (D.C. Act 12-400, July 13, 1998, 45 DCR 5158), and see §§ 202-208 of the Whistleblower Reinforcement Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-464, October 28, 1998, 45 DCR 7821).

**Legislative history of Law 12-160.** — Law 12-160, the "Whistleblower Reinforcement Act of 1998," was introduced in Council and assigned Bill No. 12-191, which was referred to the Committee on Government Operations. The

Bill was adopted on first and second readings on May 5, 1998, and June 2, 1998, respectively. Signed by the Mayor on June 23, 1998, it was assigned Act No. 12-398 and transmitted to both Houses of Congress for its review. D.C. Law 12-160 became effective on October 7, 1998.

**Employees of District Contractors and Instrumentality Whistleblower Protection Act of 1998.** — Section 201 of Title II of D.C. Law 12-160 provided that Title II may be cited as the "Employees of District Contractors and Instrumentality Whistleblower Protection Act of 1998."

## § 1-1177.2. Prohibitions.

A supervisor shall not threaten to take or take a prohibited personnel action or otherwise retaliate against an employee because of the employee's protected disclosure or because of an employee's refusal to comply with an illegal order. (Oct. 7, 1998, D.C. Law 12-160, § 203, 45 DCR 5147.)

**Emergency act amendments.** — For temporary addition of subchapter, see note to § 1-1177.1.

**Legislative history of Law 12-160.** — See note to § 1-1177.1.

### § 1-1177.3. Enforcement.

(a) An employee aggrieved by a violation of § 1-1177.2 may bring a civil action before a court or a jury in the Superior Court of the District of Columbia seeking relief and damages, including but not limited to injunction, reinstatement to the same position held before the prohibited personnel action or to an equivalent position, and reinstatement of the employee's seniority rights, restoration of lost benefits, back pay and interest on back pay, compensatory damages, reasonable costs, and attorney fees. A civil action shall be filed within one year after a violation occurs or within one year after the employee first becomes aware of the violation.

(b) In a civil action or administrative proceeding, once it has been demonstrated by a preponderance of the evidence that an activity proscribed by § 1-1177.2 was a contributing factor in the alleged prohibited personnel action against an employee, the burden of proof shall be on the employing District instrumentality or contractor to prove by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in activities protected by this section.

(c) Notwithstanding any other provision of law, a violation of § 1-1177.2 constitutes a complete affirmative defense for a whistleblower to a prohibited personnel action in an administrative review, challenge, or adjudication of that action.

(d) An employee who prevails in a civil action at the trial level shall be granted the equitable relief provided in the decision effective upon the date of the decision, absent a stay. (Oct. 7, 1998, D.C. Law 12-160, § 204, 45 DCR 5147.)

**Emergency act amendments.** — For temporary addition of subchapter, see note to § 1-1177.1.

**Legislative history of Law 12-160.** — See note to § 1-1177.1.

### § 1-1177.4. Disciplinary action; fine.

(a) As part of the relief ordered in an administrative, arbitral or judicial proceeding, any supervisor who is found to have violated § 1-1177.2 shall be subject to appropriate disciplinary action, up to and including dismissal.

(b) As part of the relief ordered in a judicial proceeding, any supervisor who is found to have violated § 1-1177.2 shall be subject to a civil fine not to exceed \$1000. (Oct. 7, 1998, D.C. Law 12-160, § 205, 45 DCR 5147.)

**Emergency act amendments.** — For temporary addition of subchapter, see note to § 1-1177.1.

**Legislative history of Law 12-160.** — See note to § 1-1177.1.

**§ 1-1177.5. Election of remedies.**

(a) The institution of a civil action pursuant to § 1-1177.3(a) shall preclude an employee from pursuing any administrative remedy for the same cause of action from an arbitrator pursuant to a negotiated grievance and arbitration procedure or an employment contract.

(b) No civil action shall be brought, pursuant to § 1-1177.3(a) if the aggrieved employee has had a final determination on the same cause of action from an arbitrator pursuant to a negotiated grievance and arbitration procedure or an employment contract. (Oct. 7, 1998, D.C. Law 12-160, § 206, 45 DCR 5147.)

**Emergency act amendments.** — For temporary addition of subchapter, see note to § 1-1177.1.

**Legislative history of Law 12-160.** — See note to § 1-1177.1.

**§ 1-1177.6. Posting of notice.**

District instrumentalities shall conspicuously display notices of employee protections and obligations under this subchapter in each personnel office and in other public places, and shall use all other appropriate means to keep all employees informed, including but not limited to the inclusion of annual notices of employee protections and obligations under this subchapter with employee tax reporting documents. District government contractors shall inform all employees engaged in performing District government contracts of their rights under this subchapter. (Oct. 7, 1998, D.C. Law 12-160, § 207, 45 DCR 5147.)

**Emergency act amendments.** — For temporary addition of subchapter, see note to § 1-1177.1.

**Legislative history of Law 12-160.** — See note to § 1-1177.1.

**§ 1-1177.7. Applicability.**

(a) This subchapter shall apply to actions taken after July 13, 1998.

(b) This subchapter shall apply to employees of the WMATA when the Commonwealth of Virginia and the State of Maryland enact similar provisions for WMATA whistleblowers. (Oct. 7, 1998, D.C. Law 12-160, § 208, 45 DCR 5147.)

**Emergency act amendments.** — For temporary addition of subchapter, see note to § 1-1177.1.

**Legislative history of Law 12-160.** — See note to § 1-1177.1.



## PROCUREMENT

### CHAPTER 11A. PROCUREMENT.

#### *Subchapter I. General Provisions.*

##### Sec.

- 1-1181.1. Purposes, rules of construction.
- 1-1181.2. Supplementary general principles of law applicable.
- 1-1181.3. Obligation of good faith.
- 1-1181.4. Application of chapter.
- 1-1181.5. Claims by contractor against District government.
- 1-1181.5a. Criteria for Council review of contracts in excess of \$1 million.
- 1-1181.5b. Privatization contracts and procedures requirements.
- 1-1181.5c. Policy for contracting out government services.
- 1-1181.5d. Council review of proposals to contract out in excess of \$1,000,000.
- 1-1181.5e. Director of the Office of Contracting and Procurement.
- 1-1181.6. Determinations.
- 1-1181.6a. New contracts with costs exceeding existing contracts.
- 1-1181.7. Definitions.

#### *Subchapter II. Procurement Organization.*

- 1-1182.1. Policy.
- 1-1182.2. Procurement regulations and information system.
- 1-1182.3. Duties of Director.
- 1-1182.4. Regulatory powers of Mayor.
- 1-1182.5. Establishment and effect of District Government Procurement Regulations.
- 1-1182.6. Contract information hotline.
- 1-1182.7. Transfer of procurement personnel to the Office of Contracting and Procurement.
- 1-1182.8. Creation and duties of Office of the Inspector General.
- 1-1182.8a. Deadline for appointment.
- 1-1182.9. [Repealed].

#### *Subchapter III. Source Selection and Contract Formation.*

- 1-1183.1. District-based businesses preference.
- 1-1183.2. Methods of source selection and recordkeeping.
- 1-1183.3. Competitive sealed bidding.
- 1-1183.4. Competitive sealed proposals.
- 1-1183.5. Sole source procurement.
- 1-1183.6. [Repealed].
- 1-1183.7. Cancellation of invitations for bids.
- 1-1183.7a. Mandatory clause for all Request for Proposals for Public Schools.
- 1-1183.8. Cost or pricing data.
- 1-1183.9. Cost-plus-a-percentage-of-cost contract prohibited.
- 1-1183.10. Cost-reimbursement contracts.
- 1-1183.11. Use of other types of contracts.

##### Sec.

- 1-1183.12. Emergency procurements.
- 1-1183.13. Multiyear contracts.
- 1-1183.14. Inspection of plant and audit of records.
- 1-1183.15. Finality of determinations.
- 1-1183.16. Collusive bidding or negotiation.
- 1-1183.17. Prohibited acts.
- 1-1183.18. Termination of contracts.
- 1-1183.19. Report of procurement actions made pursuant to §§ 1-1183.5 and 1-1183.12.
- 1-1183.20. Exemptions.
- 1-1183.21. Small purchase procurement.
- 1-1183.22. Fire and Emergency Medical Services Department small purchase authority.
- 1-1183.23. Expiration.

#### *Subchapter IV. Specifications.*

- 1-1184.1. Specifications.
- 1-1184.2. Energy conservation.

#### *Subchapter V. Bonds and Construction Procurement.*

- 1-1185.1. Bonds.
- 1-1185.2. Bid bonds for construction contracts.
- 1-1185.3. Performance bonds for construction contracts.
- 1-1185.4. Payment bonds for construction contracts.
- 1-1185.5. Bond forms, filings, and copies.
- 1-1185.6. Suits on payment bonds.
- 1-1185.7. Clauses, modifications, and fiscal responsibility.
- 1-1185.8. Nondiscrimination.

#### *Subchapter VI. Cost Principles.*

- 1-1186.1. Rules required.

#### *Subchapter VII. Supply Management.*

- 1-1187.1. Supply management rules.
- 1-1187.2. Proceeds from disposal of surplus goods.

#### *Subchapter VIII. Administrative and Civil Remedies.*

##### Subpart A. General Provisions.

- 1-1188.1. Sovereign immunity defense not available.
- 1-1188.2. District government not liable for punitive damages.
- 1-1188.3. Claims by District government against contractor.
- 1-1188.4. Authority to debar or suspend.
- 1-1188.5. Claims by contractor against District government.
- 1-1188.6. Interest.

## § 1-1181.1

### ADMINISTRATION

#### Subpart B. Procurement Related Claims.

Sec.

1-1188.7 to 1-1188.12. [Repealed].

#### Subpart C. Procurement Related Claims.

1-1188.13. Definitions.

1-1188.14. False claims liability, treble damages, costs, and civil penalties; exceptions.

1-1188.15. Corporation counsel investigations and prosecutions; powers of prosecuting authority; civil actions by individuals as qui tam plaintiffs; jurisdiction of courts.

1-1188.16. Employer interference with employee disclosures; liability of employer; remedies of employee.

1-1188.17. Limitation of actions; burden of proof.

1-1188.18. Remedies pursuant to other laws; severability of provisions; liberality of article construction.

1-1188.19. Civil investigative demands.

1-1188.20. Antifraud fund.

1-1188.21. Penalties for false representations.

#### *Subchapter VIII-A. Year 2000 District Government Computer Liability Immunity.*

1-1188.51. Immunity for Year 2000 system failures.

Sec.

1-1188.52. Applicability.

#### *Subchapter IX. Contract Appeals Board.*

1-1189.1. Creation of Contract Appeals Board.

1-1189.2. Terms and qualifications of members.

1-1189.3. Jurisdiction of Board.

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

1-1189.5. Appeal of Board decisions.

1-1189.6. Oaths, discovery, and subpoena power.

1-1189.7. Actions in court; judicial review of Board decisions.

1-1189.8. Protest procedures.

#### *Subchapter X. Ethics in Public Contracting.*

1-1190.1. Employees subject to Merit Personnel Act.

#### *Subchapter XI. Miscellaneous.*

1-1191.1. Procurement training programs.

1-1191.2. Cooperative purchasing agreement.

1-1191.3. Privatization of Fleet Management Services in the Metropolitan Police Department.

1-1191.4. Standards for contracting officer.

#### *Subchapter XII. South Africa Contracting Sanctions.*

1-1192.1 to 1-1192.6. [Repealed].

### *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 minority business opportunity program as set forth in subchapter II 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.)

**Section references.** — This section is referred to in §§ 10-305, 32-631, and 47-2853.10.

**Effect of amendments.** — Section 101(a) of D.C. Law 11-259 inserted (b)(1A), (b)(1B), and (b)(1C).

**Legislative history of Law 6-85.** — Law 6-85, the "District of Columbia Procurement Practices Act of 1985," was introduced in Council and assigned Bill No. 6-191, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 5, 1985 and November 19, 1985, respectively. Signed by the Mayor on December 3, 1985, it was assigned Act No. 6-110 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 11-259.** — Law 11-259, the "Procurement Reform Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-705, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings

on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on January 3, 1997, it was assigned Act No. 11-526 and transmitted to both Houses of Congress for its review. D.C. Law 11-259 became effective on April 9, 1997.

**Demolition and development of the Oyster School building.** — Section 6(b) of D.C. Law 12-174 authorized the Board of Education to enter into a Development Agreement with a Developer and any other agreement necessary to carry out the purposes of the act, notwithstanding the provisions of this section.

**Compliance with equal opportunity obligations in contracts.** — See Mayor's Order 85-85, June 10, 1985.

**Limitation of contracting authority for D.C. government offices, departments and agencies.** — See Mayor's Order 85-110, July 9, 1985.

**Emergency procurement to provide temporary housing for homeless families**

**in the District of Columbia.** — See Mayor's Order 90-199, December 13, 1990.

**Severability of provisions.** — Since Section 49-601(b) provides that the Council of the District of Columbia has authority to include a nonseverability clause, and no such clause is contained in the District of Columbia Procurement Practices Act of 1985 (§§ 1-1181.1 to 1-1192.6) the provisions are severable. *RDP Dev. Corp. v. District of Columbia*, App. D.C., 645 A.2d 1078 (1994).

**Cited in** *District of Columbia v. Savoy Constr. Co.*, App. D.C., 515 A.2d 698 (1986); *Lumbermen's Mut. Cas. Co. v. District of Columbia*, App. D.C., 566 A.2d 480 (1989); *District of Columbia v. Group Ins. Admin.*, App. D.C., 633 A.2d 2 (1993); *Dano Resource Recovery, Inc. v. District of Columbia*, 923 F. Supp. 249 (D.D.C. 1996); *Murphy v. A.A. Beiro Constr. Co.*, App. D.C., 679 A.2d 1039 (1996); *Francis v. Recycling Solutions, Inc.*, App. D.C., 695 A.2d 63 (1997).

## § 1-1181.2. Supplementary general principles of law applicable.

Unless superseded by the particular provisions of this chapter, the principles of law and equity, including subtitle I of Title 28 and laws relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy, shall supplement the provisions of this chapter. (Feb. 21, 1986, D.C. Law 6-85, § 102, 32 DCR 7396.)

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

## § 1-1181.3. Obligation of good faith.

Every contract or duty within this chapter imposes an obligation of good faith in its performance or enforcement. For the purposes of this chapter, the term "good faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing. (Feb. 21, 1986, D.C. Law 6-85, § 103, 32 DCR 7396.)

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

## § 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. (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.)

**Effect of amendments.** — D.C. Law 11-259 rewrote this section.

D.C. Law 12-104, in (c), substituted "CPO" for "Director of the Office of Contracting and Procurement" in the first sentence.

**Temporary amendment of section.** — Section 3(a) of D.C. Law 12-17 substituted "Chief Procurement Officer of the Office of Contracting and Procurement" for "Director of the Office of Contracting and Procurement" in (c).

Section 5(b) of D.C. Law 12-17 provided that the act shall expire on the 225th day of its having taken effect.

**Emergency act amendments.** — For temporary amendment of section, see §§ 3(a) and (e) of the Procurement Reform Emergency Amendment Act of 1997 (D.C. Act 12-62, April 15, 1997, 44 DCR 2413), and §§ 3(a) and (e) of the Procurement Reform Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-133, August 12, 1997, 44 DCR 4832).

Section 5 of D.C. Act 12-133 provides for the application of the act.

For temporary amendment of section, see § 2(a) of the Procurement Reform Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-374, April 24, 1998, 45 DCR 4338).

Section 6 of D.C. Act 12-374 provides for the application of the act.

**Legislative history of Law 8-258** — Law 8-258 was introduced in Council and assigned Bill No. 8-643, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-343 and

transmitted to both Houses of Congress for its review.

**Legislative history of Law 11-117.** — Law 11-117, the "Prison Industries Act of 1996," was introduced in Council and assigned Bill No. 11-151, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on January 4, 1996, and February 6, 1996, respectively. Signed by the Mayor on February 26, 1996, it was assigned Act No. 11-221 and transmitted to both Houses of Congress for its review. D.C. Law 11-117 became effective on May 8, 1996.

**Legislative history of Law 11-259.** — See note to § 1-1181.1.

**Legislative history of Law 12-17.** — Law 12-17, the "Procurement Reform Temporary Amendment Act of 1997," was introduced in Council and assigned Bill No. 12-80. The Bill was adopted on first and second readings on March 4, 1997, and May 6, 1997, respectively. Signed by the Mayor on May 23, 1997, it was assigned Act No. 12-83 and transmitted to both Houses of Congress for its review. D.C. Law 12-17 became effective on September 12, 1997.

**Legislative history of Law 12-104.** — Law 12-104, the "Procurement Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-363, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 4, 1997, and January 6, 1998, respectively. Signed by the Mayor on February 3, 1998, it was assigned Act No. 12-280 and transmitted to both Houses of Congress for its review. D.C. Law 12-104 became effective on May 8, 1998.

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

(a) There is established an independent service agency to be called the Office of Contracting and Procurement ("OCP"), which shall be administered by the Chief Procurement Officer. By delegation from the Mayor, pursuant to § 1-242(6), the CPO shall be the exclusive contracting authority for all

procurements covered by this chapter. Except as otherwise provided in this chapter, no other department, agency, instrumentality, or employee subject to the provisions of this chapter shall exercise procurement or contracting authority, except authority otherwise provided for receiving or making grants-in-aid or for federal financial assistance. Departments, agencies, and entities subject to this chapter shall be responsible for determining their requirements for goods and services and for technical direction of awarded contracts. The CPO may delegate contracting authority to employees of a department, agency, or other entity commensurate with the CPO's judgment of each employee's ability to meet the objective of this chapter. This delegation shall be subject to limitations specified in writing, copies of which shall be filed in the office of the CPO and submitted to the Mayor, Council, and Inspector General. The CPO shall publish the current contract delegations in the D.C. Register in January and July of each year.

(b) The CPO shall be the chief procurement officer of the District responsible for procurements covered by this chapter, subject to the Mayor's review and approval as provided in § 47-312.

(c)(1) The CPO is authorized to delegate or remove contracting authority from employees of the OCP who are designated as contracting officers and specialists in procurement. This delegation shall be subject to limitations specified in writing, copies of which shall be filed in the office of the CPO and submitted to the Mayor, Council, and the Inspector General. The CPO shall publish annually in the District of Columbia Register a list of District contracting officers with a description for each of their delegated contracting authority and responsibility. The CPO shall concurrently submit quarterly reports to the Mayor and Council on delegated authority and such other matters as the Mayor shall request.

(2) The CPO shall place OCP employees with contracting authority at various agencies when necessary to best serve the individual agency's contracting needs. These employees will rotate among the agencies and through OCP offices to provide a wide experience base to allow all agencies to benefit from the experience of other agencies. In determining the number and authority of OCP employees assigned to an agency, the delegated procurement authority of agency employees shall be considered.

(d)(1) No District employee subject to this chapter shall authorize payment for the value of goods and services received without a valid written contract. This subsection shall not apply to a payment required by court order or a final decision of the Contract Appeals Board.

(2) After April 12, 1997, no District employee shall enter into an oral agreement with a vendor to provide goods or services to the District government without a valid written contract. Any violation of this paragraph shall be cause for termination of employment of the District employee.

(3) Any vendor who, after April 12, 1997, enters into an oral agreement with a District employee to provide goods or services to the District government without a valid written contract shall not be paid. If the oral agreement was entered into by a District employee at the direction of a supervisor, the supervisor shall be terminated. The Mayor shall submit a report to the Council

at least 4 times a year on the number of persons cited or terminated under this provision.

(e) The CPO shall require bidders on procurement contracts issued by the District of Columbia to utilize the Metropolitan Washington Council of Governments' ("COG") Rider Clause:

(1) If authorized by the bidder, resultant contract will be extended to any and all of the listed members of COG as designated by the bidder to purchase at contract prices in accordance with contract terms.

(2) Any member utilizing such contracts will place its own orders directly with the successful contractor. There shall be no obligation on the part of any participating member to utilize the contracts.

(3) A negative reply will not adversely affect consideration of the bidder's proposal.

(4) It is the awarded vendor's responsibility to notify the members of COG of the availability of the contracts. (Feb. 21, 1986, D.C. Law 6-85, § 105, 32 DCR 7396; Mar. 8, 1991, D.C. Law 8-258, § 2(b), 38 DCR 974; Apr. 12, 1997, D.C. Law 11-259, § 101(c), 44 DCR 1423; May 8, 1998, D.C. Law 12-104, § 2(b), 45 DCR 1687; Mar. 26, 1999, D.C. Law 12-175, § 402(a), 45 DCR 7193; Apr. 20, 1999, D.C. Law 12-264, § 8, 46 DCR 2118.)

**Section references.** — This section is referred to in § 1-1191.3.

**Effect of amendments.** — Section 101(c) of D.C. Law 11-259 rewrote this section.

Section 2(b) of D.C. Law 12-104, in (a), substituted "the Chief Procurement Officer" for "a Director" in the first sentence, and "pursuant to § 1-242(6) the CPO shall" for "the Director of the OCP ("Director") shall" in the second sentence; and in (b), (c), and (e), substituted "CPO" for "Director."

D.C. Law 12-175 in (a), substituted "CPO may" for "Director may, by regulation" in the fifth sentence and inserted the sixth sentence; and inserted "Council" in the second sentence of (c)(1).

D.C. Law 12-264 added the last sentence in (a).

**Temporary amendment of section.** — Section 3(b) of D.C. Law 12-17, in subsection (a), substituted "by the Chief Procurement Officer" for "by a Director" in the first sentence and "pursuant to § 1-242(6), the CPO shall" for "the Director of the OCP ("Director") shall" in the second sentence; and substituted "CPO" for "Director" throughout the section.

Section 5(b) of D.C. Law 12-17 provided that the act shall expire on the 225th day of its having taken effect.

**Temporary authorization for payment of outstanding invoices.** — Sections 2 through 4 of D.C. Law 12-181 provided temporary authorization for the District of Columbia government to pay outstanding invoices for goods and services received during Fiscal Years 1995, 1996, 1997, and 1998 through September

30, 1998, for which the required purchase orders or contracts have not been executed or entered into the Financial Management System.

Section 7(b) of D.C. Law 12-181 provides that this act shall expire after 225 days of its having taken effect.

**Emergency act amendments.** — For temporary authorization for the District of Columbia Public Library to pay outstanding invoices, see §§ 2 and 3 of the District of Columbia Public Library Vendor Payment Emergency Amendment Act of 1997 (D.C. Act 12-102, July 2, 1997, 44 DCR 4197).

For temporary authorization for the District of Columbia Public Library to pay outstanding invoices for goods and services procured during Fiscal Year 1996 through March 1, 1997, but not received until after March 1, 1997, for which the required purchase orders have not been entered into the Financial Management System, see §§ 2-4a of the Public Library Vendor Payment Extension Emergency Act of 1997 (D.C. Act 12-157, October 16, 1997, 44 DCR 6046).

For temporary amendment of section, see § 3(b) of the Procurement Reform Emergency Amendment Act of 1997 (D.C. Act 12-62, April 15, 1997, 44 DCR 2413), and § 3(b) of the Procurement Reform Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-133, August 12, 1997, 44 DCR 4832).

Section 5 of D.C. Act 12-133 provides for the application of the act.

For temporary amendment of section, see § 202(a) of the Fiscal Year 1999 Budget Sup-

port Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794) and § 202(a) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

For temporary amendment of section, see § 2(b) of the Procurement Reform Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-374, April 24, 1998, 45 DCR 4338).

Section 2101 of D.C. Act 12-564 provides for the application of the act.

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

**Legislative history of Law 8-258.** — See note to § 1-1181.4.

**Legislative history of Law 11-259.** — See note to § 1-1181.1.

**Legislative history of Law 12-17.** — See note to § 1-1181.4.

**Legislative history of Law 12-104.** — See note to § 1-1181.4.

**Legislative history of Law 12-175.** — Law 12-175, the "Fiscal Year 1999 Budget Support Act of 1998," was introduced in Council and assigned Bill No. 12-618, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 5, 1998, and June 2, 1998, respectively. Signed by the Mayor on June 23, 1998, it was assigned Act No. 12-399 and transmitted to both Houses of Congress for its review. D.C. Law 12-175 became effective on March 26, 1999.

**Legislative history of Law 12-181.** — Law 12-181, the "Vendor Payment and Drug Abuse, Alcohol Abuse, and Mental Illness Coverage Temporary Act of 1998," was introduced in Council and assigned Bill No. 12-627. The Bill was adopted on first and second readings on June 2, 1998, and July 7, 1998, respectively. Signed by the Mayor on July 27, 1998, it was assigned Act No. 12-434 and transmitted to both Houses of Congress for its review. D.C. Law 12-181 became effective on March 26, 1999.

**Legislative history of Law 12-264.** — Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

**Provision for payment of vendors.** — For temporary allowance of the District of Columbia government to receive and pay valid claims for certain vendors who provided goods and services to the Department of Human Services from October 1, 1994, through July 31, 1995,

without benefit of a valid written contract, see §§ 2 to 6 of the Vendor Payment Emergency Act of 1995 (D.C. Act 11-84, June 30, 1995, 42 DCR 3567).

For temporary provisions allowing the District to receive and pay valid claims for certain vendors who provided goods and services to certain District agencies between October 1, 1994 and July 31, 1995, without benefit of a valid written contract, see §§ 2 to 6 of the Equitable Relief for Vendors Emergency Act of 1995 (D.C. Act 11-121, July 27, 1995, 42 DCR 4115).

For temporary allowance of the District government to receive and pay valid claims of certain persons and vendors who provided goods and services to J.B. Johnson Nursing Center November 20, 1995, through November 29, 1995, without the benefit of a valid written contract with the District government, see §§ 2 to 6 of the Equitable Relief for Certain Persons and Vendors of J.B. Johnson Nursing Center Emergency Act of 1996 (D.C. Act 11-186, January 25, 1996, 43 DCR 382).

For temporary allowance, on an emergency basis, of the District of Columbia government to receive and pay valid claims for certain vendors who provided goods or services to the Department of Human Services without benefit of a valid written contract, see §§ 2-7 of the Vendor Payment Emergency Act of 1996 (D.C. Act 11-491, January 13, 1997, 44 DCR 754).

For temporary allowance, on an emergency basis, of the District of Columbia government to receive and pay valid claims for certain vendors who provided goods or services to the District without benefit of a valid written purchase order or contract, see §§ 2-4 of the Vendor Payment and Drug Abuse, Alcohol Abuse, and Mental Illness Coverage Emergency Amendment Act of 1998 (D.C. Act 12-396, September 16, 1998, 45 DCR 6952).

**Amendment of Mayor's Order 86-44 Delegation of Contracting Authority.** — See Mayor's Order 88-2, December 15, 1987.

**Amendment of Mayor's Order 86-45, Delegation of Small Purchase Authority.** — See Mayor's Order 88-102, December 15, 1987.

**Delegation of contracting authority.** — See Mayor's Order 88-193, August 19, 1988; Mayor's Order 88-273, December 30, 1988, as amended by Mayor's Order 89-215, September 27, 1989 and Mayor's Order 90-94, July 3, 1990; Mayor's Order 90-178, November 19, 1990; Mayor's Memorandum 89-46, November 29, 1989; Mayor's Order 91-92, June 7, 1991; Mayor's Order 92-153, December 1, 1992.

**Amendment of Mayor's Order 90-178, Delegation of contracting authority.** — See Mayor's Order 95-45, March 23, 1995.

**Delegation of contracting authority.** — See Mayor's Order 95-168, December 7, 1995.



**Amendment of Mayor's Order 90-178, Delegation of Contracting Authority.** — See Mayor's Order 96-83, June 20, 1996 (43 DCR 3510).

**Amendment of Mayor's Order 90-178, Delegation of Contracting Authority.** — See Mayor's Order 96-136, September 9, 1996 (43 DCR 5043).

**Amendment of Mayor's Order 90-178, Delegation of Contracting Authority.** — See Mayor's Order 96-152, October 17, 1996 (43 DCR 5855).

**Amendment of Mayor's Order 90-178, Delegation of Contracting Authority; Delegation of Personnel Authority; and Establishment of Position of Administrator in the Commission on Mental Health Services.** — See Mayor's Order 96-172, December 9, 1996 (43 DCR 6973).

**Amendment of Mayor's Order 96-172, Establishing Position of Administrator in**

**the Commission on Mental Health Services; Appointment of Interim Administrator; Duties of Administrator.** — See Mayor's Order 97-6, January 9, 1997 (44 DCR 357).

**Authority to appeal decision of Contracts Appeals Board.** — Since it is clear from the language of the Procurement Practices Act and its legislative history, that the Council meant to withhold the power to seek judicial review of Contract Appeals Board decision from everyone but the Department of Administrative Services, the director of a non corporate department within the municipal corporation may not bring an appeal of a decision of the Contract Appeals Board, on behalf of the department which is not sui juris, as an agent of the Mayor or as the contracting officer. *Francis v. Recycling Solutions, Inc.*, App. D.C., 695 A.2d 63 (1997).

### **§ 1-1181.5a. Criteria for Council review of contracts in excess of \$1 million.**

(a)(1) After July 28, 1992, no contract for goods or services worth over \$1,000,000 may be awarded until after the Council has approved the proposed contract award as provided in this section.

(2) Prior to the award of a contract covered by this section, the Mayor shall submit a proposed contract award to the Council. The proposed contract award shall be deemed approved 7 calendar days, excluding days of Council recess, after the proposal has been officially introduced in the Council according to its rules, unless during that time, an objection to the proposed award is filed in the Office of the Secretary to the Council. An objection to a proposed contract award shall be signed by at least 3 members of the Council.

(3) If an objection to the proposed contract award is filed, the proposed award shall be deemed approved 21 calendar days, excluding days of Council recess, after the proposed award was officially introduced in the Council, unless during that time, the Council adopts a resolution or passes an act disapproving the proposed award. If the Council disapproves a proposed contract award by an act, the proposed contract award shall be deemed disapproved unless the act disapproving the proposed contract award fails to become law pursuant to § 1-227(e).

(4) The Council may approve or disapprove a proposed contract award by resolution or an act prior to the expiration of the time periods provided in this section.

(b) The approval required by this section shall be a condition precedent to the existence of a District of Columbia contract for goods or services worth over \$1,000,000. No contractor may undertake any work, and no District officer or employee may obligate or expend funds, with respect to the performance of a proposed contract prior to Council approval under this section.

(c) This section shall not apply to contracts awarded under the "competitive sealed bidding" provisions pursuant to § 1-1183.3.

(d) This section shall not apply to contracts to implement a federal program

where federal law governs contracting procedures as a condition for the receipt of federal assistance. (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.)

**Temporary amendment of section.** — Section 2 of D.C. Law 11-88 amended this section to read as follows:

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

(a) Pursuant to § 1-1130(b), prior to the award of a contract, in excess of \$1,000,000 during a 12-month period, the Mayor is required to submit the contract to the Council for approval in accordance with the criteria established in this section.

(b) The proposed contract shall be deemed approved if one of the following occurs:

(1) During the 10-calendar-day period beginning on the date the Mayor submits the contract to the Council, no member of the Council introduces a resolution to approve or disapprove the contract; or

(2) If a resolution has been introduced in accordance with paragraph (1) of this subsection, the Council does not disapprove the contract during the 45-calendar-day period beginning on the date the Mayor submits the contract to the Council.

(c) Contracts submitted pursuant to this section shall contain the following:

(1) If the contract is a proposal to extend an existing contract or to enter into a new contract with a contractor who has contracted with the District for the same product or services under a prior contract, there shall be a statement that includes the following:

(A) Whether the contractor is willing to continue to provide the product or services at the price and terms of the existing or prior contract; and

(B) Whether the price agreed to exceeds the price of the existing or prior contract for the same terms and provides a rationale for the difference in price;

(2) If the contract is a proposal to modify an existing contract for a product or service, there shall be a statement that provides a rationale for the modification of the existing contract and a summary of the changes;

(3) A statement indicating whether the amount of the contract is within the appropriated authority for the agency for the fiscal year as set forth in the District of Columbia Appropriations Act;

(4) If the contract is for any fiscal year in which the District has adopted a financial plan and budget in accordance with subpart B of subchapter VII of Chapter 3 of Title 47, a certification that the contract is consistent with the applicable approved financial plan and budget;

(5) A certification that the contractor is current with its District and federal taxes or has worked out and is current with a payment schedule approved by those entities (including withholding taxes, income and property taxes, or regulatory fees) and includes a statement concerning the contractor's indebtedness to the District involving loans or taxes;

(6) A copy of the request for proposal, if any;

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

(8) A statement as to whether the contractor is a certified local, small, or disadvantaged business enterprise as defined in § 1-1152.1; and

(9) A statement as to whether the contractor is located within an economic development zone as described in § 5-1401 et seq.

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

(e) After July 28, 1995, any employee or agency head who shall knowingly or willfully enter into a contract or lease in excess of \$1,000,000 without prior Council approval in accordance with this section shall be subject to suspension, dismissal, or other disciplinary action under § 1-617.1(d)(1) and (18). This subsection shall apply to subordinate agency heads appointed according to § 1-611.1.

(f) 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.

(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."

Section 4(b) of D.C. Law 11-88 provided that the act shall expire after 225 days of its having taken effect or on the effective date of the Council Contract Approval Act of 1995, whichever occurs first.

Section 2 of D.C. Law 11-190 amended this section to read as follows:

"(a) Pursuant to § 1-1130 ("FRMAA"), which amended § 1-1130 ("District Charter"), prior to

the award of 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) The proposed contract shall be deemed approved if one of the following occurs:

(1) During the 10-calendar-day period beginning on the date the Mayor (or executive independent agency) submits the contract to the Council, no member of the Council introduces a resolution to approve or disapprove the proposed contract; or

(2) If a resolution has been introduced in accordance with paragraph (1) of this subsection, the Council does not disapprove the contract during the 45-calendar-day period beginning on the date the Mayor (or executive independent agency) submits the proposed contract to the Council.

(c) Proposed contracts submitted pursuant to this section shall contain the following:

(1) If the proposed contract is a proposal to extend an existing contract or to enter into a new contract with a proposed contractor who has contracted with the District for the same product or services under a prior contract, there shall be a statement that includes the following:

(A) Whether the proposed contractor is willing to continue to provide the product or services at the price and terms of the existing or prior contract; and

(B) Whether the price agreed to exceeds the price of the existing or prior contract for the same terms, and if the price exceeds the price of the existing or prior contract, a rationale for the difference in price;

(2) If the proposed contract is a proposal to modify an existing contract for a product or service, there shall be a statement that provides a rationale for the modification of the existing contract and a summary of the changes;

(3) A statement indicating whether the amount of the proposed contract is within the appropriated authority for the agency for the fiscal year as set forth in the District of Columbia Appropriations Act;

(4) If the proposed contract is for any fiscal year in which the District has adopted a financial plan and budget in accordance with §§ 47-392.1 and 47-392.2, a certification that the proposed contract is consistent with the applicable approved financial plan and budget;

(5) 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 applicable governmental entities (including withholding taxes, income and property taxes, or regulatory fees or fines) and includes a statement concerning the

proposed contractor's indebtedness to the District involving loans or taxes;

(6) A copy of the request for proposal, if any, to which the proposed contractor responded;

(7) 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;

(8) A statement as to whether the proposed contractor is a certified local, small, or disadvantaged business enterprise as defined in § 1-1152.1;

(9) A statement as to whether the proposed contractor is located within an economic development zone as described in Chapter 14 of Title 5;

(10) A statement whether the proposed contract is in accordance with procurement laws and regulations applicable to the procuring agency, including whether the proper type of procurement was selected, whether policies and procedures governing source selection and cost or price determination have been followed, whether the proposed procurement fulfills an agency mission, and whether the proposed procurement represents the best practice currently available to the District for fulfillment of the particular mission;

(11) A statement indicating whether the proposed contractor has any currently pending legal claim against the District government; and

(12) All information related to the proposed contract which has been or is required to be submitted to the District of Columbia Financial Responsibility and Management Assistance Authority.

(d) After the effective date of the Council Contract Approval Modification Temporary Amendment Act of 1995 Emergency Amendment Act of 1996, 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 the effective date of the Council Contract Approval Modification Temporary Amendment Act of 1995 Emergency Amendment Act of 1996, any employee or agency head who shall knowingly or willfully enter into 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 § 1-611.1 and to independent agency heads.

(f) 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 the effective date of the Council Contract Approval Modification Temporary Amendment Act of 1995 Emergency Amendment Act of 1996 without prior Council approval can be paid more than \$1,000,000 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 District Charter-required Council review and approval of individual federal-aid highway contracts that make up the annual program."

Section 4(b) of D.C. Law 11-190 provides that the act shall expire after 225 days of its having taken effect.

Section 2 of D.C. Law 12-78 amended this section to read as follows:

"(a) Pursuant to § 1-1130, prior to the award of 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) The proposed contract shall be deemed approved if one of the following occurs:

(1) During the 10-calendar-day period beginning on the date the Mayor (or executive independent agency) submits the contract to the Council, no member of the Council introduces a resolution to approve or disapprove the proposed contract; or

(2) If a resolution has been introduced in accordance with paragraph (1) of this subsection, the Council does not disapprove the contract during the 45-calendar-day period beginning on the date the Mayor (or executive independent agency) submits the proposed contract to the Council.

(c) Proposed contracts submitted pursuant to this section shall contain the following:

(1) If the proposed contract is a proposal to extend an existing contract or to enter into a new contract with a proposed contractor who has contracted with the District for the same product or services under a prior contract, there shall be a statement that includes the following:

(A) Whether the proposed contractor is willing to continue to provide the product or services at the price and terms of the existing or prior contract; and

(B) Whether the price agreed to exceeds the price of the existing or prior contract for the same terms, and if the price exceeds the price of the existing or prior contract, a rationale for the difference in price;

(2) If the proposed contract is a proposal to modify an existing contract for a product or service, there shall be a statement that provides a rationale for the modification of the existing contract and a summary of the changes;

(3) A statement indicating whether the amount of the proposed contract is within the appropriated authority for the agency for the fiscal year as set forth in the District of Columbia Appropriations Act;

(4) If the proposed contract is for any fiscal year in which the District has adopted a financial plan and budget in accordance with sections 201 and 202 of FRMAA (109 Stat. 108; §§ 47-392.1 and 47-392.2), a certification that the proposed contract is consistent with the applicable approved financial plan and budget;

(5) 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 applicable governmental entities (including withholding taxes, income and property taxes, or regulatory fees or fines) and includes a statement concerning the proposed contractor's indebtedness to the District involving loans or taxes;

(6) A copy of the request for proposal, if any, to which the proposed contractor responded;

(7) 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;

(8) A statement as to whether the proposed contractor is a certified local, small, or disadvantaged business enterprise as defined in section 3 of 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 § 1-1152.1);

(9) A statement as to whether the proposed contractor is located within an economic development zone as described in the Economic Development Zone Incentives Amendment Act of 1988, effective October 29, 1988 (D.C. Law 7-177; D.C. Code § 5-1401 et seq.);

(10) A statement whether the proposed contract is in accordance with procurement laws and regulations applicable to the procuring agency, including whether the proper type of procurement was selected, whether policies and procedures governing source selection and cost or price determination have been followed, whether the proposed procurement fulfills an agency mission, and whether the proposed procurement represents the best practice currently available to the District for fulfillment of the particular mission;

(11) A statement indicating whether the proposed contractor has any currently pending legal claim against the District government; and

(12) All information related to the proposed contract which has been or is required to be submitted to the District of Columbia Financial Responsibility and Management Assistance Authority.

(d) After the effective date of the Council Contract Approval Modification Temporary Amendment Act of 1995 Emergency Amendment Act of 1996, 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 the effective date of the Council Contract Approval Modification Temporary Amendment Act of 1995 Emergency Amendment Act of 1996, any employee or agency head who shall knowingly or willfully enter into 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 section 1601(d) (1) and (18) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Code § 1-617.1(d) (1) and (18)). This subsection shall apply to subordinate agency heads appointed according to section 1001 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Code § 1-611.1) and to independent agency heads.

(f) 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 the effective date of the Council Contract Approval Modification Temporary Amendment Act of 1995 Emergency Amendment Act of 1996, without prior Council approval, can be paid more than \$1,000,000 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 District Charter-required Council review and approval of individual federal-aid highway contracts that make up the annual program."

Section 4(b) of D.C. Law 12-78 provides that the act shall expire after 225 days of its having taken effect.

**Emergency act amendments.** — For temporary amendment of section, see § 2 of the Council Contract Approval Modification Temporary Amendment Act of 1995 Congressional

Adjournment Emergency Act of 1997 (D.C. Act 12-7, March 3, 1997, 44 DCR 1621).

Section 4 of D.C. Act 12-7 provides for the application of the act.

For temporary amendment of section, see § 2 of the Establishment of Council Contract Review Criteria Emergency Amendment Act of 1997 (D.C. Act 12-214, December 16, 1997, 44 DCR 1), and see § 2 of the Establishment of Council Contract Review Criteria Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-305, March 20, 1998, 45 DCR 2277).

Section 4 of D.C. Act 12-305 provided for the application of the act.

For temporary amendment of section, see § 2 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).

**Legislative history of Law 8-257.** — Law 8-257 was introduced in Council and assigned Bill No. 8-645, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-342 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 9-55.** — Law 9-55 was introduced in Council and assigned Bill No. 9-295. The Bill was adopted on first and second readings on September 17, 1991, and October 1, 1991, respectively. Vetoed by the Mayor on November 1, 1991, it was reenacted, following council's override of the Mayor's veto on November 5, 1991, and transmitted to both Houses of Congress for its review.

**Legislative history of Law 9-136.** — Law 9-136, the "District of Columbia Procurement Practices Act of 1985 Council Contract Approval Procedures Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-312, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on April 7, 1992, and May 6, 1992, respectively. Vetoed by the Mayor on May 22, 1992, and overridden by Council on June 2, 1992, it was assigned Act No. 9-222 and transmitted to both Houses of Congress for its review. D.C. Law 9-136 became effective on July 28, 1992.

**Legislative history of Law 10-255.** — Law 10-255, the "Technical Amendments Act of 1994," was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Con-

gress for its review. D.C. Law 10-255 became effective on May 16, 1995.

**Legislative history of Law 11-88.** — Law 11-88, the “Council Contract Approval Modification Temporary Amendment Act of 1995,” was introduced in Council and assigned Bill No. 11-459. The Bill was adopted on first and second readings on October 10, 1995, and November 7, 1995, respectively. Approved without the signature the Mayor on November 29, 1995, it was assigned Act No. 11-166 and transmitted to both Houses of Congress for its review. D.C. Law 11-88 became effective on February 13, 1996.

**Legislative history of Law 11-190.** — Law 11-190, the “Council Contract Approval Modification Temporary Amendment Act of 1995, Temporary Amendment Act of 1996,” was introduced in Council and assigned Bill No. 11-745. The Bill was adopted on first and second readings on June 4, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 22, 1996, it was assigned Act No. 11-343 and transmitted to both Houses of Congress for its review. D.C. Law 11-190 became effective on April 9, 1997.

**Legislative history of Law 12-78.** — Law 12-78, the “Establishment of Council Contract

Review Criteria Temporary Amendment Act of 1997,” was introduced in Council and assigned Bill No. 12-440. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-234 and transmitted to both Houses of Congress for its review. D.C. Law 12-78 became effective on March 24, 1998.

**District of Columbia Contract No. 89-0154-AA-2-0-KA Disapproval Resolution of 1991.** — Pursuant to Resolution 9-54, effective May 24, 1991, the Council disapproved Contract No. 89-0154-AA-2-0-KA, in the amount of \$3,339,935.00 for the procurement of reconstruction of South Dakota Ave., N.E., Taylor Street to Road Island Ave., N.E.

**Approval of individual contracts.** — Section 1-229 does not allow the District of Columbia Council to require approval of certain individual contracts by means of a resolution of the Council. *Wilson v. Dixon*, 120 WLR 33 (Super. Ct. 1992).

**Cited in** *Wilson v. Kelly*, App. D.C., 615 A.2d 229 (1992).

## § 1-1181.5b. Privatization contracts and procedures requirements.

(a) Any contract, including a lease or other agreement, or any contracting policies and procedures relating to such contracts, to provide goods and services to or on behalf of the District government shall provide that:

(1) With respect to contracting out to provide goods or services to or on behalf of the District government that currently are provided by employees, department, or agencies of the District government, a cost-benefit analysis comparing the in-house costs of providing the service with the costs associated with contracting for the service shall be completed for each contract proposed pursuant to this section;

(2) Contracting out will provide savings over the duration of the contract of at least 5%;

(3) Any contractor who is awarded a contract that displaces District government employees shall offer to any displaced employee a right-of-first-refusal to employment by the contractor, in a comparable available position for which the employee is qualified, for at least a 6-month period during which the employee shall not be discharged without cause;

(4) Any District employee that is displaced as a result of a contract, and is hired by the contractor which was awarded the contract which displaced the employee shall be entitled to the benefits provided by the Service Contract Act of 1965 (“Act”), 41 U.S.C. § 351 *et seq.* For purposes of this subchapter, service employees of the water and sewer fund shall be treated by the contractor and entitled to all benefits as if those employees were not excluded from application of the Act.

(5) If the employee's performance during the 6-month transition employment period required by paragraph (3) of this subsection is satisfactory, the new contractor shall offer the employee continued employment under terms and conditions established by the new contractor;

(6) Any solicitation for proposed contracts issued pursuant to this section shall include information concerning the procedure by which current District government employees may exercise the right to bid on the contracts;

(7) An assessment of the economic impact on the District shall be completed for each contract proposed pursuant to this section;

(8) Prior notification shall be provided to affected District government employees 30 days prior to any adverse impact on the employees; and

(9) For those contracts which provide services essential to the health or safety of District residents, a determination and findings that the contracting out will not adversely affect the recipients.

(b) The Mayor shall submit to the Council the cost analysis comparing the in-house costs of providing goods and services with the costs associated with any contract for goods and services for any contract described in subsection (a)(1) of this section made by any agency of the District government which is subordinate to the Mayor.

(c) The Mayor shall submit to the Council any assessment of the economic impact on the District made pursuant to subsection (a)(5) of this section.

(d) Prior to the award of any contract, and unless otherwise prohibited by statute or the District Charter, the Mayor, and all independent agencies and entities of the District government, shall submit to the Council any contract, including a lease or other agreement, or any other contracting policies and procedures relating to such contracts, to provide goods and services to or on behalf of the District that currently are provided by employees, departments, or agencies of the District government for a 45-day review period, during which the Council may approve or disapprove the contract. If the Council takes no action during the 45-day review period, the contract will be deemed approved.

(e) No cost analysis or economic impact assessment shall be submitted to the Council under this section during any time that the Council is on recess, according to its rules, nor shall any time period provided in this section or in the Council's rules continue to run during any time that the Council is on recess. (Feb. 21, 1986, D.C. Law 6-85, § 105b, as added Mar. 19, 1994, D.C. Law 10-79, § 2(b), 40 DCR 8696; Mar. 5, 1996, D.C. Law 11-98, § 501(a), 43 DCR 5.)

**Section references.** — This section is referred to in § 1-1191.4.

**Emergency act amendments.** — For temporary repeal of the Department of Corrections Procurement and Privatization Exemption Emergency Amendment Act of 1996 (D.C. Act 11-220, February 23, 1996, 43 DCR 1176), see § 5 of the Department of Corrections Privatization Facilitation Emergency Act of 1997 (D.C. Act 12-29, March 18, 1997, 44 DCR 1897).

For temporary amendment of section, see § 2

of the Tenant Representative Services Facilitation Emergency Exemption Act of 1997 (D.C. Act 12-3, February 24, 1997, 44 DCR 1605).

**Legislative history of Law 10-79.** — Law 10-79, the "Privatization Procurement and Contract Procedures Amendment Act of 1993," was introduced in Council and assigned Bill No. 10-285, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on September 21, 1993, and November 2, 1993, respectively. Vetoed by the Mayor on November

19, 1993, Council overrode the veto on December 7, 1993, and the Bill was assigned Act No. 10-153 and transmitted to both Houses of Congress for its review. D.C. Law 10-79 became effective on March 19, 1994.

**Legislative history of Law 11-78.** — See note to § 1-1181.5c.

**Legislative history of Law 11-98.** — See note to § 1-1181.5c.

**Effective date.** — Section 7(a) of D.C. Law 11-149 provided that the act shall take effect following approval by the Mayor, approval by the Financial Responsibility and Management Assistance Authority, and a 30-day period of Congressional review, and publication in the District of Columbia Register.

**Privatization of Government Services Task Force.** — D.C. Law 10-240 provided that the Mayor shall appoint a Privatization of Government Services Task Force that will examine the potential benefits of privatizing certain government services and programs.

**Fleet Management Services of the Metropolitan Police Department.** — For temporary provisions concerning the privatization of Fleet Management Services in the Metropolitan Police Department, see § 701 of D.C. Law 10-253.

Section 1301(b) of D.C. Law 10-253 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Multiyear Budget Spending Reduction and Support Act of 1995, whichever occurs first.

For temporary provisions concerning the privatization of Fleet Management Services in the Metropolitan Police Department, see § 701 of the Multiyear Budget Spending Reduction

and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

**Department of Corrections Privatization Facilitation.** — Sections 2 through 4 of D.C. Law 11-149 provides for exemption, on a temporary basis, from the requirements of the District of Columbia Procurement Practices Act of 1985 privatization initiatives of the Department of Corrections to contract-out food, medical, inmate finance, and canteen services, and time and attendance responsibilities, and to contract for the sale and lease-back of the Correctional Treatment Facility.

Section 7(b) of D.C. Law 11-149 provided that the act shall expire after 225 days of its having taken effect.

For temporary exemption from the requirements of the District of Columbia Procurement Practices Act of 1985 privatization initiatives of the Department of Corrections to contract-out food, medical, inmate finance, and canteen services, and time and attendance responsibilities, and to contract for the sale and lease-back of the Correctional Treatment Facility, see §§ 2-4 of the Department of Corrections Privatization Facilitation Emergency Act of 1996 (D.C. Act 11-251, April 15, 1996, 43 DCR 2135), §§ 2-4 of the Department of Corrections Privatization Facilitation Congressional Review Emergency Act of 1996 (D.C. Act 11-305, July 24, 1996, 43 DCR 4200), and §§ 2-4 of the Department of Corrections Privatization Facilitation Emergency Act of 1997 (D.C. Act 12-29, March 18, 1997, 44 DCR 1897).

Section 7 of D.C. Act 11-305 provides for the application of the act.

Section 7 of D.C. Act 12-29 provides for application of the act.

## § 1-1181.5c. Policy for contracting out government services.

(a) In contracting out (including a lease or other agreement or any contracting policies or procedures relating to such contracts) to provide goods or services to or on behalf of the District government that currently are provided by employees, departments, or agencies of the District government, the Mayor shall make a determination and findings in writing submitted to the Council that the contract will meet the following criteria:

(1) Meets specific performance criteria for the service to be contracted out including costs and savings resulting from the contract;

(2) Includes a requirement for the submission to the District contracting officer of monthly reports on the contractor's compliance with the performance criteria; and

(3) Includes a provision that the contract can be cancelled for failure to comply with the performance criteria.



(b) When contracting out occurs, the Mayor shall make efforts to assist affected District employees and to promote employment opportunities for District residents based on the action to contract out. The findings shall include efforts made by the Mayor to:

(1) Consult with union representatives and all employees concerning affected District government employees;

(2) Provide alternative employment in the District government to affected District employees who are qualified; and

(3) Encourage the contractor performing the service that is contracted out to make bona fide offers of employment to all other qualified District residents before extending offers to qualified nonresidents.

(c) When contracting out pursuant to this chapter, the Mayor shall conduct a cost-benefit analysis, which shall be made available to the public by the Mayor, to determine whether the contracting out will:

(1) Result in increased economic development for the District in terms of entrepreneurial opportunities for District businesses or employment opportunities for District businesses or employment opportunities for District residents;

(2) Result in the strengthening of one or more existing District businesses, creation of one or more new businesses in the District, or relocation of one or more businesses from outside to inside the District; and

(3) Result in the expansion of, or at least in revenue neutral effect on, the District's tax base. (Feb. 21, 1986, D.C. Law 6-85, § 105c, as added Mar. 5, 1996, D.C. Law 11-98, § 501(b), 43 DCR 5.)

**Legislative history of Law 11-78.** — Law 11-78, the "Budget Support Temporary Act of 1995," was introduced in Council and assigned Bill No. 11-421. The Bill was adopted on first and second readings on July 29, 1995, and October 10, 1995, respectively. Signed by the Mayor on October 31, 1995, it was assigned Act No. 11-150 and transmitted to both Houses of Congress for its review. D.C. Law 11-78 became effective on January 26, 1996.

**Legislative history of Law 11-98.** — Law

11-98, the "Budget Support Act of 1995," was introduced in Council and assigned Bill No. 11-440, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1995, and December 5, 1995, respectively. Signed by the Mayor on December 26, 1995, it was assigned Act No. 11-181 and transmitted to both Houses of Congress for its review. D.C. Law 11-98 became effective on March 5, 1996.

### **§ 1-1181.5d. Council review of proposals to contract out in excess of \$1,000,000.**

Pursuant to § 1-1130(b) the Mayor and all independent agencies and entities of the District government shall submit to the Council for approval any proposal to contract out services covered by this act that involves expenditures in excess of \$1,000,000 during a 12-month period. (Feb. 21, 1986, D.C. Law 6-85, § 105d, as added Mar. 5, 1996, D.C. Law 11-98, § 501(b), 43 DCR 5.)

**Legislative history of Law 11-78.** — See note to § 1-1181.5c.

**Legislative history of Law 11-98.** — See note to § 1-1181.5c.

**References in text.** — "This act," referred to in this section, is D.C. Law 6-85.

**§ 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 procurement experience in federal, state, or local procurement, and shall have demonstrated management skills.

(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. (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.)

**Effect of amendments.** — Section 101(d) of D.C. Law 11-259 added this section.

D.C. Law 12-82 rewrote (d).

D.C. Law 12-104 substituted "CPO" for "Director" throughout the section; and substituted "of Chief Procurement Officer ('CPO')" for "Director of the Office of Contracting and Procurement" in (a).

Both D.C. Law 12-82 and D.C. Law 12-104 amended this section. Neither of the amendments referred to the other, and effect has been given to the amendments in Law 12-104.

**Temporary amendments of section.** — Section 3(c) of D.C. Law 12-17 substituted "CPO" for "Director" throughout the section.

Section 5(b) of D.C. Law 12-17 provides that the act shall expire on the 225th day of its having taken effect.

Section 2 of D.C. Law 12-67 amended (d) to read as follows: "(d) The Chief Procurement Officer shall have not less than 7 years of senior-level experience in procurement, and shall have demonstrated management skills."

Section 4(b) of D.C. Law 12-67 provided that the act shall expire after 225 days of its having taken effect.

**Emergency act amendments.** — For temporary amendment of section, see § 3 of the Procurement Reform Emergency Amendment Act of 1997 (D.C. Act 12-62, April 15, 1997, 44 DCR 2413) and § 3(c) of the Procurement Re-

form Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-133, August 12, 1997, 44 DCR 4832).

Section 5 of D.C. Act 12-133 provides for the application of the act.

For temporary amendment of section, see § 2 of the Chief Procurement Officer Qualification Emergency Amendment Act of 1997 (D.C. Act 12-185, October 31, 1997, 44 DCR 6962).

For temporary amendment of section, see § 2(c) of the Procurement Reform Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-374, April 24, 1998, 45 DCR 4338).

Section 6 of D.C. Act 12-374 provides for the application of the act.

**Legislative history of Law 11-259.** — See note to § 1-1181.1.

**Legislative history of Law 12-17.** — See note to § 1-1181.4.

**Legislative history of Law 12-67.** — Law 12-67, the "Chief Procurement Officer Qualification Temporary Amendment Act of 1997," was introduced in Council and assigned Bill No. 12-400. The Bill was adopted on first and second readings on October 7, 1997, and November 4, 1997, respectively. Signed by the Mayor on November 21, 1997, it was assigned Act No. 12-209 and transmitted to both Houses of Congress for its review. D.C. Law 12-67 became effective on March 20, 1998.

**Legislative history of Law 12-82.** — Law 12-82, the “Chief Procurement Officer Qualification Amendment Act of 1997,” was introduced in Council and assigned Bill No. 12-366, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 4, 1997, and

December 16, 1997, respectively. Signed by the Mayor on January 8, 1998, it was assigned Act No. 12-249 and transmitted to both Houses of Congress for its review. D.C. Law 12-82 became effective on March 24, 1998.

**Legislative history of Law 12-104.** — See note to § 1-1181.4.

## § 1-1181.6. Determinations.

Every determination required by this chapter shall be in writing and based upon written findings of the public official making the determination. These determinations and written findings shall be retained in the official contract file. (Feb. 21, 1986, D.C. Law 6-85, § 106, 32 DCR 7396.)

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

## § 1-1181.6a. New contracts with costs exceeding existing contracts.

The Mayor shall not enter into any new contract for goods or services the cost of which exceeds the cost of an existing contract for the same goods or services, when the current contractor is willing to continue to provide the goods or services at the price of the existing contract, as long as the contractor is providing satisfactory service; nor shall the Mayor extend any existing contract for any amount over the price agreed to in the existing contract. Nothing contained in this section shall prohibit the Mayor from putting a contract out for bid for a lower price. (Sept. 26, 1995, D.C. Law 11-52, § 816, 42 DCR 3684.)

**Temporary addition of sections.** — Sections 2 through 5 of D.C. Law 11-193 enacted §§ 1-1181.6b through 1-1181.6e to read as follows:

“§ 1-1181.6b. Contracting authority of the Mayor for educational services at the Oak Hill Youth Center.

(a) Notwithstanding subchapter I of Chapter II of Title I (“Procurement Practices Act”), the Mayor may contract for the development and operation of an on site residential education program (“Program”) with literacy, remedial academic, specialized educational, and post-high school instruction for resident youth at the Oak Hill Youth Center.

(b) The Program shall include diagnostic evaluations, innovative technological approaches to individualized instruction, functional competencies curriculum, and positive disciplinary methods.”

“§ 1-1181.6c. Policy, criteria, and standards for contracting government services for the Oak Hill Youth Center.

“(a) In contracting for services pursuant to § 1-1181.6b, the Mayor shall use the most competitive process practicable, under then ex-

isting circumstances, to facilitate the establishment of the Program.

“(b) In contracting for services pursuant to § 1-1181.6b, the Mayor may make a written determination and findings that the contract will meet the following criteria:

“(1) A cost savings to the District government, or improved quality or quantity of service at the same or lower cost, will result for the duration of the contract, including all option years of the contract;

“(2) Performance criteria for the contracted service can be specified with reasonable exactness;

“(3) Cost, efficiency of operation, and quality and quantity of the contracted service can be measured with reasonable accuracy; and

“(4) For a service which is essential to the health or safety of District residents, contracting for the service will not adversely affect the recipients.

“(c) The Mayor may base any determination and findings pursuant to subsection (b) of this section on a written cost/benefit analysis prepared by the Department of Human Services.

At a minimum, this analysis shall include comparison of the following:

"(1) Current total cost to the District government versus projected total cost to the District government after contracting with a private vendor, if quality and quantity of service remain substantially the same; and

"(2) Current quality and quantity versus projected quality and quantity of service after contracting with a private vendor, if current total cost to the District government remains substantially the same.

"(d) The Mayor may issue rules necessary to implement the provisions of this act, including rules that address the following:

"(1) Cost factors to be considered in evaluating the total cost to the District government of a service currently provided by the government if the service continues to be projected by the government, such as the costs of equipment, facilities, maintenance, personnel, and utilities;

"(2) Cost factors to be considered in evaluating the total cost to the District government if a service currently provided by the government is contracted for with a private vendor, such as the additional cost of improving any capital assets to be transferred to a contractor, the additional cost of any one-time severance of District government employees, the additional cost of contract administration, the value of any improvement to District government programs resulting from contracted programs which serve the District government, and any tax revenue to the District based on income earned by a contractor; and

"(3) Methods to be used to identify and measure quality and quantity of service so that accurate cost comparisons can be made between District government and private sector performance.

"(e) When the Mayor contracts for a service pursuant to section 2, the Mayor may make reasonable efforts to assist affected District government employees and to promote employment opportunities for District residents. If not already required by a collective bargaining agreement, the Mayor may make reasonable efforts to accomplish the following:

"(1) Consult with union representatives concerning affected District government employees;

"(2) Provide alternative employment in the District government to affected District employees who are qualified; and

"(3) Encourage the contractor performing the service to make bona fide offers of employment to all other qualified District residents before extending offers to qualified nonresidents.

"(f) Any solicitation for proposed contracts issued pursuant to this act may include infor-

mation concerning the procedure for which current District government employees may exercise the right to bid on the contracts.

"(g) The Director of the Department of Human Services shall publish a notice of solicitation in the District of Columbia Register and 2 newspapers of general circulation at least 30 days prior to the awarding of any contract for goods or services under this act."

"§ 1-1181.6d. Council review of contracts.

"Pursuant to § 1-1130(b), the Mayor shall submit to the Council of the District of Columbia for approval any proposal to contract for services covered by this act involving expenditures in excess of \$1,000,000 during a 12-month period."

"§ 1-1181.6e. Procurement Practices Act procedures.

"Nothing in this act shall be construed to prevent the Mayor from relying upon the procedures of the Procurement Practices Act as a guide in determining how best to promote competition and greater efficiencies in contracting for the services specified in § 1-1181.6b".

"Section 6(b) of D.C. Law 11-193 provides that the act shall expire after the 225th day of its having taken effect or on the effective date of the Oak Hill Youth Center Educational Contracting Act of 1996, whichever occurs first.

**Legislative history of Law 11-18.** — Law 11-18, the "Budget Implementation Temporary Act of 1995," was introduced in Council and assigned Bill No. 11-124. The Bill was adopted on first and second readings on February 21, 1995, and March 7, 1995, respectively. Signed by the Mayor on March 24, 1995, it was assigned Act No. 11-34 and transmitted to both Houses of Congress for its review. D.C. Law 11-18 became effective on May 27, 1995.

**Legislative history of Law 11-52.** — Law 11-52, the "Omnibus Budget Support Act of 1995," was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

**Legislative history of Law 11-193.** — Law 11-193, the "Oak Hill Youth Center Educational Contracting Temporary Act of 1996," was introduced in Council and assigned Bill No. 11-727, which was retained by Council. The Bill was adopted on first and second readings on June 4, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 22, 1996, it was assigned Act No. 11-349 and transmitted to both Houses of Congress for its review. D.C. Law 11-193 became effective on April 9, 1997.

**§ 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.

(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 contracting by either the method set forth in § 1-1183.4 or 1-1183.5.

(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.

(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.

(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.

(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.

(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.

(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. (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.)

**Effect of amendments.** — Section 101(e) of D.C. Law 11-259 rewrote (2), (9), (13) and (15); and inserted (22A) and (37A).

D.C. Law 12-104 repealed (9); and substituted "CPO or the CPO's designee" for "Director of the Office of Contracting and Procurement or the Director's designee" in (15).

**Temporary amendment of section.** — Section 3(d) of D.C. Law 12-17 amended (9) and (15) to read as follows:

"For the purposes of this chapter, the term:

\*\*\*\*\*

(9) 'Chief procurement officer' means the CPO of the Office of Contracting and Procurement.

\*\*\*\*\*

(15) 'Contracting officer' means the Mayor or the CPO of the Office of Contracting and Procurement 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.”

Section 5(b) of D.C. Law 12-17 provides that the act shall expire on the 225th day of its having taken effect.

**Emergency act amendments.** — For temporary repeal of the Department of Corrections Procurement and Privatization Exemption Emergency Amendment Act of 1996 (D.C. Act 11-220, February 23, 1996, 43 DCR 1176), see § 2 of the Department of Corrections Privatization Facilitation Emergency Act of 1997 (D.C. Act 12-29, March 18, 1997, 44 DCR 1897).

Section 7 of D.C. Act 12-29 provides for application of the act.

For temporary amendment of section, see § 3(d) of the Procurement Reform Emergency Amendment Act of 1997 (D.C. Act 12-62, April 15, 1997, 44 DCR 2413), and § 3(d) of the Procurement Reform Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-133, August 12, 1997, 44 DCR 4832).

Section 5 of D.C. Act 12-133 provides for the application of the act.

For temporary amendment of section, see § 2(d) of the Procurement Reform Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-374, April 24, 1998, 45 DCR 4338).

Section 6 of D.C. Act 12-374 provides for the application of the act.

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

**Legislative history of Law 6-116.** — Law 6-116 was introduced in Council and assigned Bill No. 6-165, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on

March 11, 1986 and March 25, 1986, respectively. Signed by the Mayor on April 8, 1986, it was assigned Act No. 6-151 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 10-75.** — Law 10-75, the “South Africa Sanctions Temporary Repeal Act of 1993,” was introduced in Council and assigned Bill No. 10-417. The Bill was adopted on first and second readings on October 5, 1993, and November 2, 1993, respectively. Signed by the Mayor on November 4, 1993, it was assigned Act No. 10-142 and transmitted to both Houses of Congress for its review. D.C. Law 10-75 became effective on March 8, 1994.

**Legislative history of Law 10-134.** — Law 10-134, the “South Africa Sanctions Repeal Act of 1994,” was introduced in Council and assigned Bill No. 10-427, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on March 1, 1994, and April 12, 1994, respectively. Signed by the Mayor on April 28, 1994, it was assigned Act No. 10-234 and transmitted to both Houses of Congress for its review. D.C. Law 10-134 became effective on June 28, 1994.

**Legislative history of Law 11-259.** — See note to § 1-1181.1.

**Legislative history of Law 12-17.** — See note to § 1-1181.4.

**Legislative history of Law 12-104.** — See note to § 1-1181.4.

**Purchase orders.** — The procurement provisions of the District of Columbia Code define the term “contract” to include purchase orders. *United States ex rel. Modern Elec., Inc. v. Ideal Elec. Sec. Co.*, 81 F.3d 240 (D.C. Cir. 1996).

## *Subchapter II. Procurement Organization.*

### **§ 1-1182.1. Policy.**

(a) It is the policy of the Council that the District government’s contracting and procurement system provide for uniform rules and regulations and the equitable application of the rules and regulations to increase competition and to broaden private participation in meeting government requirements.

(a-1) It is the policy of the Council that the District achieve accountability, uniformity, efficiency, and economy in its procurement system by centralizing all procurement authority within the OCP, staffed by procurement professionals dedicated exclusively to contract formation and administration.

(b)(1) Nothing in this chapter or its implementing regulations shall be construed to abrogate the powers or duties of the Mayor pursuant to the District of Columbia Self-Government and Governmental Reorganization Act, or Chapter 6 of Title 36, or any other law not specifically repealed by this act.

(2) Nothing in this act or its implementing regulations shall be construed to supersede any provision of subchapter II of Chapter 11 of this title.

(c) It is the intent of the Council to simplify and clarify the organization for contracting and procurement in the District government, while maintaining a proper separation of powers, and preserving the benefits and protections conferred on minority-owned companies by subchapter II of Chapter 11 of this title. (Feb. 21, 1986, D.C. Law 6-85, § 201, 32 DCR 7396; Apr. 12, 1997, D.C. Law 11-259, § 101(f), 44 DCR 1423.)

**Effect of amendments.** — Section 101(f) of D.C. Law 11-259 added (a-1).

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

**Legislative history of Law 11-259.** — See note to § 1-1181.1.

**References in text.** — The “District of Columbia Self-Government and Governmental Reorganization Act,” referred to in paragraph (1) of subsection (b), is Public Law 93-198.

“This act,” referred to in paragraphs (1) and (2) of subsection (b), is D.C. Law 6-85.

## § 1-1182.2. Procurement regulations and information system.

(a)(1) The Mayor shall issue rules consistent with this act governing procurement, management, control, and disposal of supplies, services, and construction.

(2) The Mayor shall consider and decide matters of policy within the provisions of this chapter, and may audit and monitor the implementation of rules and the requirements of this chapter.

(3) All rules issued under this chapter must be approved by the Council pursuant to § 1-1182.5.

(b) The Director shall provide overall leadership in the implementation of procurement regulations, shall coordinate all procurement activities of the District government in accordance with the provisions of the chapter, and shall develop a system of unified and simplified procurement procedures and forms.

(c)(1) Within 12 months of February 21, 1986, the Director shall develop and establish a comprehensive computer-based material management information system for collecting, organizing, disseminating, maintaining, and reporting procurement data which takes into account the needs of all branches of the District government, and the best interest of the District government.

(2) The system shall be designed to permit measuring and assessing the impact of procurement activities on the economy of the District government, and the extent to which local, women-owned, and minority business concerns are sharing in District government contracts.

(3) The system shall:

(A) Serve for policy and management control purposes, such as forecasting material requirements, inventory control, warehousing, accounting, and purchasing;

(B) Reflect the state of the art in information systems technology; and

(C) Have the ability to accommodate future technical enhancements, including the use of bar coding.

(d) All agencies, independent agencies, boards, and commissions as described in § 1-1181.4(a) shall cooperate with the Director in the establishment

of the Material Management Information System ("MMIS") and shall furnish information to the system on all proposed procurements at the time the requirements for the procurement are established.

(e) All agencies with independent procurement authority shall develop or modify their existing material management information systems to be compatible with the reporting system described in subsection (d) of this section. In the event this becomes impractical, independent agencies are authorized to utilize the reporting system established by the Director on a cost-reimbursable basis. The Mayor shall issue rules setting forth requirements to promote compatibility between the MMIS and the procurement information systems of the various independent agencies. The rules shall specify reporting formats, minimum levels of information, and other data concerning procurement operations and compliance with applicable laws necessary to facilitate the exchange of procurement information, and to enable the Council to make accurate determinations regarding the District government's entire procurement process. (Feb. 21, 1986, D.C. Law 6-85, § 202, 32 DCR 7396; Apr. 12, 1997, D.C. Law 11-259, § 101(g), 44 DCR 1423.)

**Effect of amendments.** — Section 101(g) of D.C. Law 11-259 rewrote (a)(1); substituted "agencies, independent agencies, boards, and commissions as described in § 1-1181.4" for "agencies subordinate to the Mayor" in (d); and substituted "with independent procurement

authority" for "independent of the Mayor" in (e).

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

**Legislative history of Law 11-259.** — See note to § 1-1181.1.

### § 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; and

(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.

(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.)

**Effect of amendments.** — Section 101(h) of D.C. Law 11-259 substituted "chief" for "central" in (a), rewrote (b)(8); and repealed (d) which related to establishment and termination of procurement advisory councils by the Director.

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

**Legislative history of Law 11-259.** — See note to § 1-1181.1.

## § 1-1182.4. Regulatory powers of Mayor.

(a) The Mayor shall have power and authority over, and shall, except as otherwise provided in this chapter, issue rules that are consistent with this chapter and adopted in accordance with subchapter I of Chapter 15 of this title, governing:

(1) Procedures for the review and approval of procurement contracts, including multiyear contracts;

(2) Conditions and procedures for delegating procurement authority, including designation of control authorities;

(3) Procedures for the review of determinations; and

(4) Procedures for the certification of adequacy of appropriations and availability of funds.

(b) The District Government Procurement Regulations shall include, but not be limited to, the following:

(1) Procedures for the prequalification, qualification, suspension, disqualification, and reinstatement of prospective bidders;

(2) Small purchase procedures;

(3) Procedures for the procurement of perishables and items for resale;

(4) Procedures for the procurement of supplies, services, or construction financed by federal contracts or grants;

(5) Procedures for cooperative procurement;

(6) Procedures for procurement which are financed by revenue bonds;

(7) Conditions, including emergencies, and procedures under which procurement may be made by means other than competitive sealed bidding;

(8) Procedures for the opening or rejection of bids and offers, consideration of alternative bids and offers, and waiver of informalities in bids and offers;

(9) Procedures for safeguarding confidential, proprietary information, and trade secrets submitted by actual or prospective bidders and offerors;

(10) Procedures for partial and multiple awards;

(11) Procedures for supervision of storerooms and inventories, including the determination of appropriate stock levels, and the management, transfer, sale, or other disposal of publicly-owned supplies;

(12) Definitions and classes of contractual services and procedures for acquiring them;

(13) Procedures for conducting price analysis;

(14) Procedures for use of payment and performance bonds in connection with contracts for supplies and services;

(15) Guidelines for use of cost principles in negotiations, adjustments, and settlements; and

(16) Guidelines for the cancellation of invitations for bids or requests for proposals. (Feb. 21, 1986, D.C. Law 6-85, § 204, 32 DCR 7396; Apr. 12, 1997, D.C. Law 11-259, § 101(i), 44 DCR 1423.)

**Effect of amendments.** — Section 101(i) of D.C. Law 11-259 substituted “which are” for “by District government agencies which is” in (b)(6).

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

**Legislative history of Law 11-259.** — See note to § 1-1181.1.

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

(a)(1) The existing procurement regulations, to the degree that they are consistent with this chapter, shall remain in effect until permanent rules are approved by the Council.

(2) The Mayor shall publish the District Government Procurement Regulations.

(3) Final rules shall be transmitted to the Council within 180 days following February 21, 1986, for a 60-day review period, excluding Saturdays, Sundays, holidays, and days of Council recess.

(4) The Council may, by resolution, approve or disapprove the regulations, in whole or in part, within the 60-day review period. If the Council, by resolution, does not approve or disapprove the regulations before the expiration of the 60-day review period, the regulations shall become effective at the expiration of the 60-day review period.

(b) Any additional rules or modifications issued subsequent to the adoption of the final regulations shall be transmitted to the Council for a 60-day review period pursuant to subsection (a) of this section.

(c) No District government procurement rule or regulation shall change in any way a contract commitment by the District government or of a contractor to the District government which was in existence on the effective date of the rule or regulation.

(d)(1) Except as otherwise provided in this chapter, a contract which is entered into in violation of this chapter or the rules and regulations issued pursuant to this chapter is void, unless it is determined in a proceeding pursuant to this chapter or subsequent judicial review that good faith has been shown by all parties, and there has been substantial compliance with the provisions of the chapter and the rules and regulations.

(2) If a contract is void, a contractor who has entered into the contract in good faith, without directly contributing to a violation and without knowledge of any violation of the chapter or rules and regulations prior to the awarding of the contract, shall be compensated for costs actually incurred. (Feb. 21,

1986, D.C. Law 6-85, § 205, 32 DCR 7396; May 23, 1986, D.C. Law 6-116, § 3(b), 33 DCR 2432.)

**Section references.** — This section is referred to in §§ 1-1182.2, 1-1182.8, and 1-1189.8.

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

**Legislative history of Law 6-116.** — See note to § 1-1181.7.

**Approval of initial District of Columbia Procurement Practices Act rules.** — Pursuant to Resolution 7-181, the "District of Columbia Procurement Practices Act of 1985 Initial Rules Approval Resolution of 1987," effective December 8, 1987, the Council approved proposed chapters 10, 12, 13, 15 — 28, 32, 38 and 41 of 27 DCMR which were submitted by the Mayor on July 9, 1987, and proposed chapters 11, 31, 33, 36, 37, 40, 42 and 45 of 27 DCMR which were submitted by the Mayor on October 5, 1987. Final rulemaking effective February 26, 1988 (35 DCR 1385).

**Disapproval of amendments to District of Columbia Procurement Practices Act rules.** — Pursuant to Resolution 8-216, the "District of Columbia Procurement Practices Act of 1985 Amend. to Rules for Special Contracting Methods Disapproval Resolution of 1990", effective April 27, 1990, the Council disapproved rules amending the District of Columbia procurement regulations to increase the number of option periods in any contract for a city-wide telecommunications system.

**Contracting for Expert and Consulting Services Final Rulemaking Approval Resolution of 1996.** — Pursuant to Resolution 11-220, effective February 6, 1996, Council approved the final rulemaking to amend Title 27, Chapter 19 of the District of Columbia Municipal Regulations.

**Editor's notes.** — The word "period" was inserted in subsection (b) to correct an omission in D.C. Law 6-85.

**Applicability.** — Where it was unclear whether District of Columbia Procurement Practices Act was intended to apply to contracts entered into before February 21, 1986, the effective date of the Act, and to the extent that the Act affected only the forum in which plaintiff made its claim, Court of Appeals presumed, absent a clear legislative indication to the contrary, that the Act applied to claim based on contracts entered into before February 21, 1986. *Lumbermen's Mut. Cas. Co. v. District of Columbia*, App. D.C., 566 A.2d 480 (1989).

**Determination of contract's validity.** — A 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 to the Contract Appeals Board) for a determination of the validity of a contract vis-à-vis the procurement provisions. *RDP Dev. Corp. v. District of Columbia*, App. D.C., 645 A.2d 1078 (1994).

**Jurisdiction.** — Where claims before trial court involved issues which were within the special competence of an administrative agency, the trial court properly retained jurisdiction to determine whether the competitive bidding provisions applied and correctly dismissed that portion of the action which addressed the validity of the lease/purchase agreement. *RDP Dev. Corp. v. District of Columbia*, App. D.C., 645 A.2d 1078 (1994).

## § 1-1182.6. Contract information hotline.

(a)(1) Within 30 days of February 21, 1986, the Director shall establish a telephone line or system of telephone lines known as the contract information hotline.

(2) The primary purpose of the contract information hotline is to provide callers with prerecorded information on all contracting opportunities that are currently available with agencies of the District government.

(3) The following information shall be provided by prerecorded message to callers on the contract information hotline:

(A) The title of the invitation for bid, or other identifying information on the contract;

(B) The nature of the procurement, including whether the procurement is for supplies, services, or construction;

(C) A brief description of the type of supplies, services, or construction being sought and whether the offer is for spot acquisition or term contract;

- (D) The amount of deposit required, if any;
- (E) Whether the contract is restricted to the sheltered market or is available to the open market;
- (F) The date and time by which bids or requests for proposals must be submitted and the place for submission;
- (G) Where and when further information on the contracts may be obtained; and
- (H) Any other information the Director considers appropriate and practicable.

(b) The information described in subsection (a) of this section shall be updated at least once per week as the Director considers appropriate and practicable. (Feb. 21, 1986, D.C. Law 6-85, § 206, 32 DCR 7396.)

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

### **§ 1-1182.7. Transfer of procurement personnel to the Office of Contracting and Procurement.**

(a) Within 15 days of the effective date of the Chief Procurement Officer Qualification Amendment Act of 1997, all agencies, boards, commissions, and entities whose procurement functions fall under the authority of the CPO shall provide the CPO with a list of personnel who spend a majority of their time on procurement duties. The Director of Personnel shall review the lists to ensure that they include all the employees whose primary responsibility is to perform procurement duties.

(b) Within 30 days of March 24, 1998, employees listed as performing procurement duties in subsection (a) of this section shall be transferred to the OCP along with the assets and budget authority associated with those functions.

(c) On the 60th day following April 12, 1997, District agencies, boards, and commissions shall cease to have procurement authority except as otherwise provided by this act, including through delegation by the Director. (Feb. 21, 1986, D.C. Law 6-85, § 207, 32 DCR 7396; Apr. 12, 1997, D.C. Law 11-259, § 101(j), 44 DCR 1423; Mar. 24, 1998, D.C. Law 12-82, § 2(b), 45 DCR 772.)

**Effect of amendments.** — Section 101(j) of D.C. Law 11-259 rewrote this section.

D.C. Law 12-82 rewrote (a) and (b).

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

**Legislative history of Law 11-259.** — See note to § 1-1181.1.

**Legislative history of Law 12-82.** — Law 12-82, the "Chief Procurement Officer Qualification Amendment Act of 1997," was introduced

in Council and assigned Bill No. 12-366, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 4, 1997, and December 16, 1997, respectively. Signed by the Mayor on January 8, 1998, it was assigned Act No. 12-249 and transmitted to both Houses of Congress for its review. D.C. Law 12-82 became effective on March 24, 1998.

**§ 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 Reorganization 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) Act as liaison representative for the Mayor for all external audits of the District government;

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

(D) Conduct other special audits, assignments, and investigations the Mayor shall assign;

(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) Forward to the Mayor and the appropriate authority any evidence of criminal wrongdoing, that is discovered as a result of any investigation or audit conducted by the office;

(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.

(b) 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, as well as generally accepted accounting and procurement principles, practices, and procedures, including, but not limited to, federal and District government case law, decisions of the U.S. Comptroller General, and decisions of federal contract appeals boards.

(c)(1) The Inspector General shall have access to all books, accounts, records, reports, findings, and all other papers, things, or property belonging to

or in use by any department or agency under the direct supervision of the Mayor necessary to facilitate the Inspector General's work.

(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.

(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.

(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.

(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.)

**Section references.** — This section is referred to in §§ 1-603.1, 1-1182.8a, 47-391.1, and 47-3401.1.

**Effect of amendments.** — D.C. Law 11-255 validated previously made stylistic corrections in (a)(1)(A), (a)(1)(B)(iii), (a)(2)(B), (a)(3)(G), (a)(3)(H), (a)(4)(A), and (a)(4)(B).

Section 11601(b)(3) of Pub. L. 105-33, 111 Stat. 777, deleted former (a)(2)(B); redesignated former (a)(2)(C) as present (a)(2)(B); and in present (a)(2)(B), substituted "Amounts appropriated for the Inspector General" for "Amounts deposited in the dedicated fund described in subparagraph (B)."

Section 160 of Pub. Law 105-277, 112 Stat. 2681-148, substituted "more than 5 consecutive fiscal years" for "more than 3 consecutive fiscal years" in (a)(4)(A).

D.C. Law 12-190 inserted (f-1).

**Temporary amendment of section.** — Section 2 of D.C. Law 12-177 inserted (f-1).

Section 5(b) of D.C. Law 12-177 provides that this act shall expire after 225 days of its having taken effect or on the effective date of the Office of the Inspector General Law Enforcement Powers Amendment Act of 1998, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 2 of the Office of the Inspector General Law Enforcement Powers Emergency Amendment Act of

1998 (D.C. Act 12-394, July 6, 1998, 45 DCR 4645), § 2 of the Office of the Inspector General Law Enforcement Powers Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-463, October 28, 1998, 45 DCR 7818), and § 2 of the Office of the Inspector General Law Enforcement Powers Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-3, February 8, 1999, 46 DCR 2288).

For amendment of section, see § 2 of the Office of the Inspector General Law Enforcement Powers Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-3, February 8, 1999, 46 DCR 2288).

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

**Legislative history of Law 7-201.** — Law 7-201 was introduced in Council and assigned Bill No. 7-95, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 15, 1988 and November 29, 1988, respectively. Signed by the Mayor on December 23, 1988, it was assigned Act No. 7-271 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 11-255.** — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was

adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

**Legislative history of Law 12-177.** — Law 12-177, the "Office of the Inspector General Law Enforcement Powers Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-676. The Bill was adopted on first and second readings on June 2, 1998, and July 7, 1998, respectively. Signed by the Mayor on July 20, 1998, it was assigned Act No. 12-419 and transmitted to both Houses of Congress for its review. D.C. Law 12-177 became effective on March 26, 1999.

**Legislative history of Law 12-190.** — Law 12-190, the "Office of the Inspector General Law Enforcement Powers Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-622, which was referred to the Committee on Government Operations. The

Bill was adopted on first and second readings on July 7, 1998, and September 22, 1998, respectively. Signed by the Mayor on October 2, 1998, it was assigned Act No. 12-461 and transmitted to both Houses of Congress for its review. D.C. Law 12-190 became effective on March 26, 1999.

**References in text.** — "Part D of Title IV of the District of Columbia Self-Government and Governmental Reorganization Act," referred to in (a)(2)(A), is Part D of Title IV of the Act of December 24, 1973, 87 Stat. 774, Pub. L. 93-198 which is composed of §§ 441 through 456 of the act.

"Such Act," referred to in subsection (a)(2)(A) of this section, is the District of Columbia Self-Government and Governmental Reorganization Act (Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198), set out in Volume 1.

**Office of Inspector.** — Section 155 of P.L. 105-100 provided for creation of the Office of the Inspector General.

## § 1-1182.8a. Deadline for appointment.

(a) *In general.* — Not later than 30 days after its members are appointed, the Mayor shall appoint the Inspector General of the District of Columbia pursuant to § 1-1182.8(a)(1).

(b) *Transition rule.* — The term of service of the individual serving as the Inspector General under § 1-1182.8(a) prior to the appointment of the Inspector General by the Authority under § 1-1182.8(a)(1) shall expire upon the appointment of the Inspector General by the Authority. (Apr. 17, 1995, 109 Stat. 151, Pub. L. 104-8, § 303(e); Aug. 5, 1997, 109 Stat. 151, Pub. L. 105-33, § 11711(b).)

**Effect of amendments.** — Section 11711(b) of P.L. 105-33, 111 Stat. 782, in (a), substituted "Mayor" for "Authority."

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

Repealed.

(Jan. 26, 1996, D.C. Law 11-78, § 1001, 42 DCR 6181; Mar. 5, 1996, D.C. Law 11-98, § 801, 43 DCR 5; Mar. 26, 1999, D.C. Law 12-175, § 502, 45 DCR 7193.)

**Cross references.** — As to the transfer of positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds to the Chief Information Officer in the Office of the City Administration to the Office of the Chief Technology Office, see § 1-1195.4.

**Emergency act amendments.** — For tem

porary repeal of section, see § 302 of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and § 302 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

Section 2101 of D.C. Act 12-564 provides for the application of the act.

**Legislative history of Law 12-175.** — See note to § 1-1181.5.

*Subchapter III. Source Selection and Contract Formation.*

**§ 1-1183.1. District-based businesses preference.**

(a) The Director shall, in the purchase of materials, equipment, and supplies, give preference, so far as may be in the best interest of the District, to materials, equipment, and supplies produced in the District government or sold by District-based businesses.

(b) The Mayor shall issue rules articulating the various factors to be considered in determining whether a business is District-based, including the number of District residents employed, the size of the work force, and other factors considered to be in the best interest of the District government. (Feb. 21, 1986, D.C. Law 6-85, § 301, 32 DCR 7396.)

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

**§ 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; or
- (4) Small purchase procedures pursuant to § 1-1183.6.

(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-quali-

cation 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.)

**Effect of amendments.** — D.C. Law 12-175 added (d).

**Emergency act amendments.** — For temporary amendment of section, see § 202(b) of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and § 202(b) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

Section 2101 of D.C. Act 12-564 provides for the application of the act.

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

**Legislative history of Law 12-175.** — See note to § 1-1181.5.

**References in text.** — Section 1-1183.6, referred to in (a)(4), was repealed by D.C. Law 11-259, § 101(n), 44 DCR 1423, effective April 12, 1997.

### § 1-1183.3. Competitive sealed bidding.

(a) Contracts exceeding the amount provided by § 1-1183.6 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.)

**Section references.** — This section is referred to in §§ 1-336, 1-1181.5a, 1-1183.2, 1-1183.4, 1-1183.10, and 1-1183.15.

**Effect of amendments.** — D.C. Law 12-243 rewrote (c); and inserted (c-1).

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

**Legislative history of Law 12-243.** — Law 12-243, the "Procurement Practices Bid Notice Period Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-805, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 23, 1998, it was assigned Act No. 12-577 and transmitted to both Houses of Congress for its review. D.C. Law 12-243 became effective on April 20, 1999.

**References in text.** — Section 1-1183.6, referred to in the introductory language of (a),

was repealed by D.C. Law 11-259, § 101(n), 44 DCR 1423, effective April 12, 1997.

**District of Columbia Public Schools exception.** — Section 123 of Pub. L. 104-194, 110 Stat. 2367, the District of Columbia Appropriations Act, 1997, provided that no sole source contract with the District of Columbia government or any agency thereof maybe renewed or extended without opening that contract to the competitive bidding process as set forth in § 1-1183.3, except that the District of Columbia Public Schools may renew or extend sole source contracts for which competition is not feasible or practical, provided that the determination as to whether to invoke the competitive bidding process has been made in accordance with duly promulgated Board of Education rules and procedures.

**Cited in** *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, App. D.C., 560 A.2d 517 (1989).

## § 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 concerning the procurement of architectural and engineering services, medical and human care services, and real property appraisal services. The rules and procedures 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.)

**Section references.** — This section is referred to in §§ 1-336, 1-1181.7, 1-1183.2, 1-1183.10, and 1-1183.15.

**Effect of amendments.** — Section 101(l) of D.C. Law 11-259 substituted "supplies, services, or construction" for "supplies or services"

in (b); and inserted "or other description of the District's specific needs" in (d).

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

**Legislative history of Law 11-259.** — See note to § 1-1181.1.

## § 1-1183.5. Sole source procurement.

(a) Procurement contracts may be awarded through noncompetitive negotiations when under rules implementing this section, the Director or the Director's designee determines in writing that one of the following conditions exists:

(1) There is only 1 source for the required commodity, service, or construction item;



(2) The contract is for the purchase of real property or interests in real property;

(3) The contract is with a vendor who maintains a price agreement or schedule with any federal agency, so long as no contract executed under this provision authorizes a price higher than is contained in the contract between the federal agency and the vendor; or

(4) Contracts for the purchase of commodities, supplies, equipment, or construction services that would ordinarily be purchased on a competitive basis when an emergency has been declared pursuant to § 1-1183.12.

(b) Repealed. (Feb. 21, 1986, D.C. Law 6-85, § 305, 32 DCR 7396; Apr. 12, 1997, D.C. Law 11-259, § 101(m), 44 DCR 1423.)

**Section references.** — This section is referred to in §§ 1-1181.7, 1-1183.2, 1-1183.10, 1-1183.15, and 1-1183.19.

**Effect of amendments.** — Section 101(m) of D.C. Law 11-259 substituted “under rules implementing this section, the Director or the Director’s designee” for “under rules issued by the Mayor and approved by the Council, the Director or a designee” in (a); and repealed (b) which related to the Sheltered Market Program.

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

**Legislative history of Law 11-259.** — See note to § 1-1181.1.

**Restrictions on renewal or extension of**

**sole source contracts.** — Section 123 of Pub. L. 104-194, 110 Stat. 2367, the District of Columbia Appropriations Act, 1997, provided that no sole source contract with the District of Columbia government or any agency thereof may be renewed or extended without opening that contract to the competitive bidding process as set forth in § 1-1183.3, except that the District of Columbia Public Schools may renew or extend sole source contracts for which competition is not feasible or practical, provided that the determination as to whether to invoke the competitive bidding process has been made in accordance with duly promulgated Board of Education rules and procedures.

## § 1-1183.6. General limitations; small purchase procurements.

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 306, 32 DCR 7396; Nov. 25, 1993, D.C. Law 10-65, § 602, 40 DCR 7351; Apr. 12, 1997, D.C. Law 11-259, § 101(n), 44 DCR 1423.)

**Legislative history of Law 11-259.** — See note to § 1-1181.1.

## § 1-1183.7. Cancellation of invitations for bids.

An invitation for bids, a request for proposals, or other solicitations may be cancelled, or all bids or proposals may be rejected, only if it is determined in writing by the Director that the action is taken in the best interest of the District government. This information must be forwarded to the Inspector General for review within 72 hours of the action. (Feb. 21, 1986, D.C. Law 6-85, § 307, 32 DCR 7396.)

**Section references.** — This section is referred to in § 1-1183.15.

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

**Cited in** Jones & Artis Constr. Co. v. District of Columbia Contract Appeals Bd., App. D.C., 549 A.2d 315 (1988).

## § 1-1183.7a. Mandatory clause for all Request for Proposals for Public Schools.

Any Request for Proposals for services to be provided to the District public schools shall contain a provision advising potential bidders that public schools have the right to choose between accepting the services contracted for or receiving a proportionate share of what would be the school's individual costs for the services as an increase to the local school's allotment of appropriations. (Feb. 21, 1986, D.C. Law 6-85, § 307a., as added Apr. 9, 1997, D.C. Law 11-198, § 702, 43 DCR 4569.)

**Effect of amendments.** — Section 702 of D.C. Law 11-198 added this section.

**Temporary addition of section.** — Section 702 of D.C. Law 11-226 added this section.

Section 1201(b) of D.C. Law 11-226 provided that the act shall expire after 225 days of its having taken effect, or upon the effective date of the Fiscal year 1997 Budget Support Amendment Act of 1996, whichever occurs first.

**Temporary repeal of section.** — Section 2(f) of D.C. Law 12-4 repealed § 702 of D.C. Law 11-198 which had previously added this section.

Section 4(b) of D.C. Law 12-4 provides that the act shall expire after 225 days of its having taken effect.

**Emergency act amendments.** — For temporary addition of section, see § 702 of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

Section 1001 of D.C. Act 12-2 provides for the application of the act.

For temporary repeal of § 702 of D.C. Act 11-360, see § 2(f) of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1997 (D.C. Act 12-37, March 18, 1997, 44 DCR 1935).

**Legislative history of Law 11-198.** — Law 11-198, the "Fiscal Year 1997 Budget Support

Act of 1996," was introduced in Council and assigned Bill No. 11-741, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 19, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 26, 1996, it was assigned Act No. 11-360 and transmitted to both Houses of Congress for its review. D.C. Law 11-198 became effective on April 9, 1997.

**Legislative history of Law 11-226.** — Law 11-226, the "Fiscal Year 1997 Budget Support Temporary Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-896. The Bill was adopted on first and second readings on October 1, 1996, and November 7, 1996, respectively. Signed by the Mayor on December 4, 1996, it was assigned Act No. 11-453 and transmitted to both Houses of Congress for its review. D.C. Law 11-226 became effective on April 9, 1997.

**Legislative history of Law 12-4.** — Law 12-4, the "Fiscal Year 1997 Budget Support Temporary Amendment Act of 1997," was introduced in Council and assigned Bill No. 12-103. The Bill was adopted on first and second readings on February 18, 1997, and March 4, 1997, respectively. Signed by the Mayor on March 19, 1997, it was assigned Act No. 12-45 and transmitted to both Houses of Congress for its review. D.C. Law 12-4 became effective on May 23, 1997.

## § 1-1183.8. Cost or pricing data.

(a) A contractor or offeror shall submit cost or pricing data for procurements in excess of \$100,000, and shall certify that, to the best of the contractor's or offeror's knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a mutually determined specified date, before entering into:

(1) Any contract awarded through competitive sealed proposals or through sole source procurement; or

(2) Any change order or contract modification.

(b) Every contract, change order, or modification under which a cost and price certificate is required shall contain a provision that the price, including profit or fee, shall be adjusted to exclude any significant price increases

occurring because the contractor furnished cost or price information which, as of the date specified in subsection (a) of this section, was inaccurate, incomplete, or not current.

(c) This section need not be applied to contracts for which the price negotiated is based on established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulations. (Feb. 21, 1986, D.C. Law 6-85, § 308, 32 DCR 7396; Apr. 12, 1997, D.C. Law 11-259, § 101(o), 44 DCR 1423.)

**Section references.** — This section is referred to in §§ 1-1183.14 and 1-1183.15.

**Effect of amendments.** — Section 101(o) of D.C. Law 11-259 inserted “for procurements in excess of \$100,000” in (a).

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

**Legislative history of Law 11-259.** — See note to § 1-1181.1.

### **§ 1-1183.9. Cost-plus-a-percentage-of-cost contract prohibited.**

The cost-plus-a-percentage-of-cost contract system of contracting shall not be used. (Feb. 21, 1986, D.C. Law 6-85, § 309, 32 DCR 7396.)

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

### **§ 1-1183.10. Cost-reimbursement contracts.**

(a) No cost-reimbursement contract may be awarded pursuant to § 1-1183.3, 1-1183.4, or 1-1183.5 unless it is determined in writing that such a contract is likely to be less costly to the District government than any other type of contract, or that it is impracticable to obtain supplies or services of the kind or quality required except under such a contract.

(b) All cost-reimbursement contracts shall contain a provision that only costs determined in writing to be reimbursable by the contracting officer, in accordance with cost principles set forth in rules issued pursuant to subchapter VI of this chapter, shall be reimbursable. (Feb. 21, 1986, D.C. Law 6-85, § 310, 32 DCR 7396.)

**Section references.** — This section is referred to in §§ 1-1183.11 and 1-1183.15.

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

### **§ 1-1183.11. Use of other types of contracts.**

(a) Subject to the limitations of § 1-1183.10 and this section, any type of contract which will promote the best interest of the District government may be used.

(b) Preference shall be given in the order indicated to the following types of contracts: First, fixed-price; second, fixed-price incentive; third, cost-plus incentive fee; and fourth, cost-plus fixed fee or cost-reimbursement. (Feb. 21, 1986, D.C. Law 6-85, § 311, 32 DCR 7396.)

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

## § 1-1183.12. Emergency procurements.

(a)(1) Notwithstanding any other provision of this chapter, a contracting officer may make emergency procurements when there exists an imminent threat to the public health, welfare, property, or safety under emergency conditions as defined in rules adopted pursuant to this chapter.

(2) Emergency procurements shall be made with as much competition as is maximally practicable under the circumstances.

(3) A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file which shall be kept in the office of the Director.

(b) The Director shall maintain a record listing all contracts entered into pursuant to this section for a minimum of 5 years. The record shall contain:

- (1) The contract number;
- (2) The name and address of each contractor;
- (3) The dollar amount of each contract;
- (4) The type of contract; and

(5) A listing of the supplies, services, or construction procured under each contract. (Feb. 21, 1986, D.C. Law 6-85, § 312, 32 DCR 7396; Apr. 12, 1997, D.C. Law 11-259, § 101(p), 44 DCR 1423.)

**Section references.** — This section is referred to in §§ 1-1183.5 and 1-1183.19.

**Effect of amendments.** — Section 101(p) of D.C. Law 11-259 rewrote (a)(1).

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

**Legislative history of Law 11-259.** — See note to § 1-1181.1.

## § 1-1183.13. Multiyear contracts.

(a) Unless otherwise provided in an appropriations act, a contract for supplies, services, or construction may be entered into for periods which extend beyond the fiscal year in which the contract is contemplated.

(b) Before the utilization of a multiyear contract, it shall be determined in writing that:

(1) Estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(2) Such a contract will serve the best interest of the District government, encourage effective competition, or otherwise promote economies in District government procurement.

(c) If funds are not appropriated or otherwise made available for the continued performance in a subsequent year of a multiyear contract, the contract for the subsequent year shall be terminated, either automatically or in accordance with the termination clause of the contract, if any. Unless otherwise provided for in the contract, the effect of termination is to discharge both the District government and the contractor from future performance of the contract, but not from their existing obligations. The contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not

amortized in the price of the supplies or services delivered under the contract. (Feb. 21, 1986, D.C. Law 6-85, § 313, 32 DCR 7396.)

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

#### **§ 1-1183.14. Inspection of plant and audit of records.**

(a) The Director may inspect the plant or place of business of a contractor or any subcontractor under any contract awarded or to be awarded by the District government.

(b) The Director may audit the books and records pertaining to the contract of:

(1) Any business which has submitted cost or pricing data pursuant to § 1-1183.8;

(2) Any prime contractor awarded a contract under competitive sealed proposals or a subcontract other than a firm fixed-price contract; and

(3) Any contractor providing professional services to the District government if the contract price exceeds \$25,000.

(c) Books and records shall be maintained by the contractor for a period of 3 years from the date of final payment under the contract and shall be made available within 3 work days, excluding Saturdays, Sundays, and holidays, to the Director upon his or her written request. (Feb. 21, 1986, D.C. Law 6-85, § 314, 32 DCR 7396.)

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

#### **§ 1-1183.15. Finality of determinations.**

The determinations required by §§ 1-1183.3, 1-1183.4, 1-1183.5, 1-1183.7, 1-1183.8, and 1-1183.10 are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law. (Feb. 21, 1986, D.C. Law 6-85, § 315, 32 DCR 7396.)

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

#### **§ 1-1183.16. Collusive bidding or negotiation.**

(a) A business which enters into a contract with the District government after engaging in collusion with another business for the purpose of defrauding the District government is liable in a suit brought by the Corporation Counsel in the appropriate court for damages equal to 3 times the value of the loss to the District government attributable to the collusion.

(b) If there is a reasonable basis for believing that collusion has occurred among any businesses for the purpose of defrauding the District government, the Director shall send a written notice of this belief to the Corporation Counsel and to the Mayor.

(c) All documents involved in any procurement in which collusion is suspected shall be retained until the Corporation Counsel gives notice that they may be destroyed. All documents shall be made available to the Corporation Counsel. (Feb. 21, 1986, D.C. Law 6-85, § 316, 32 DCR 7396.)

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

### § 1-1183.17. Prohibited acts.

(a) Every contract shall contain the following prohibition against contingent fees: "The contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. For breach or violation of this warranty, the District government shall have the right to terminate the contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of the commission, percentage, brokerage, or contingent fee."

(b) A contractor may not offer to pay any fee or other consideration that is contingent on the making of a contract.

(c) An employee of a District government agency may not solicit or secure, or offer to solicit or secure, a contract for which the employee is paid or is to be paid any fee or other consideration contingent on the making of the contract between the employee and any other person.

(d) The District Government Procurement Regulations shall provide that information which has been designated as confidential or proprietary by a business, and which has been submitted by that business as a part of its response to an invitation for bids, a request for proposals, or competitive sealed proposals, is to be treated by the Director, an employee of that office, or any other employee of the District in a confidential manner, and is to be disclosed only to District employees for use in the procurement process and is not to be disclosed to other persons or parties without the prior written consent of that business. (Feb. 21, 1986, D.C. Law 6-85, § 317, 32 DCR 7396.)

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

### § 1-1183.18. Termination of contracts.

(a) The Director may terminate without liability any contract and may deduct from the contract price or otherwise recover the full amount of any fee, commission, percentage, gift, or consideration paid in violation of this subchapter, if:

(1) The contractor has been convicted of a crime arising out of or in connection with the procurement of any work to be done or any payment to be made under the contract; or

(2) There has been any breach or violation of:

- (A) Any provision of this chapter; or
- (B) The contract provision against contingent fees.
- (b) If a contract is terminated pursuant to this section, the contractor:
  - (1) May be paid only the actual costs of the work performed to the date of termination, plus termination costs, if any; and
  - (2) Shall refund all profits or fixed fees realized under the contract.
- (c) The rights and remedies contained in this section are in addition to any other right or remedy provided by law, and the exercise of any of them is not a waiver of any other right or remedy provided by law. (Feb. 21, 1986, D.C. Law 6-85, § 318, 32 DCR 7396.)

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

### **§ 1-1183.19. Report of procurement actions made pursuant to §§ 1-1183.5 and 1-1183.12.**

(a) The Director shall make an annual report to the Council, within 90 days following the close of each fiscal year, of contracts made pursuant to §§ 1-1183.5 and 1-1183.12 during the preceding fiscal year. The report shall include for each contract:

- (1) The contract number;
  - (2) The name and address of each contractor;
  - (3) The dollar amount of the contract;
  - (4) The type of contract;
  - (5) A listing of the supplies, services, or construction provided under the contract;
  - (6) Whether the contract was in the open or sheltered market; and
  - (7) As attachments, copies of all determinations and findings required to be made by the provisions of this subchapter and the implementing regulations.
- (b) The reports shall be retained for a period of 3 years and shall be made available to the public upon request. (Feb. 21, 1986, D.C. Law 6-85, § 319, 32 DCR 7396.)

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

### **§ 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. (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.)

**Section references.** — This section is referred to in § 1-1181.4.

**Effect of amendments.** — Section 101(q) of D.C. Law 11-259 added this section.

D.C. Law 12-50 added subsection (j).

D.C. Law 12-82 added the subsection designated herein as (k).

D.C. Law 12-263 added (l).

D.C. Law 12-264 validated a previously made technical correction in (k).

**Emergency act amendments.** — For temporary amendment of section, see § 2 of the Photo Enforcement Evidenced Traffic Violation System Emergency Amendment Act of 1998 (D.C. Act 12-516, December 9, 1998, 45 DCR 9177).

For temporary amendment of section, see § 3 of the District of Columbia Public Service Commission Independent Procurement Authority Emergency Amendment Act of 1998 (D.C. Act 12-438, August 18, 1998, 45 DCR 6291).

**Legislative history of Law 11-259.** — See note to § 1-1181.1.

**Legislative history of Law 12-50.** — Law 12-50, the "Small Purchase Authority Amendment Act of 1997," was introduced in Council and assigned Bill No. 12-231, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on July 1, 1997, and September 22, 1997, respectively. Signed by the Mayor on October 3, 1997, it was assigned Act No. 12-164 and transmitted to both Houses of Congress for its review. D.C. Law 12-50 became effective on February 27, 1998.

**Legislative history of Law 12-82.** — See note to § 1-1182.7.

**Legislative history of Law 12-263.** — Law 12-263, the "Residential Real Property Seller Disclosure, Funeral Services Date Change, and Public Service Commission Independent Procurement Authority Act of 1998," was introduced in Council and assigned Bill No. 12-648, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on Octo-



ber 6, 1998, and November 10, 1998, respectively. Signed by the Mayor on December 1, 1998, it was assigned Act No. 12-625 and transmitted to both Houses of Congress for its re-

view. D.C. Law 12-263 became effective on April 20, 1999.

**Legislative history of Law 12-264.** — See note to § 1-1181.5.

### § 1-1183.21. Small purchase procurement.

Special small purchase procedures may be used by the Chief Procurement Officer or his or her designee, in accordance with regulations established pursuant to this chapter, for procurements not exceeding \$25,000. Procurement requirements shall not be parceled, split, divided, or purchased over a period of time in order not to exceed the dollar limitation for use of these small purchase procedures. An employee who violates the provisions of this subsection shall be subject to suspension, dismissal, or other disciplinary action pursuant to District law. (Feb. 21, 1986, D.C. Law 6-85, § 321, as added Feb. 27, 1998, D.C. Law 12-50, § 2(b), 44 DCR 6222.)

**Effect of amendments.** — D.C. Law 12-50 added this section.

**Emergency act amendments.** — For temporary amendment of section, see § 2 of the Small Purchase Authority Congressional Recess Emergency Amendment Act of 1997 (D.C. Act 12-237, January 13, 1998, 45 DCR 501).

Section 4 of D.C. Act 12-237 provided for application of the act.

For temporary addition of section, see § 2 of the Small Purchase Authority Emergency Amendment Act of 1997 (D.C. Act 12-82, June 19, 1997, 44 DCR 3719), and § 2 of the Small

Purchase Authority Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-162, October 16, 1997, 44 DCR 6059).

Section 4 of D.C. Act 12-162 provides for the application of the act.

**Legislative history of Law 12-50.** — See note to § 1-1183.20.

**Delegation of Authority Pursuant to D.C. Law 6-85, the "Procurement Practices Act of 1985," as amended, relating to Small Purchase Procurements.** — See Mayor's Order 97-194, November 12, 1997 (44 DCR 7196).

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

Notwithstanding any other provision of law, or Mayor's Order 89-37, issued February 7, 1989, the Fire and Emergency Medical Services Department's delegated small purchase authority shall be \$500,000. The District of Columbia government may not require the Fire and Emergency Medical Services Department to submit to any other procurement review process, or to obtain the approval of or be restricted in any manner by any official or employee of the District of Columbia government, for purchases that do not exceed \$500,000. (Mar. 26, 1999, D.C. Law 12-175, § 1602, 45 DCR 7193.)

**Emergency act amendments.** — For temporary amendment of D.C. Act 12-401 by adding a new § 1204, see § 4 of Fiscal Year 1999 Budget Support Emergency Amendment Act of 1998 (D.C. Act 12-480, October 28, 1999, 45 DCR 8016).

For temporary amendment of D.C. Law 12-175 by adding a new § 1604, see § 5 of Fiscal Year 1999 Budget Support Emergency Amendment Act of 1998 (D.C. Act 12-480, October 28, 1999, 45 DCR 8016); and § 5 of the Fiscal Year

1999 Budget Support Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-4, February 8, 1999, 46 DCR 2291).

For temporary addition of section, see § 1202 of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794) and § 1202 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, 46 DCR 669).

Section 1204 of D.C. Act 12-564 provides this

## § 1-1183.23

### ADMINISTRATION

title shall expire on September 30, 1999.

Section 2101 of D.C. Act 12-564 provides for the application of the act.

**Legislative history of Law 12-175.** — See note to § 1-1181.5.

**Fire and Emergency Medical Services**

### **Department Small Purchase Authority**

**Act.** — Section 1601 of D.C. Law 12-175 provided that this title may be cited as the “Fire and Emergency Medical Services Department Small Purchase Authority Act of 1998.”

## § 1-1183.23. Expiration.

Section 1-1183.22 and this section shall expire on September 30, 1999. (Mar. 26, 1999, D.C. Law 12-175, § 1604, as added Apr. 27, 1999, D.C. Law 12-267, § 4, 46 DCR 960.)

**Effect of amendments.** — D.C. Law 12-267 added this section.

**Temporary amendment of D.C. Law 12-175.** — Section 5 of D.C. Law 12-211 amended D.C. Law 12-175 by adding a new § 1604 codified as § 1-1183.23.

Section 9(b) of D.C. Law 12-211 provided that the act shall expire after 225 days of its having taken effect.

**Legislative history of Law 12-267.** — Law 12-267, the “Closing of a Public Alley in Square

371, S.O. 96-202, Act of 1998,” was introduced in Council and assigned Bill No. 12-800, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 23, 1998, it was assigned Act No. 12-576 and transmitted to both Houses of Congress for its review. D.C. Law 12-267 became effective on April 27, 1999.

## *Subchapter IV. Specifications.*

## § 1-1184.1. Specifications.

The Director shall:

(1) Prepare and issue standard specifications for supplies, services, and construction required by the District government on needs identifications supplied by the agencies;

(2) Revise all standard specifications to conform to existing technical and scientific advances pertaining to supplies, services, and construction described in those specifications;

(3) Obtain expert advice and assistance from personnel of the various agencies in the development of standard and nonstandard specifications, and may delegate in writing to a using agency the authority to prepare its own specifications; and

(4) Assist each agency in developing an unambiguous statement of the technical requirements and evaluation criteria necessary to prepare a non-standard procurement specification. (Feb. 21, 1986, D.C. Law 6-85, § 401, 32 DCR 7396.)

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

## § 1-1184.2. Energy conservation.

(a) Specifications for the procurement of goods, whenever possible, shall contain standards for energy efficiency.

(b) Specifications for the acquisition of all motor fleet and mobile equipment shall include life cycle or total ownership costs among factors to be considered in the evaluation of bids and proposals. (Feb. 21, 1986, D.C. Law 6-85, § 402, 32 DCR 7396.)

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

### *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 Minority 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.)

**Effect of amendments.** — Section 101(r) of D.C. Law 11-259 substituted “Director” for “Mayor” throughout.

**Legislative history of Law 11-259.** — See note to § 1-1181.1.

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

#### **§ 1-1185.2. Bid bonds for construction contracts.**

(a)(1) Bid security shall be required for all competitive sealed bids and competitive sealed proposals for construction contracts when the price is estimated by the Director to exceed \$100,000.

(2) This amount is subject to revision by the procurement regulations. Bid security shall be a bond provided by a surety company authorized to do business in the District, or the equivalent in cash, or otherwise supplied in a form satisfactory to the Director.

(3) Nothing in this chapter shall prevent the requirement of bonds on construction contracts under \$100,000, when the circumstances warrant.

(b) The bid bond shall be in an amount equal to at least 5% of the amount of the bid or price proposal.

(c) If the invitation for bids or request for proposals requires that a bid bond be provided, a bidder or offeror that does not comply shall be rejected unless, pursuant to the District Government Procurement Regulations, it is determined that the bid fails to comply in a nonsubstantial manner with the security requirements.

(d) Once opened, bids or price proposals are irrevocable for the period specified in the invitation for bids or the request for proposal, except as may be provided in the District Government Procurement Regulations. If a bidder or offeror is permitted to withdraw a bid or proposal before award because of a mistake in the bid or proposal, no action shall be taken against the bid bond. (Feb. 21, 1986, D.C. Law 6-85, § 502, 32 DCR 7396; Apr. 12, 1997, D.C. Law 11-259, § 101(s), 44 DCR 1423.)

**Effect of amendments.** — Section 101(s) of D.C. Law 11-259 substituted “Director” for “Mayor” throughout.

**Legislative history of Law 11-259.** — See note to § 1-1181.1.

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

### § 1-1185.3. Performance bonds for construction contracts.

On all contracts estimated to exceed \$100,000, the contractor shall furnish a performance bond executed by a surety authorized to do business in the District, the equivalent in cash, or other security considered satisfactory to the Director. The performance bond shall be in an amount considered adequate by the Director to ensure the protection of the District government. (Feb. 21, 1986, D.C. Law 6-85, § 503, 32 DCR 7396; Apr. 12, 1997, D.C. Law 11-259, § 101(t), 44 DCR 1423.)

**Effect of amendments.** — Section 101(t) of D.C. Law 11-259 substituted “Director” for “Mayor” in two places.

**Legislative history of Law 11-259.** — See note to § 1-1181.1.

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

### § 1-1185.4. Payment bonds for construction contracts.

(a) On all contracts estimated by the Director to exceed \$100,000, the contractor shall furnish a payment bond executed by a surety authorized to do business in the District, or the equivalent in cash, or other security considered satisfactory to the Director. The payment bond shall be for the protection of all businesses supplying labor and materials, including lessors of equipment to the extent of the fair rental value of the equipment, to the contractor or a subcontractor in the performance of work provided for by the contract.

(b) The payment bond shall be in an amount not less than 50% of the total amount payable by the terms of the contract.

(c) Any contractor, prior to receiving a progress or final payment under a contract covered by this chapter, shall certify in writing that the contractor has made payment from the proceeds of prior payments, and that the contractor will make timely payments from the proceeds of the progress or final payment then due the contractor, to the contractor’s subcontractors and suppliers in

accordance with his or her contractual arrangements with them. (Feb. 21, 1986, D.C. Law 6-85, § 504, 32 DCR 7396; Apr. 12, 1997, D.C. Law 11-259, § 101(u), 44 DCR 1423.)

**Effect of amendments.** — Section 101(u) of D.C. Law 11-259 substituted “Director” for “Mayor” in two places in (a).

**Legislative history of Law 11-259.** — See note to § 1-1181.1.

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

### § 1-1185.5. Bond forms, filings, and copies.

(a) Bonds or other security shall be payable to the District government, on forms prescribed by rule or regulation, and shall be filed with the Mayor.

(b) The Mayor shall furnish a certified copy of a payment bond or other security to any person making application who submits an affidavit that the person has supplied labor or materials for which payment has not been made, or that the person is being sued on any bond or other security.

(c)(1) A certified copy of the bond or other security shall be prima facie evidence of the contents, execution, and delivery of the bond or other security as applicable.

(2) Applicants shall pay for the certified copies and the fees set by the Mayor to cover the costs of preparation. (Feb. 21, 1986, D.C. Law 6-85, § 505, 32 DCR 7396.)

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

### § 1-1185.6. Suits on payment bonds.

(a) Every person who has furnished labor or materials to the contractor or a subcontractor for the work provided in the contract, in respect to which a payment bond or other security is furnished under this section, and who has not been paid in full before the expiration of a period of 90 days after the day on which the last of the labor was done or performed by the person or material was furnished or supplied by the person for which claim is made, shall have the right to sue on the payment bond or other security for the amount, or the balance unpaid at the time of institution of the suit, and to prosecute the action to final judgment and execution for the sum or sums justly due the person.

(b) Any person having a direct contractual relationship with a subcontractor of the contractor, but having no contractual relationship, expressed or implied, with the contractor furnishing the payment bond or other security, shall have a right of action upon the payment bond or other security upon giving written notice to the contractor within 90 days from the date on which the person performed the last of the labor or furnished or supplied the last material for which the claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was supplied or for whom the labor was performed.

(c) The notice shall be personally served or served by registered or certified mail, postage prepaid, addressed to the contractor at any place the contractor maintains an office or conducts business, or at the contractor's residence.

(d) No suit instituted under this section shall be commenced after 1 year from the date the final labor was performed or the material was supplied. (Feb. 21, 1986, D.C. Law 6-85, § 506, 32 DCR 7396.)

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

### § 1-1185.7. **Clauses, modifications, and fiscal responsibility.**

(a) In all construction contracts estimated to exceed \$50,000, the Director shall include, but not be limited to, clauses concerning:

- (1) Termination for the convenience of the District government, or for default;
- (2) Liquidated damages;
- (3) Excuses for nonperformance;
- (4) A change order;
- (5) Differing site conditions from those indicated in the specifications;
- (6) Suspension of work; and
- (7) Disputes.

(b)(1) Every supplemental agreement, change order, or adjustment in contract price is subject to prior approval by the Director and certification by the appropriate fiscal authority as to availability of funds and the effect of the modification, change, or adjustment on the project budget or the total construction cost.

(2) If the certification discloses a resulting increase in the project budget or total construction cost, there shall be no modification, change, or adjustment unless sufficient funds are made available, or the scope of the project is adjusted to permit its completion within the project budget. (Feb. 21, 1986, D.C. Law 6-85, § 507, 32 DCR 7396; Apr. 12, 1997, D.C. Law 11-259, § 101(v), 44 DCR 1423.)

**Effect of amendments.** — Section 101(v) of D.C. Law 11-259 substituted "Director" for "Mayor" in (a). **Legislative history of Law 11-259.** — See note to § 1-1181.1.

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

### § 1-1185.8. **Nondiscrimination.**

(a) A contract subject to this subchapter may not be awarded to any contractor unless the contract contains provisions obligating the contractor not to discriminate in any manner against any employee or applicant for employment that would constitute a violation of § 1-2512 and obligating the contractor to include a similar clause in all subcontracts, except subcontracts for standard commercial supplies or raw materials. In addition, the contractor and subcontractor shall agree to post in conspicuous places, available to employees

and applicants for employment, notice setting forth the provisions of the nondiscrimination clause provided in § 1-2522.

(b) Failure to include such a contract provision may render any contract void ab initio at the election of the Director, but any party shall be entitled to reasonable value of services performed and materials supplied.

(c) If the contractor wilfully fails to comply with the nondiscrimination provisions, the Director may, when the contract is still executory in part, compel continued performance of the contract, but the District government shall be liable only for the actual cost of services performed and materials supplied from the date of willful noncompliance, and profits previously paid by the District government under the contract shall be set off against the sums to become due as the contract is performed.

(d) If the subcontractor wilfully fails to comply with the nondiscrimination provisions, the contractor may void the contract and shall be liable only for the actual costs of the services performed and materials supplied.

(e)(1) Any person with information concerning violations of the requirements of this section may inform the Director.

(2) The Director, upon receiving information of an alleged violation, shall immediately inform the Director of the Office of Human Rights in writing, and request an investigation of the charges.

(3) If the Office of Human Rights concludes that the charges are true, the Director shall invoke the remedies set forth in this section, in addition to other remedies or action provided pursuant to subchapter III of Chapter 25 of this title. (Feb. 21, 1986, D.C. Law 6-85, § 508, 32 DCR 7396.)

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

### *Subchapter VI. Cost Principles.*

#### **§ 1-1186.1. Rules required.**

The Mayor shall issue rules for determining the reasonableness of price and establishing cost principles, based upon generally accepted accounting principles, which shall be used:

(1) As guidelines in the negotiation of:

(A) Estimated costs or fixed prices if the absence of open market competition precludes the use of sealed bidding;

(B) Equitable adjustments for District government-directed changes or modifications in contract performance;

(C) Settlements of contracts which have been terminated; and

(D) The allowability of costs under contract provisions which provide for the reimbursement of costs; and

(2) In any other situation that requires the determination of the estimated or incurred costs of performing the contracts. (Feb. 21, 1986, D.C. Law 6-85, § 601, 32 DCR 7396.)

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

*Subchapter VII. Supply Management.*

**§ 1-1187.1. Supply management rules.**

The Mayor shall issue rules governing:

- (1) The management of supplies during their entire life cycle;
- (2) The sale, lease, or disposal of surplus supplies by public auction, competitive sealed bidding, or other appropriate method designated by regulation and providing that no employee of the disposing agency shall be entitled to purchase any surplus supplies; and
- (3) Transfer of excess supplies. (Feb. 21, 1986, D.C. Law 6-85, § 701, 32 DCR 7396.)

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

**§ 1-1187.2. Proceeds from disposal of surplus goods.**

Unless otherwise provided by law, the Director shall send proceeds from the sale, lease, or disposal of surplus goods and supplies back to the General Fund. The Director shall transmit to the Council a quarterly report providing detailed information on transactions made under this section. (Feb. 21, 1986, D.C. Law 6-85, § 702, 32 DCR 7396.)

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

*Subchapter VIII. Administrative and Civil Remedies.*

**Subpart A. General Provisions.**

**Editor's notes.** — Pursuant to § 101(ff) of D.C. Law 11-259, which enacted Subpart B. of this subchapter, consisting of §§ 1-1188.7 through 1-1188.12, the preexisting provisions of this subchapter have been designated as Subpart A.

**§ 1-1188.1. Sovereign immunity defense not available.**

Unless otherwise specifically provided by law of the District, the District government and every officer, department, agency or other unit of the District government may not raise the defense of sovereign immunity in the courts of the District in an action based upon a written procurement contract executed on behalf of the District government. (Feb. 21, 1986, D.C. Law 6-85, § 801, 32 DCR 7396.)

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

**Execution on judgment.** — While the Procurement Practices Act clearly and explicitly eliminates sovereign immunity as a defense to

suit on a contract, it does not speak to whether immunity exists when a claimant seeks to execute on a judgment. *Grunley Constr. Co. v. District of Columbia*, App. D.C., 704 A.2d 288 (1997).



**Attachment of District Funds.** — There is nothing in the language of the Procurement Practices Act or in the legislative history that evinces any legislative intent to permit attach-

ment of District of Columbia funds. *Grunley Constr. Co. v. District of Columbia*, App. D.C., 704 A.2d 288 (1997).

## **§ 1-1188.2. District government not liable for punitive damages.**

In an action in contract based upon a written contract executed on behalf of the District government, or by an official or employee acting within the scope of the official's or the employee's authority, the District government, its officers, departments, agencies, or other units of government are not liable for punitive damages. (Feb. 21, 1986, D.C. Law 6-85, § 802, 32 DCR 7396.)

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

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

(a)(1) All claims by the District government against a contractor arising under or relating to a contract shall be decided by the contracting officer who shall issue a decision in writing, and furnish a copy of the decision to the contractor.

(2) The decision shall be supported by reasons and shall inform the contractor of his or her rights as provided in this subchapter. Specific findings of fact are not required, but, if made, shall not be binding in any subsequent proceeding.

(3) The authority of this subsection shall not apply to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another District government agency is specifically authorized to administer, settle, or determine.

(4) This subsection shall not authorize the contracting officer to settle, compromise, pay, or otherwise adjust any claim involving fraud.

(b) The decision of the contracting officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced as authorized by § 1-1189.4.

(c) Nothing in this subchapter shall prohibit the contracting officer from including a clause in District government contracts requiring that pending final decision of an appeal, action, or final settlement, a contractor shall proceed diligently with performance of the contract in accordance with the decision of the contracting officer. (Feb. 21, 1986, D.C. Law 6-85, § 803, 32 DCR 7396; Apr. 12, 1997, D.C. Law 11-259, § 101(w), 44 DCR 1423.)

**Effect of amendments.** — Section 101(w) of D.C. Law 11-259 rewrote (a)(1); and substituted "contracting officer" for "Director" in (a)(4), (b), and (c).

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

**Legislative history of Law 11-259.** — See note to § 1-1181.1.

**§ 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 contract 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 § 1-1188.8(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.)

**Effect of amendments.** — Section 101(x) of D.C. Law 11-259 rewrote (a)(1), (a)(3), (b)(2), (b)(4), (b-1)(1), and (f); and added (b)(5A) and (g).

D.C. Law 12-81 redesignated (b)(5A) as (b)(4A); and made stylistic changes.

D.C. Law 12-104 substituted "CPO" for "Director" throughout the section.

D.C. Law 12-264 validated a previously made technical correction.

**Temporary amendment of section.** — Section 3(e) of D.C. Law 12-17 substituted "CPO" for "Director" throughout the section.

Section 5(b) of D.C. Law 12-17 provided that the act shall expire on the 225th day of its having taken effect.

**Emergency act amendments.** — For temporary amendment of section, see § 3(e) of the Procurement Reform Emergency Amendment Act of 1997 (D.C. Act 12-62, April 15, 1997, 44 DCR 2413).

For temporary amendment of section, see § 3(e) of the Procurement Reform Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-133, August 12, 1997, 44 DCR 4832).

Section 5 of D.C. Act 12-133 provides for the application of the act.

For temporary amendment of section, see § 2(e) of the Procurement Reform Congressional Review Emergency Amendment Act of

1998 (D.C. Act 12-374, April 24, 1998, 45 DCR 4338).

Section 6 of D.C. Act 12-374 provides for the application of the act.

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

**Legislative history of Law 8-258.** — See note to § 1-1181.4.

**Legislative history of Law 11-259.** — See note to § 1-1181.1.

**Legislative history of Law 12-17.** — Law 12-17, the "Procurement Reform Temporary Amendment Act of 1997," was introduced in Council and assigned Bill No. 12-80. The Bill was adopted on first and second readings on March 4, 1997, and May 6, 1997, respectively. Signed by the Mayor on May 23, 1997, it was assigned Act No. 12-83 and transmitted to both Houses of Congress for its review. D.C. Law 12-17 became effective on September 12, 1997.

**Legislative history of Law 12-81.** — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

**Legislative history of Law 12-104.** — Law 12-104, the “Procurement Reform Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-363, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 4, 1997, and January 6, 1998, respectively. Signed by the Mayor on February 3, 1998, it was assigned Act No. 12-280 and transmitted to both Houses of Congress for its review. D.C. Law 12-104 became effective on May 8, 1998.

**Legislative history of Law 12-264.** — See note to § 1-1181.5.

**References in text.** — Section 1-1188.8, referred to in (b)(4), was repealed by D.C. Law 12-104, 45 DCR 1687, effective May 8, 1998.

Section 1-1152 et seq., the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Act of 1992, referred to in (b)(4), has expired.

**Cited in** *Jones & Artis Constr. Co. v. District of Columbia Contract Appeals Bd.*, App. D.C., 549 A.2d 315 (1988).

## § 1-1188.5. Claims by contractor against District government.

(a) All claims by a contractor against the District government arising under or relating to a contract shall be in writing and shall be submitted to the contracting officer for a decision.

(b) The contracting officer shall issue a decision on any submitted claim of \$50,000 or less within 60 days from receipt of a written request from a contractor that a decision be rendered within that period.

(c) Within 90 days of receipt of a claim over \$50,000, the contracting officer shall issue a decision, whenever possible taking into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the contractor.

(d) Any failure by the contracting officer to issue a decision on a contract claim within the required time period will be deemed to be a denial of the claim, and will authorize the commencement of an appeal on the claim as otherwise provided in this subchapter.

(e)(1) If a contractor is unable to support any part of his or her claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the contractor, the contractor shall be liable to the District government for an amount equal to the unsupported part of the claim in addition to all costs to the District government attributable to the cost of reviewing that part of the contractor’s claim.

(2) Liability under this section shall be determined within 6 years of the commission of the misrepresentation of fact or fraud. (Feb. 21, 1986, D.C. Law 6-85, § 805, 32 DCR 7396; Apr. 12, 1997, D.C. Law 11-259, § 101(y), 44 DCR 1423.)

**Section references.** — This section is referred to in § 1-1189.4.

**Effect of amendments.** — Section 101(y) of D.C. Law 11-259 substituted “shall be submitted to the contracting officer for a decision” for “shall be submitted to the Director for an informal hearing and decision” in (a); rewrote (b); and substituted “contracting officer” for “Director” in (c) and (d).

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

**Legislative history of Law 11-259.** — See note to § 1-1181.1.

**Applicability.** — Where it was unclear whether the District of Columbia Procurement Practices Act was intended to apply to contracts entered into before February 21, 1986, the effective date of the Act, and to the extent that the Act affected only the forum in which plaintiff made its claim, Court of Appeals presumed, absent a clear legislative indication to the contrary, that the Act applied to claim based on contracts entered into before February 21, 1986. *Lumbermen’s Mut. Cas. Co. v. District of Columbia*, App. D.C., 566 A.2d 480 (1989).

Where a change in tribunal is all that is at

issue, application of the provisions of this section requiring resort to administrative remedies does not change any contractual right or commitment of either plaintiff or the District. The rights are the same, only the forum in which those rights are to be enforced has been altered. *Lumbermen's Mut. Cas. Co. v. District of Columbia*, App. D.C., 566 A.2d 480 (1989).

**Remedies.** — Absent showing by plaintiff that Contract Appeals Board was unwilling to consider its claim, or was predisposed to find against it, plaintiff was not excused from requirement that it exhaust its administrative remedy before resorting to the courts. *Dano Resource Recovery, Inc. v. District of Columbia*, App. D.C., 566 A.2d 483 (1989).

Delay alone is insufficient to trigger futility exception to the exhaustion doctrine as any eventual award to a complaining contractor will include interest at the statutory rate, compensating for delay. *Dano Resource Recovery, Inc. v. District of Columbia*, App. D.C., 566 A.2d 483 (1989).

The exhaustion doctrine does not preclude, but rather defers judicial review until after expert administrative body has built a factual record and rendered a final decision. *Dano Resource Recovery, Inc. v. District of Columbia*, App. D.C., 566 A.2d 483 (1989).

**Cited in** *Jones & Artis Constr. Co. v. District of Columbia Contract Appeals Bd.*, App. D.C., 549 A.2d 315 (1988).

## § 1-1188.6. Interest.

Interest on amounts found due to a contractor on claims shall be payable at a rate set in § 28-3302(b) applicable to judgments against the District government from the date the contracting officer receives the claim until payment of the claim. Interest on amounts found due to the District from a contractor on claims shall be payable at the rate set in § 28-3302(b) applicable to judgments against the District government, from the date the contractor receives a contracting officer's written decision asserting the claim on behalf of the District until payment of the claim. (Feb. 21, 1986, D.C. Law 6-85, § 806, 32 DCR 7396; Apr. 12, 1997, D.C. Law 11-259, § 101(z), 44 DCR 1423.)

**Effect of amendments.** — Section 101(z) of D.C. Law 11-259 rewrote this section.

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

**Legislative history of Law 11-259.** — See note to § 1-1181.1.

**Applicability.** — Any interest due to a contractor on the contractor's breach of contract claim against the District would be calculated in accordance with District law and not the federal Treasury rate, despite the fact that

federal block grant funds were used to pay the contractor. *District of Columbia v. Organization for Env'tl. Growth, Inc.*, App. D.C., 700 A.2d 185 (1997).

**Exhaustion doctrine.** — Delay alone is insufficient to trigger futility exception to the exhaustion doctrine as any eventual award to a complaining contractor will include interest at the statutory rate, compensating for delay. *Dano Resource Recovery, Inc. v. District of Columbia*, App. D.C., 566 A.2d 483 (1989).

### Subpart B. Procurement Related Claims.

## § 1-1188.7. Definitions.

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 807, 32 DCR 7396, as added Apr. 12, 1997, D.C. Law 11-259, § 101(ff), 44 DCR 1423; May 8, 1998, D.C. Law 12-104, § 3, 45 DCR 1687; Apr. 20, 1999, D.C. Law 12-264, § 3, 46 DCR 2118.)

**Temporary addition of sections.** — Section 2 of D.C. Law 12-17 added §§ 813 through 815 to subpart B of D.C. Law 11-259, designated as §§ 1-1188.13 through 1-1188.15.

**Emergency act amendments.** — For temporary amendment of subpart, see § 2 of the

Procurement Reform Emergency Amendment Act of 1997 (D.C. Act 12-62, April 15, 1997, 44 DCR 2413), and see § 2 of the Procurement Reform Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-133, August 12, 1997, 44 DCR 4832).

Section 5 of D.C. Act 12-133 provides for the application of the act.

For temporary addition of §§ 1-1188.13 and 1-1188.14, see § 2 of the Procurement Reform Emergency Amendment Act of 1997 (D.C. Act 12-62, April 15, 1997, 44 DCR 2413), and see § 2 of the Procurement Reform Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-133, August 12, 1997, 44 DCR 4832).

For temporary repeal of §§ 1-1188.8 through 1-1188.12, see § 3 of the Procurement Reform Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-374, April 24, 1998, 45 DCR 4338).

Section 6 of D.C. Act 12-374 provides for the application of the act.

**Legislative history of Law 12-17.** — Law 12-17, the "Procurement Reform Temporary Amendment Act of 1997," was introduced in Council and assigned Bill No. 12-80. The Bill was adopted on first and second readings on

March 4, 1997, and May 6, 1997, respectively. Signed by the Mayor on May 23, 1997, it was assigned Act No. 12-83 and transmitted to both Houses of Congress for its review. D.C. Law 12-17 became effective on September 12, 1997.

**Legislative history of Law 12-104.** — Law 12-104, the "Procurement Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-363, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 4, 1997, and January 6, 1998, respectively. Signed by the Mayor on February 3, 1998, it was assigned Act No. 12-280 and transmitted to both Houses of Congress for its review. D.C. Law 12-104 became effective on May 8, 1998.

**Editor's notes.** — Section 3 of D.C. Law 12-104, as amended by § 59(a) of D.C. Law 12-264, repealed §§ 1-1188.7 through 1-1188.12.

### **§ 1-1188.8. Treble damages, costs and civil penalties; exceptions.**

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 808, 32 DCR 7396, as added Apr. 12, 1997, D.C. Law 11-259, § 101(ff), 44 DCR 1423; May 8, 1998, D.C. Law 12-104, § 3, 45 DCR 1687; Apr. 20, 1999, D.C. Law 12-264, § 3, 46 DCR 2118.)

**Legislative history of Law 12-104.** — See note to § 1-1188.7.

### **§ 1-1188.9. Corporation Counsel investigations and prosecutions; powers of prosecuting authority; civil actions by individuals as qui tam plaintiffs; jurisdiction of courts.**

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 809, 32 DCR 7396, as added Apr. 12, 1997, D.C. Law 11-259, § 101(ff), 44 DCR 1423; May 8, 1998, D.C. Law 12-104, § 3, 45 DCR 1687; Apr. 20, 1999, D.C. Law 12-264, § 3, 46 DCR 2118.)

**Legislative history of Law 12-104.** — See note to § 1-1188.7.

### **§ 1-1188.10. Employer interference with employee disclosures; liability of employer; remedies of employee.**

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 810, 32 DCR 7396, as added Apr. 12, 1997, D.C. Law 11-259, § 101(ff), 44 DCR 1423; May 8, 1998, D.C. Law 12-104, § 3, 45 DCR 1687; Apr. 20, 1999, D.C. Law 12-264, § 3, 46 DCR 2118.)

**Legislative history of Law 12-104.** — See note to § 1-1188.7.

**§ 1-1188.11. Limitation of actions; activities antedating this article; burden of proof.**

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 811, 32 DCR 7396, as added Apr. 12, 1997, D.C. Law 11-259, § 101(ff), 44 DCR 1423; May 8, 1998, D.C. Law 12-104, § 3, 45 DCR 1687; Apr. 20, 1999, D.C. Law 12-264, § 3, 46 DCR 2118.)

**Legislative history of Law 12-104.** — See note to § 1-1188.7.

**§ 1-1188.12. Remedies under other laws; severability of provisions; liberality of construction.**

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 812, 32 DCR 7396, as added Apr. 12, 1997, D.C. Law 11-259, § 101(ff), 44 DCR 1423; May 8, 1998, D.C. Law 12-104, § 3, 45 DCR 1687; Apr. 20, 1999, D.C. Law 12-264, § 3, 46 DCR 2118.)

**Legislative history of Law 12-104.** — See note to § 1-1188.7.

Subpart C. Procurement Related Claims.

**§ 1-1188.13. Definitions.**

For the purposes of this subpart, the term:

(1) “Claim” means any request or demand for money, property, or services made to any employee, officer, or agent of the District, or to any contractor, grantee, or other recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded issued from, or was provided by, the District, or if the District will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

(2) “Fixed obligation” means an amount due the District by contract or by law. The term “fixed obligation” does not include a fine to be imposed by law until the fine has been assessed.

(3)(A) “Knowing” or “knowingly” means that a person, with respect to information, does any of the following:

- (i) Has actual knowledge of the falsity of the information;
- (ii) Acts in deliberate ignorance of the truth or falsity of the information; or



(iii) Acts in reckless disregard of the truth or falsity of the information.

(B) Proof of specific intent to defraud is not required for an act to be knowing.

(4) "Person" includes any natural person, corporation, firm, association, organization, partnership, business, or trust.

(5) "Proceeds" means civil penalties as well as double or treble damages as provided in § 1-1188.14, and criminal fines pursuant to § 1-1181.21. (Feb. 21, 1996, D.C. Law 6-85, § 813, 32 DCR 7396, as added May 8, 1998, D.C. Law 12-104, § 2(g); Apr. 20, 1999, D.C. Law 12-264, § 10(a), 46 DCR 2118.)

**Effect of amendments.** — D.C. Law 12-264, in (5), substituted "§ 1-1188.14" for "§ 1-1188.8," and "§ 1-1188.21" for "§ 1-1188.3."

**Emergency act amendments.** — For temporary addition of Subpart C, see § 2(g) of the Procurement Reform Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-374, April 24, 1998, 45 DCR 4338).

Section 6 of D.C. Act 12-374 provides for the application of the act.

**Legislative history of Law 12-104.** — See note to § 1-1188.7.

**Legislative history of Law 12-264.** — See note to § 1-1181.5.

## **§ 1-1188.14. False claims liability, treble damages, costs, and civil penalties; exceptions.**

(a) Any person who commits any of the following acts shall be liable to the District for 3 times the amount of damages which the District sustains because of the act of that person. A person who commits any of the following acts shall also be liable to the District for the costs of a civil action brought to recover penalties or damages, and may be liable to the District for a civil penalty of not less than \$5,000, and not more than \$10,000, for each false claim for which the person:

(1) Knowingly presents, or causes to be presented, to an officer or employee of the District a false claim for payment or approval;

(2) Knowingly makes, uses, or causes to be made or used, a false record or statement to get a false claim paid or approved by the District;

(3) Conspires to defraud the District by getting a false claim allowed or paid by the District;

(4) Has possession, custody, or control of public property or money used, or to be used, by the District and knowingly delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;

(5) Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the District and knowingly makes or delivers a document that falsely represents the property used or to be used;

(6) Knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property;

(7) Knowingly makes or uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the District;

(8) Is a beneficiary of an inadvertent submission of a false claim to the District, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the District; or

(9) Is the beneficiary of an inadvertent payment or overpayment by the District of monies not due and knowingly fails to repay the inadvertent payment or overpayment to the District.

(b) Notwithstanding subsection (a) of this section, the court may assess not more than two times the amount of damages which the District sustains because of the act of the person, and there shall be no civil penalty, if the court finds all of the following:

(1) The person committing the violation furnished officials of the District responsible for investigating false claims violations with all information known to that person about the violation within 30 days after the date on which the person first obtained the information;

(2) The person fully cooperated with any investigation by the District; and

(3) At the time the person furnished the District with information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation.

(c) Liability pursuant to this section shall be joint and several for any act committed by 2 or more persons.

(d) This section shall not apply to the following:

(1) Workers' compensation claims filed pursuant to Chapter 3 of Title 36;

(2) Unemployment compensation claims filed pursuant to Chapter 1 of Title 46; and

(3) Claims, records, or statements made pursuant to those portions of Title 47 of the District of Columbia Code that refer or relate to taxation. (Feb. 21, 1986, D.C. Law 6-85, § 814, 32 DCR 7396, as added May 8, 1998, D.C. Law 12-104, § 2(g), 45 DCR 1687.)

**Legislative history of Law 12-104.** — See note to § 1-1188.7.

**§ 1-1188.15. Corporation counsel investigations and prosecutions; powers of prosecuting authority; civil actions by individuals as qui tam plaintiffs; jurisdiction of courts.**

(a) The Corporation Counsel shall investigate, with such assistance from other District agencies as may be required, violations pursuant to § 1-1188.14 involving District funds. If the Corporation Counsel finds that a person has violated or is violating the provisions of § 1-1188.14, the Corporation Counsel may bring a civil action against that person in the Superior Court of the District of Columbia.

(b)(1) A person may bring a civil action for a violation of § 1-1188.14 for the person and either for the District or in the name of the District. The person bringing the action shall be referred to as the qui tam plaintiff. Once filed, the action brought by the qui tam plaintiff may be dismissed only with the written

consent of the court, taking into account the best interest of the parties involved and the public disclosure purposes of this subpart. The Corporation Counsel shall be served with the notice of proposed dismissal and shall have the opportunity to be heard.

(2) A complaint filed by a qui tam plaintiff pursuant to this subsection shall be filed in the Superior Court in camera and may remain under seal for up to 180 days, unless the seal is extended by the court. No service shall be made on the defendant until after the complaint is unsealed.

(3) On the same day as the complaint is filed pursuant to paragraph (2) of this subsection, the qui tam plaintiff shall serve the Corporation Counsel by mail, return receipt requested, with a copy of the complaint and a written disclosure of substantially all material evidence and information the person possesses.

(4) Within 180 days after receiving a complaint alleging violations involving District funds, the Corporation Counsel shall do either of the following:

(A) Notify the court that he or she intends to proceed with the action, in which case the seal may be lifted unless, for good cause shown, the court continues the seal; or,

(B) Notify the court that he or she declines to take over the action, in which case the seal shall be lifted and the qui tam plaintiff shall have the right to conduct the action.

(5) Upon a showing of good cause, the Corporation Counsel may move the court for extensions of the time during which the complaint remains under seal.

(6) When a qui tam plaintiff brings an action pursuant to this subsection, no other person may bring an action pursuant to this section based on the facts underlying the pending action.

(c)(1) No person may bring an action pursuant to subsection (b) of this section against a member of the Council of the District of Columbia ("Council"), a member of the District judiciary, or an elected official in the executive branch of the District, if the action is based on any official act occurring during his or her term of office.

(2)(A) No person may bring an action pursuant to subsection (b) of this section based upon allegations or transactions in a criminal, civil, or administrative proceeding, investigation, or report, or audit conducted by or at the request of the Council, the Auditor, the Inspector General, or other District or federal agency; or upon allegations or transactions disclosed by the news media, unless the person bringing the action is an original source of the information.

(B) For purposes of subparagraph (A) of this paragraph, the term "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based, who voluntarily provided the information to the District before filing an action based on that information, and whose information provided the basis or catalyst for the investigation, report, hearing, audit, or media disclosure which led to the public disclosure as described in subparagraph (A) of this paragraph.

(3) No person may bring an action pursuant to subsection (b) of this section based upon information learned by the person in the course of an

internal investigation in preparation for, or in conjunction with, a voluntary disclosure to the District or federal government.

(4) No present or former employee of the District, or any person who is acting on behalf of or relying on information provided by that employee, may bring an action pursuant to subsection (b) of this section if the employee discovered or obtained the information on which the action is based during the course of his or her employment, unless that employee first in good faith exhausted internal procedures for reporting and seeking recovery of such falsely claimed sums through official channels, including notice to the Corporation Counsel, and unless the District failed to act on the information provided within a reasonable time.

(5) No member or employee of the Council of the District of Columbia, the Corporation Counsel's Office, the Office of the Inspector General, the Office of the Auditor, the Office of the Chief Financial Officer, or the Metropolitan Police Department may bring an action pursuant to subsection (b) of this section based upon information discovered during the term of his or her employment.

(6) No person may bring an action pursuant to this section if the person has been convicted of a criminal offense in connection with any false claim that is the subject of the action.

(7) No person may sell or otherwise transfer any cause of action, or interest in any present or future benefit provided, pursuant to this section.

(d)(1) If the District proceeds with the action, it shall have the primary responsibility for prosecuting the action. The qui tam plaintiff shall have the right to continue as a party to the action and to participate in the action to the extent that the qui tam plaintiff is able to demonstrate to the court that such participation would neither be duplicative of nor interfere with the prosecution of the action by the Corporation Counsel; provided, that the qui tam action was proper pursuant to subsection (c) of this section.

(2)(A) The District may dismiss the action for good cause shown.

(B) The District may settle the action with the defendant, notwithstanding the objections of the qui tam plaintiff, if the court determines, after a hearing providing the qui tam plaintiff an opportunity to be heard, that the proposed settlement fairly, adequately, and reasonably protects the interests of the District under all of the circumstances.

(e)(1) If the District elects not to proceed and the qui tam action was proper pursuant to subsection (c) of this section, the qui tam plaintiff shall have the same right to conduct the action as the Corporation Counsel would have had if he or she had chosen to proceed pursuant to subsection (b) of this section. If the District so requests, the District shall be served with copies of all pleadings filed in the action.

(2) Upon timely application, the court shall permit the District to intervene in an action with which it had initially declined to proceed. In the event that the District is permitted to intervene, it shall have the primary responsibility for prosecuting the action as provided in subsection (d)(1) of this section.

(f)(1) If the District proceeds with an action brought by a qui tam plaintiff pursuant to subsection (b) of this section, and the qui tam action was proper

pursuant to subsection (c) of this section, the qui tam plaintiff, subject to paragraphs (3) and (4) of this subsection, shall receive at least 10%, but not more than 20%, of the proceeds of the judgment or settlement of the claim, taking into account the significance of the information, the role of the qui tam plaintiff in advancing the litigation, the qui tam plaintiff's attempts to avoid or resist such activity, and all other circumstances surrounding the activity, except, that if the qui tam plaintiff was substantially involved in the fraudulent activity on which the action is based, the court may direct that the plaintiff receive less than 10%. When the Corporation Counsel conducts the action, 25% of the proceeds of the judgment or settlement of the claim shall be paid into the Antifraud Fund established by § 1-1188.20.

(2) If the District does not proceed with the action, the court may award the qui tam plaintiff those sums from the proceeds it considers appropriate, which shall be at least 25% but not more than 40%, taking into account the significance of the information, the role of the qui tam plaintiff in advancing the case to litigation, and the scope of, and response to, the employee's attempts to report and gain recovery of such falsely claimed funds through official channels; provided, that if the qui tam plaintiff was substantially involved in the fraudulent activity on which the action is based, the court may award the qui tam plaintiff less than 25%.

(3) The portion of the recovery not distributed pursuant to paragraphs (1) and (2) of this subsection shall be paid to the District treasury.

(4) If the District or the qui tam plaintiff prevails in or settles any action pursuant to subsection (c) of this section, the qui tam plaintiff shall receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable costs and attorneys fees. All expenses, costs, and fees shall be awarded against the defendant and under no circumstances shall they be the responsibility of the District.

(5) If the District does not proceed with the action and the qui tam plaintiff conducts the action, the court may award to the defendant reasonable attorneys fees and expenses necessarily incurred if the defendant prevails in the action and the court finds that the claim of the qui tam plaintiff was frivolous, vexatious, or brought solely for purposes of harassment.

(g) In any action brought pursuant to this section, the court may stay discovery if the Corporation Counsel or the United States Attorney's Office shows that discovery would interfere with an investigation or a prosecution of a criminal matter arising out of the same facts, regardless of whether the Corporation Counsel or the United States Attorney's Office has pursued the criminal or civil investigation or proceedings with reasonable diligence, and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings. (Feb. 21, 1986, D.C. Law 6-85, § 815, 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(b), 46 DCR 2118.)

**Effect of amendments.** — D.C. Law 12-264, in (a), substituted “§ 1-1188.14” for “§ 1-1188.8” twice; in (b)(1), substituted “§ 1-1188.14” for “§ 1-1188.8”; in (f)(1), substituted

“§ 1-1188.20” for “§ 1-1188.14”; and in (g), substituted “this section” for “§ 1-1188.9.”

**Legislative history of Law 12-104.** — See note to § 1-1188.7.

**Legislative history of Law 12-264.** — See note to § 1-1181.5.

**§ 1-1188.16. Employer interference with employee disclosures; liability of employer; remedies of employee.**

(a) No employer, including the District of Columbia, shall make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency concerning, or from acting in furtherance of, a false claims action, including investigating, initiating, testifying, or assisting in an action filed or to be filed pursuant to § 1-1188.15.

(b) No employer, including the District of Columbia, shall discharge, demote, suspend, threaten, harass, deny promotion to, or in any other manner discriminate against an employee in the terms and conditions of employment because of lawful acts done by the employee on behalf of the employee or others in disclosing information to a government or law enforcement agency relating to, or in furtherance of, a false claims action, including investigation of, initiation of, or testimony or assistance in, an action filed or to be filed pursuant to § 1-1188.15.

(c) Any employer, including the District of Columbia, who violates subsection (b) of this section shall be liable for the relief necessary to make the employee whole, including reinstatement with the same seniority status that the employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, compensation for any special damage sustained as a result of the discrimination, and, where appropriate (except in the case of the District), punitive damages. In addition, the defendant shall be required to pay litigation costs and reasonable attorneys fees, necessarily incurred. An employee may bring an action in the Superior Court for the relief provided in this subsection.

(d) An employee who is discharged, demoted, suspended, harassed, denied promotion, or in any other manner discriminated against in the terms and conditions of employment by his or her employer, including the District of Columbia, because of participation in conduct which directly or indirectly results in submission of a false claim being submitted to the District shall be entitled to the remedies pursuant to subsection (c) of this section, only if the following is true:

(1) The employee voluntarily disclosed all relevant information to a government or law enforcement agency; and

(2) The employee had been harassed, threatened with termination or demotion, or otherwise coerced by the employer or its management into engaging in the activity giving rise to the false claim. (Feb. 21, 1986, D.C. Law 2-85, § 816, 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(c), 46 DCR 2118.)

**Effect of amendments.** — D.C. Law 12- 1188.8"; and in (b), substituted "§ 1-1188.15" 264, in (a), substituted "§ 1-1188.15" for "§ 1- for "§ 1-1188.9."

**Legislative history of Law 12-104.** — See note to § 1-1188.7.

**Legislative history of Law 12-264.** — See note to § 1-1181.5.

### **§ 1-1188.17. Limitation of actions; burden of proof.**

(a) A civil action brought pursuant to § 1-1188.15 may not be filed more than 6 years after the date on which the violation of § 1-1188.14 is committed or more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by an official of the Office of Corporation Counsel, but in no event more than 9 years after the date on which the violation is committed, whichever occurs last.

(b) A civil action brought pursuant to § 1-1188.15 may not be brought for activity prior to April 12, 1997.

(c) In any action brought pursuant to § 1-1188.15, the District or the qui tam plaintiff shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(d) Notwithstanding any other provision of law, a judgment of guilt in a criminal proceeding charging false statements or fraud, upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action brought pursuant to § 1-1188.15 which involves the same transaction as in the criminal proceeding. (Feb. 21, 1986, D.C. Law 6-85, § 817, 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(d), 46 DCR 2118.)

**Effect of amendments.** — D.C. Law 12-264, in (a), substituted “§ 1-1188.15” for “§ 1-1188.9” and “§ 1-1188.14” for “§ 1-1188.8”; and substituted “§ 1-1188.15” for “§ 1-1188.9” in (b), (c), and (d).

**Legislative history of Law 12-104.** — See note to § 1-1188.7.

**Legislative history of Law 12-264.** — See note to § 1-1181.5.

### **§ 1-1188.18. Remedies pursuant to other laws; severability of provisions; liberality of article construction.**

The provisions of this chapter are not exclusive, and the remedies provided for shall be in addition to any other remedies provided for in any other law or available pursuant to common law. (Feb. 21, 1986, D.C. Law 6-85, § 818, 32 DCR 7396, as added May 8, 1998, D.C. Law 12-104, § 2(g), 45 DCR 1687.)

**Legislative history of Law 12-104.** — See note to § 1-1188.7.

### **§ 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 (e)(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.)

**Effect of amendments.** — D.C. Law 12-264, in (m)(3), substituted "§§ 1-1188.13 through 1-1188.21" for "§§ 1-1188.7 through 1-1188.15."

**Legislative history of Law 12-104.** — See note to § 1-1188.7.

**Legislative history of Law 12-264.** — See note to § 1-1181.5.

**§ 1-1188.20. Antifraud fund.**

(a) There is hereby established an Antifraud Fund ("Fund") to be operated as a proprietary fund with assets not to exceed \$2,000,000 at any time. The Fund shall consist of criminal fines, civil penalties, and damages collected in cases brought pursuant to this chapter, other than funds awarded to a cooperator or for restitution to a particular agency in the amount of the actual loss to that agency. Such funds (with the exception of amounts for an award to a cooperator or restitution to a program) shall be deposited in the Fund upon receipt. Monies in the Fund shall not revert to the General Fund of the District of Columbia at the end of any fiscal year, but shall remain available for the purposes set forth in this section, subject to authorization and appropriation by Congress. Any balance in excess of that allowed the Fund by this section shall be deposited in the General Fund of the District of Columbia.

(b) Amounts in the Fund shall be available for use by the Corporation Counsel to carry out the enforcement of this chapter, including all costs reasonably related to prosecuting cases and conducting investigations pursuant to this chapter.

(c) The Fund shall be audited annually by the Inspector General.

(d) It is intended that disbursements made from the Fund to the Office of Corporation Counsel or other appropriate agency be used to supplement and not supplant the Corporation Counsel's appropriated operating budget. (Feb. 21, 1986, D.C. Law 6-85, § 820, 32 DCR 7396, as added May 8, 1998, D.C. Law 12-104, § 2(g), 45 DCR 1687.)

**Legislative history of Law 12-104.** — See note to § 1-1188.7.

**§ 1-1188.21. Penalties for false representations.**

Whoever makes or presents to any officer or employee of the District of Columbia government, or to any department or agency thereof, any claim upon or against the District of Columbia, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be imprisoned not more than one year and assessed a fine of not more than \$100,000 for each violation of this chapter. The Corporation Counsel shall prosecute violations of this section. (Feb. 21, 1986, D.C. Law 6-85, § 821, 32 DCR 7396, as added May 8, 1998, D.C. Law 12-104, § 2(g), 45 DCR 1687.)

**Legislative history of Law 12-104.** — See note to § 1-1188.7.



*Subchapter VIII-A. Year 2000 District Government Computer Liability Immunity.*

**§ 1-1188.51. Immunity for Year 2000 system failures.**

(a) Notwithstanding § 1-1188.1, no cause of action at law or in equity, nor any administrative action shall be maintained against the District government or its officers or employees, arising from a Year 2000 system failure.

(b) No cause of action at law or in equity, nor any administrative action shall be maintained against a District government vendor, arising from a Year 2000 system failure caused primarily by the vendor's use of computer hardware, software, or equipment that is not Year 2000 compliant and which is owned or provided by the District government, unless the action is maintained by the District government.

(c) All District government contracts executed after April 20, 1999 shall include a warranty of Year 2000 compliance for any goods or services provided pursuant to the contract, and shall state that the vendor is liable for any damages if the goods and services are not Year 2000 compliant.

(d) For the purposes of this subchapter:

(1) The term "Year 2000 compliance or compliant" means the capability of a computer software program, database, network, information system, computer device, or any equipment using microchips, to interpret, produce, generate, calculate, or to correctly account for a date in the year 2000 or in subsequent years.

(2) The term "Year 2000 system failure" means the failure of a computer software program, database, network, information system, computer device, or any equipment using microchips, to interpret, produce, generate, calculate, or to correctly account for a date in the year 2000 or in subsequent years. (Apr. 20, 1999, D.C. Law 12-244, § 2, 46 DCR 1080.)

**Legislative history of Law 12-244.** — Law 12-244, the "Year 2000 Government Computer Immunity Act of 1998," was introduced in Council and assigned Bill No. 12-732, which was referred to the Committee on Government Operations. The Bill was adopted on first and

second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 24, 1998, it was assigned Act No. 12-581 and transmitted to both Houses of Congress for its review. D.C. Law 12-244 became effective on April 20, 1999.

**§ 1-1188.52. Applicability.**

This subchapter shall apply to claims arising between April 20, 1999 and December 31, 2005, and to contracts executed and in effect between April 20, 1999 and December 31, 2005. (Apr. 20, 1999, D.C. Law 12-244, § 3, 46 DCR 1080.)

**Legislative history of Law 12-244.** — See note to § 1-1188.51.

*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. (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.)

**Section references.** — This section is referred to in § 1-633.7.

**Effect of amendments.** — Section 101(aa) of D.C. Law 11-259 substituted "2" for "3" in (b).

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

**Legislative history of Law 11-259.** — See note to § 1-1181.1.

**Cited in** Jones & Artis Constr. Co. v. District of Columbia Contract Appeals Bd., App. D.C., 549 A.2d 315 (1988).

**§ 1-1189.2. Terms and qualifications of members.**

(a)(1) The term of office of the chairperson and other full-time members of the Board shall be 4 years, except that in making the initial appointment, the Mayor shall appoint 2 members for a term of 1 year, 2 members for a term of 2 years, and the chairperson for a term of 3 years. The terms of the chairperson and members first appointed shall begin on the date that a majority of the first members are sworn in, which shall become the anniversary date for all subsequent appointments. Thereafter, their successors shall be appointed for terms of 4 years, or for the balance of any unexpired term, but members may continue to serve beyond their terms until their successors take office.

(2) The Mayor shall endeavor to nominate persons for appointment to the Board at least 30 days before the expiration of a member's term.

(3) Members may be reappointed for succeeding terms.

(4) If there is no chairperson, or if the chairperson is absent or unable to serve, the member senior in length of service shall be acting chairperson.

(b) The chairperson and members of the Board shall be attorneys licensed to practice law in the District who shall have experience in public contract law.

All members of the Board shall have experience in the areas of procurement and contract law.

(c)(1) Notwithstanding the provisions of this section, current lay members of the District of Columbia Contract Appeals Board, appointed pursuant to Organization Order No. 9, serving on February 21, 1986, shall be considered qualified, and may continue to serve as members of the Board at the discretion of the Mayor.

(2) Any member appointed pursuant to Organization Order No. 9 may continue to serve on panels involving pending appeals at the discretion of the chairperson, when the jurisdiction of the appeals shall transfer to the Board established by this chapter. (Feb. 21, 1986, D.C. Law 6-85, § 902, 32 DCR 7396; Oct. 7, 1987, D.C. Law 7-31, § 2, 34 DCR 3789; Apr. 12, 1997, D.C. Law 11-259, § 101(bb), 44 DCR 1423.)

**Effect of amendments.** — Section 101(bb) of D.C. Law 11-259 deleted “2” preceding “members” in the first sentence in (b).

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

**Legislative history of Law 7-31.** — Law 7-31 was introduced in Council and assigned Bill No. 7-139, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 14, 1987 and May 5, 1987, respectively. Signed by the Mayor on June 1, 1987, it was assigned Act No. 7-26 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 11-259.** — See note to § 1-1181.1.

**Superior Court's emergency powers.** — The Superior Court's power to grant emergency relief does not give it the authority to function as a competitor of the Contract Appeals Board (CAB) or to ignore the CAB's findings. The Superior Court still owes the CAB deference as the primary fact-finder. *District of Columbia v. Group Ins. Admin.*, App. D.C., 633 A.2d 2 (1993).

**Cited in** *Dano Resource Recovery, Inc. v. District of Columbia*, App. D.C., 620 A.2d 1346, cert. denied, 510 U.S. 931, 114 S. Ct. 343, 126 L. Ed. 2d 308 (1993); *RDP Dev. Corp. v. District of Columbia*, App. D.C., 645 A.2d 1078 (1994).

### § 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. (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.)

**Effect of amendments.** — Section 101(cc) of D.C. Law 11-259 designated the first paragraph as (a); deleted “and” from the end of present (a)(1); rewrote present (a)(2); added (a)(3); and added (b).

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

**Legislative history of Law 11-259.** — See note to § 1-1181.1.

**Nature of proceedings.** — Cancellation of

original invitation for bids was not subject to "appeal," but merely to a "protest." *Jones & Artis Constr. Co. v. District of Columbia Contract Appeals Bd.*, App. D.C., 549 A.2d 315 (1988).

**Superior Court's emergency powers.** — There is not necessarily any inconsistency between this section and the Superior Court's authority to issue emergency relief pending the outcome of Contract Appeals Board proceedings. *District of Columbia v. Group Ins. Admin.*, App. D.C., 633 A.2d 2 (1993).

**Standing.** — Disappointed bidders for a contract with the District government have standing to sue for relief. *District of Columbia v. Group Ins. Admin.*, App. D.C., 633 A.2d 2 (1993).

Where a disappointed bidder can demonstrate standing, it can sue for emergency relief in the Superior Court regardless of the Contract Appeals Board's apparent incapacity to issue such relief. *District of Columbia v. Group Ins. Admin.*, App. D.C., 633 A.2d 2 (1993).

**Determination of contract's validity.** — A party bringing an action involving a contract with the District must first defer to the exper-

tise of the Director of the Department of Administrative Services (and then to the Contract Appeals Board) for a determination of the validity of a contract vis-à-vis the procurement provisions. *RDP Dev. Corp. v. District of Columbia*, App. D.C., 645 A.2d 1078 (1994).

**Superior Court review.** — A disappointed bidder who has shown standing has the right to avail himself or herself of the Superior Court's review jurisdiction, which also includes the jurisdiction to hear claims for interim relief before the Contract Appeals Board has rendered a decision. *District of Columbia v. Group Ins. Admin.*, App. D.C., 633 A.2d 2 (1993).

Where claims before trial court involved issues which were within the special competence of an administrative agency, the trial court properly retained jurisdiction to determine whether the competitive bidding provisions applied and correctly dismissed that portion of the action which addressed the validity of the lease/purchase agreement. *RDP Dev. Corp. v. District of Columbia*, App. D.C., 645 A.2d 1078 (1994).

Cited in *Jones & Artis Constr. Co. v. District of Columbia Contract Appeals Bd.*, App. D.C., 549 A.2d 315 (1988).

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

(a) Except as provided in § 1-1188.5, within 90 days from the date of receipt of a decision of the contracting officer, the contractor may appeal the decision to the Board.

(b) The Board shall provide, to the fullest extent practicable, informal, expeditious, and inexpensive resolution of disputes, and shall issue a decision in writing, or take other appropriate action on each appeal submitted, and shall mail or otherwise furnish a copy of the decision to the contractor and the Mayor. All decisions which constitute a final adjudication of appeal on the merits shall be published in the District of Columbia Register.

(c)(1) The rules of the Board shall include a procedure for the accelerated disposition of any appeal from a decision of the contracting officer where the amount in dispute is \$50,000 or less.

(2) This procedure shall be applicable at the sole election of the contractor.

(3) Appeals under the accelerated procedure shall be resolved within 180 days from the date the contractor elects to utilize the procedure.

(d) The rules of the Board shall include a procedure for the expedited disposition of any appeal from a decision of the contracting officer where the amount in dispute is \$10,000 or less. This small claims procedure shall be applicable at the sole election of the contractor.

(e) The small claims procedure shall provide for simplified rules of procedure to facilitate the decision of any appeal. The appeals may be decided by a single member of the Board with any concurrences required by rule or regulation.

(f) Appeals under the small claims procedure shall be resolved, whenever possible, within 90 days from the date on which the contractor files an appeal.

(g) A decision against the District government or the contractor reached under the small claims procedure shall be final and conclusive and shall not be set aside except in cases of fraud.

(h) Administrative determinations and final decisions under the small claims procedure shall have no value as precedent for future cases under this subchapter.

(i) The Mayor may review at least every 3 years, beginning with the 3rd year after the enactment of this chapter, the dollar amount defined in subsection (d) of this section as a small claim, and based upon economic indexes selected by the Mayor may adjust that level through rulemaking. (Feb. 21, 1986, D.C. Law 6-85, § 904, 32 DCR 7396; Apr. 12, 1997, D.C. Law 11-259, § 101(dd), 44 DCR 1423.)

**Section references.** — This section is referred to in § 1-1188.3.

**Effect of amendments.** — Section 101(dd) of D.C. Law 11-259 substituted “contracting officer” for “Director” in (a) and (c)(1); and deleted “Director or other” preceding “contracting officer” in the first sentence in (d).

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

**Legislative history of Law 11-259.** — See note to § 1-1181.1.

**Cancellation of original invitation for bids was not subject to “appeal,”** but merely to a “protest.” *Jones & Artis Constr. Co. v. District of Columbia Contract Appeals Bd.*, App. D.C., 549 A.2d 315 (1988).

**Contested case.** — A contractor’s “appeal” of a decision of the director to the board may present a contested case involving a trial-type hearing. *Jones & Artis Constr. Co. v. District of Columbia Contract Appeals Bd.*, App. D.C., 549 A.2d 315 (1988).

**“Protest” not contested case.** — Where a “protest,” not an administrative “appeal,” is involved in the proceeding, the board is not presented with a “contested” case. *Jones & Artis Constr. Co. v. District of Columbia Contract Appeals Bd.*, App. D.C., 549 A.2d 315 (1988).

A bid protest is not a contested case because it does not require a trial-type hearing. The mere possibility of holding a discretionary hearing on a bid protest, particularly in a case where the Contract Appeals Board has decided not to hold one, does not meet the required by law element of the “trial-type hearing” criterion for a contested case. *Francis v. Recycling Solutions, Inc.*, App. D.C., 695 A.2d 63 (1997).

**Cited in** *Lumbermen’s Mut. Cas. Co. v. District of Columbia*, App. D.C., 566 A.2d 480 (1989).

## § 1-1189.5. Appeal of Board decisions.

(a) A contractor may appeal a Board decision to the District of Columbia Court of Appeals within 120 days after the date of receipt of a copy of the decision.

(b) If the Director determines that an appeal should be taken, the Director, with the prior approval of the Corporation Counsel, may appeal the Board’s decision to the District of Columbia Court of Appeals for judicial review within 120 days from the date of the receipt of the Board’s decision. (Feb. 21, 1986, D.C. Law 6-85, § 905, 32 DCR 7396.)

**Section references.** — This section is referred to in § 1-1189.7.

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

**Legislative history.** — The legislative history of the Procurement Practices Act makes clear, if its plain statutory words do not, that the Council granted the Department of Admin-

istrative 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).

**Standing.** — In an action appealing a decision of the Contract Appeals Board and requesting an order vacating the order of the Contract Appeals Board, the Contract Appeals

Board was the proper defendant, not the successful bidder. The successful bidder cannot provide the requested relief and is not the "real" party in interest. *Francis v. Recycling Solutions, Inc.*, App. D.C., 695 A.2d 63 (1997).

Where, under the provisions of this section, the Department of Administrative Services was the only proper plaintiff, it was not abuse of discretion for the trial court to deny an improper plaintiff's motion under Superior Court Civil Rule 17(a) to seek ratification of the action by the Department of Administrative Services; to do so would defeat the purpose of the Procurement Practices Act to centralize in the Department of Administrative Services the decision to initiate review of Contract Appeals Board decisions. *Francis v. Recycling Solutions, Inc.*, App. D.C., 695 A.2d 63 (1997).

**Nature of proceeding.** — Customarily, complaints about the solicitation and award of contracts are called "protests." In contrast, "appeals" are customarily limited to issues of contract performance or to suspension or debarment of a firm. *Jones & Artis Constr. Co. v. District of Columbia Contract Appeals Bd.*, App. D.C., 549 A.2d 315 (1988).

**Bid protest is not contested case.** — Bid protests are not contested cases and thus cannot be appealed directly to the D.C. Court of Appeals under either this section or § 1-1510(a). *Francis v. Recycling Solutions, Inc.*, App. D.C., 695 A.2d 63 (1997).

A bid protest is not a contested case because it does not require a trial-type hearing. The mere possibility of holding a discretionary hearing on a bid protest, particularly in a case where the Contract Appeals Board has decided not to hold one, does not meet the required by law element of the "trial-type hearing" criterion for a contested case. *Francis v. Recycling Solutions, Inc.*, App. D.C., 695 A.2d 63 (1997).

**Jurisdiction of Court of Appeals.** — If contractors filed an "appeal" with the board, the Court of Appeals may have jurisdiction to review the board's decision; but if the contractors

filed a "protest," the Court of Appeals does not have jurisdiction, and any relief from the board's action would have to be sought, in the first instance, from the Superior Court. *Jones & Artis Constr. Co. v. District of Columbia Contract Appeals Bd.*, App. D.C., 549 A.2d 315 (1988).

**Authority to seek review of Contract Appeals Board decisions.** — Council deliberately chose to limit the Mayor's and the Corporation Counsel's authority in the procurement area and, thereby, conferred on the Department of Administrative Services the exclusive authority to seek judicial review of Contract Appeals Board decisions against the District. *Francis v. Recycling Solutions, Inc.*, App. D.C., 695 A.2d 63 (1997).

Since it is clear from the language of the Procurement Practices Act and its legislative history, that the Council meant to withhold the power to seek judicial review of Contract Appeals Board decision from everyone but the Department of Administrative Services, the director of a non corporate department within the municipal corporation may not bring an appeal of a decision of the Contract Appeals Board, on behalf of the department which is not *sui juris*, as an agent of the Mayor or as the contracting officer. *Francis v. Recycling Solutions, Inc.*, App. D.C., 695 A.2d 63 (1997).

The contracting power of the Director of the Department of Public Works pursuant to §§ 6-3410 and 6-3411 and Mayor's Order 89-160 which delegates the certain aspects of the Mayor's authority under those sections to the Director of the Department of Public Works does not give the Director of the Department of Public Works the authority to seek judicial review of Contract Appeals Board decisions relating to those contracts. *Francis v. Recycling Solutions, Inc.*, App. D.C., 695 A.2d 63 (1997).

Cited in *Dano Resource Recovery, Inc. v. District of Columbia*, App. D.C., 620 A.2d 1346, cert. denied, 510 U.S. 931, 114 S. Ct. 343, 126 L. Ed. 2d 308 (1993).

## § 1-1189.6. Oaths, discovery, and subpoena power.

(a) A member of the Board may administer oaths to witnesses, authorize depositions and discovery proceedings, and require by subpoena the attendance of witnesses and production of books and papers for the taking of testimony or evidence by deposition or in the hearing of an appeal by the Board.

(b) In the event any witness, having been personally served with a subpoena, shall neglect or refuse to obey the subpoena issued, on written application the Board may report the fact of the neglect or refusal to a judge of the Superior Court for the District of Columbia who may compel obedience to the subpoena. (Feb. 21, 1986, D.C. Law 6-85, § 906, 32 DCR 7396.)

**Legislative history of Law 6-85.** — See note to § 1-1181.1. of Columbia Contract Appeals Bd., App. D.C., 549 A.2d 315 (1988).  
**Cited in** Jones & Artis Constr. Co. v. District

### § 1-1189.7. Actions in court; judicial review of Board decisions.

In the event of an appeal by a contractor or the Director from a decision of the Board pursuant to § 1-1189.5, notwithstanding any contract provision, regulation, or rules of law to the contrary, the decision of the Board on questions of fact shall be final and conclusive and shall not be set aside unless the decision is fraudulent, arbitrary, capricious, or so grossly erroneous as to necessarily imply bad faith, or if the decision is not supported by substantial evidence. (Feb. 21, 1986, D.C. Law 6-85, § 907, 32 DCR 7396.)

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

**Exhaustion doctrine.** — The exhaustion doctrine does not preclude, but rather defers judicial review until after expert administrative body has built a factual record and rendered a final decision. *Dano Resource Recovery, Inc. v. District of Columbia*, App. D.C., 566 A.2d 483 (1989).

**Cited in** *Lumbermen's Mut. Cas. Co. v. District of Columbia*, App. D.C., 566 A.2d 480 (1989); *Dano Resource Recovery, Inc. v. District of Columbia*, App. D.C., 620 A.2d 1346 (1993), cert. denied, 510 U.S. 931, 114 S. Ct. 343, 126 L. Ed. 2d 308 (1993).

### § 1-1189.8. Protest procedures.

(a) This section shall apply to a protest of a solicitation or award of a contract addressed to the Board by any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract.

(b)(1) A protest based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the time set for receipt of initial proposals shall be filed prior to bid opening or the time set for receipt of initial proposals. In procurements where proposals are requested, alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into this solicitation, must be protested not later than the next closing time for receipt of proposals following the incorporation.

(2) In cases other than those covered in paragraph (1) of this subsection, protests shall be filed not later than 10 business days after the basis of protest is known or should have been known, whichever is earlier.

(c)(1) Within one business day of receipt of the protest, the Contract Appeals Board shall notify the contracting officer that the protest has been filed. Except as provided in this act, no contract may be awarded in any procurement after the contracting officer has received this notice and while the protest is pending. If an award has already been made but the contracting officer receives this notice within 11 business days after the date of award, the contracting officer shall immediately direct the awardee to cease performance under the contract and to suspend any related activities that may result in additional obligations being incurred by the District under that contract. Except as provided in this

act, performance and related activities suspended pursuant to this section may not be resumed while the protest is pending.

(2) Performance under a protested procurement may proceed, or award may be made, while a protest is pending only if the CPO makes a written determination, supported by substantial evidence, that urgent and compelling circumstances that significantly affect interests of the District will not permit waiting for the decision of the Board concerning the protest. A copy of the determination shall be provided within one business day of issuance to both the Board and the protester.

(3) If the protester wishes to challenge a determination made by the CPO pursuant to paragraph (2) of this subsection, the protester may do so by filing a written motion with the Board within 5 business days of receipt of a copy of the determination. The Board may adopt rules of procedure for assisting it in the evaluation of such challenges; provided, that the Board's decision on the challenge must be issued within 10 business days after the date the written motion is filed by the protester.

(d) On any direct protest pursuant to subsection (a) of this section, the Board shall decide whether the solicitation or award was in accordance with the applicable law, regulations, and terms and conditions of the solicitation. The proceeding shall be de novo and the decision of the Board shall be issued within 60 business days from the date on which the protest is filed. Any prior determinations by administrative officials shall not be final or conclusive. If the Board determines that a contract is void pursuant to § 1-1182.5(d)(1), the Board shall direct that the contract be cancelled and cause a determination to be made pursuant to § 1-1182.5(d)(2).

(e) A determination of an issue of fact by the Board under subsection (d) of this section shall be final and conclusive unless arbitrary, capricious, fraudulent, or clearly erroneous.

(f)(1) In addition to other relief, except enjoining a contract award, the Board may order, when a protest is sustained, that the contract awarded under the solicitation be terminated for the convenience of the District. A determination in this regard shall be based on considerations such as:

- (A) Best interests of the District government;
- (B) Seriousness of the procurement deficiency;
- (C) Existence of prejudice to other bidders;
- (D) Maintaining the integrity of the procurement system;
- (E) Good faith of District government officials and other parties;
- (F) Extent of contract performance; or
- (G) Impact of termination on the using agency's activities and mission.

(2) The Board may, when requested, award reasonable bid or proposal preparation costs and costs of pursuing the protest, not including legal fees, if it finds that the District government's actions toward the protester or claimant were arbitrary or capricious.

(g) The Board may dismiss, at any stage of the proceedings, any protest, or portion of a protest, it deems frivolous. In addition, the Board may require the protester to pay the agency attorneys fees, at the rate of \$100 per hour, for time counsel spent representing the agency in defending the frivolous protest or its



frivolous part. If the entire protest is dismissed on frivolous grounds, it may also assess the protester damages for each day the contract was suspended equal to the amount of liquidated damages specified in the contract for late completion of the contract. The Board shall not determine damages, if liquidated damages are not specified. In addition, counsel for the protester may be suspended or barred from practicing before the Board.

(h) The Board shall adopt rules for exercising its authority under this section. (Feb. 21, 1986, D.C. Law 6-85, § 908, 32 DCR 7396; Apr. 12, 1997, D.C. Law 11-259, § 101(ee), 44 DCR 1423; May 8, 1998, D.C. Law 12-104, § 2(f), 45 DCR 1687.)

**Effect of amendments.** — Section 101(ee) of D.C. Law 11-259 rewrote this section.

D.C. Law 12-104, substituted "CPO" for "Director" in (c)(2) and (3).

**Temporary amendment of section.** — Section 3(f) of D.C. Law 12-17 substituted "CPO" for "director" in (c)(2) and (3).

Section 5(b) of D.C. Law 12-17 provided that the act shall expire on the 225th day of its having taken effect.

**Emergency act amendments.** — For temporary amendment of section, see § 3(f) of the Procurement Reform Emergency Amendment Act of 1997 (D.C. Act 12-62, April 15, 1997, 44 DCR 2413), and see § 3(f) of the Procurement Reform Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-133, August 12, 1997, 44 DCR 4832).

Section 5 of D.C. Act 12-133 provides for the application of the act.

For temporary amendment of section, see § 2(f) of the Procurement Reform Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-374, April 24, 1998, 45 DCR 4338).

Section 6 of D.C. Act 12-374 provides for the application of the act.

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

**Legislative history of Law 11-259.** — See note to § 1-1181.1.

**Legislative history of Law 12-17.** — See note to § 1-1188.7.

**Legislative history of Law 12-104.** — Law 12-104, the "Procurement Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-363, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings

on December 4, 1997, and January 6, 1998, respectively. Signed by the Mayor on February 3, 1998, it was assigned Act No. 12-280 and transmitted to both Houses of Congress for its review. D.C. Law 12-104 became effective on May 8, 1998.

**Hearing not required.** — This section does not require a hearing, let alone a trial-type hearing, to resolve a protest. *Jones & Artis Constr. Co. v. District of Columbia Contract Appeals Bd.*, App. D.C., 549 A.2d 315 (1988).

**Superior Court's emergency powers.** — The Superior Court's power to grant emergency relief does not give it the authority to function as a competitor of the Contract Appeals Board (CAB) or to ignore the CAB's findings. The Superior Court still owes the CAB deference as the primary fact-finder. *District of Columbia v. Group Ins. Admin.*, App. D.C., 633 A.2d 2 (1993).

**Standing.** — Disappointed bidders for a contract with the District government have standing to sue for relief. *District of Columbia v. Group Ins. Admin.*, App. D.C., 633 A.2d 2 (1993).

Where a disappointed bidder can demonstrate standing, it can sue for emergency relief in the Superior Court regardless of the Contract Appeals Board's apparent incapacity to issue such relief. *District of Columbia v. Group Ins. Admin.*, App. D.C., 633 A.2d 2 (1993).

**Superior Court review.** — A disappointed bidder who has shown standing has the right to avail himself or herself of the Superior Court's review jurisdiction, which also includes the jurisdiction to hear claims for interim relief before the Contract Appeals Board has rendered a decision. *District of Columbia v. Group Ins. Admin.*, App. D.C., 633 A.2d 2 (1993).

*Subchapter X. Ethics in Public Contracting.*

**§ 1-1190.1. Employees subject to Merit Personnel Act.**

(a) All District government employees who participate in the procurement process shall be subject to the provisions of subchapter XIX of Chapter 6 of this title.

(b) Participation shall include, but not be limited to, involvement, either directly or indirectly, in:

(1) The decision, approval, disapproval, recommendation, or preparation of any part of a purchase request;

(2) Influencing the content of any specification or purchase standard;

(3) Rendering of advice;

(4) An investigation or audit; or

(5) Any other advisory capacity pertaining to any contract, subcontract, solicitation, or proposal. (Feb. 21, 1986, D.C. Law 6-85, § 1001, 32 DCR 7396.)

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

*Subchapter XI. Miscellaneous.*

**§ 1-1191.1. Procurement training programs.**

(a) The Chief Procurement Officer shall establish a program for educating, training, and certifying individuals in District government, and for conducting research for improving and enhancing the District government's overall procurement process.

(b) Participation in programs conducted by the Director shall be open to employees of the District government and nonemployees of the District government in accordance with rules issued by the Mayor.

(c) Programs offered and maintained by the Director may cover, but not be limited to, the following areas:

(1) Business knowledge, which shall include accounting, business and economic statistics, data processing, and economics;

(2) Purchasing, which shall include legal and regulatory principles, pricing and negotiation, administrative practices, and planning and control;

(3) Communication skills;

(4) General managerial skills; and

(5) Conceptual skills.

(d) The purposes of the training program may be effected through the services and property of:

(1) The District government;

(2) The United States government;

(3) The governments of any of the 50 states;

(4) A foreign government or international organization;

(5) An educational, research, technical, or professional institution, foundation, or organization; or

(6) A business, commercial, or industrial firm, corporation, partnership, proprietorship, or other organization. (Feb. 21, 1986, D.C. Law 6-85, § 1101, 32 DCR 7396; Mar. 20, 1998, D.C. Law 12-60, § 201, 44 DCR 7378.)

**Effect of amendments.** — D.C. Law 12-60 rewrote (a).

**Temporary amendment of section.** — D.C. Law 12-59 rewrote (a).

Section 2001(b) of D.C. Law 12-59 provides that the act shall expire after 225 days of its having taken effect.

Section 2002 of D.C. Law 12-59 provides that the act shall apply as of October 1, 1997.

**Emergency act amendments.** — For temporary amendment of section, see § 201 of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196).

Section 2002 of D.C. Act 12-152 provides for the application of the act.

For temporary amendment of section, see § 201(a) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

**Legislative history of Law 12-59.** — Law 12-59, the "Fiscal Year 1998 Revised Budget

Support Temporary Act of 1997," was introduced in Council and assigned Bill No. 12-350. The Bill was adopted on first and second readings on September 8, 1997, and September 22, 1997, respectively. Signed by the Mayor on October 24, 1997, it was assigned Act No. 12-190 and transmitted to both Houses of Congress for its review. D.C. Law 12-59 became effective on March 20, 1998.

**Legislative history of Law 12-60.** — Law 12-60, the "Fiscal Year 1998 Revised Budget Support Act of 1998," was introduced in Council and assigned Bill No. 12-353, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on September 8, 1997, and October 7, 1997, respectively. Signed by the Mayor on October 24, 1997, it was assigned Act No. 12-191 and transmitted to both Houses of Congress for its review. D.C. Law 12-60 became effective on March 20, 1998.

**Application of Law 12-60.** — Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

## § 1-1191.2. Cooperative purchasing agreement.

(a) The Director shall be authorized and encouraged to participate in, sponsor, conduct, or administer cooperative purchasing agreements with any state, county, or municipal jurisdiction for the purpose of procuring supplies and services, which shall not include construction services or architectural and engineering services related to construction. Cooperative purchasing agreements entered into by the District government shall be in accordance with, to the extent practicable, all laws, statutes, and regulations of the District government with respect to contracting, and shall not be inconsistent with laws, statutes, and regulations of the United States government that apply specifically to the District.

(b) The District government may not participate in any cooperative purchasing agreement pursuant to subsection (a) of this section that does not mandate minimum minority business participation levels equal to those required by subchapter II of Chapter 11 of this title.

(c) Cooperative purchasing agreements may include, but not be limited to, the following:

- (1) Agreements for the cooperative purchasing of supplies and services;
- (2) Agreements for the sale, purchase, or use of property belonging to either the District or a neighboring jurisdiction;
- (3) Agreements for the common use of facilities or equipment; or
- (4) Agreements for automated data bases.

(d) No agency shall enter into or participate in a cooperative purchasing agreement unless that participation is authorized by the Director pursuant to the District Government Procurement Regulations. (Feb. 21, 1986, D.C. Law 6-85, § 1102, 32 DCR 7396.)

**Legislative history of Law 6-85.** — See note to § 1-1181.1.

### **§ 1-1191.3. Privatization of Fleet Management Services in the Metropolitan Police Department.**

(a) Notwithstanding any provision of § 1-1181.5, the Mayor, in accordance with the provisions of this subchapter, is authorized to contract for the provision of services for the fleet management services for the Metropolitan Police Department.

(b) Prior to the award of the fleet management services contract referred to in subsection (a) of this section, the Mayor shall make a written determination and findings which will address the following factors:

(1) Over the duration of the contract, including any options, the District will either realize a projected cost savings or receive the services of an improved quality or quantity at the same or lower cost;

(2) There may be increased economic development in the District in terms of entrepreneurial opportunities for District businesses or employment opportunities for District residents;

(3) There may be strengthening of any existing District businesses or the creation of any new businesses in the District, or relocation of any businesses from outside to inside the District;

(4) The District can describe with reasonable precision its minimum acceptable performance standards;

(5) That cost, efficiency of operation, and quality and quantity can be measured with reasonable accuracy; and

(6) That contracting-out of the program will not adversely affect the delivery of services to District residents.

(c) The Mayor shall base the conclusion required by subsection (b)(1) of this section on a written cost/benefit analysis prepared by the Metropolitan Police Department. At a minimum, this analysis shall include one of the following comparisons:

(1) Over the duration of the contract, including options, the projected current total cost to the District government of performing the services in-house versus the projected total cost to the District government after the contracting-out, if quality and quantity of service remain substantially the same; or

(2) Over the duration of the contract, including options, the projected quality and quantity versus projected quality and quantity of service after the contracting-out, if total cost to the District government of services performed in-house remains substantially the same.

(d) The Mayor may issue rules which set forth standards for making the written cost/benefit analysis described in subsection (c) of this section, including rules that address the following:

(1) Cost factors to be considered in evaluating the total cost to the District government of operating the program if the service continues to be provided by the government, such as the cost of equipment, facilities, maintenance, personnel, and utilities;

(2) The cost factors to be considered in evaluating the total cost to the District government of contracting-out the program, such as the additional cost of improving any capital assets to be transferred to a contractor, the additional cost of any one-time severance of District employees, the additional cost of contract administration, the value of any improvement to District government programs resulting from privatizing the program, any income to the District government from the lease or sale of District government assets resulting from contracting-out the program, and any tax revenue to the District based on income earned by a contractor who performs the fleet management operations; and

(3) Methods to be used to identify and measure the quality and quantity of services so that accurate cost comparisons can be made between District government and private sector performance.

(e) A contract for privatizing the fleet management services referred to in subsection (a) of this section shall include a provision requiring that at least 51% of all new hires to perform the contract are bona fide District residents unless the Mayor certifies that qualified District residents are unavailable to fill the new positions.

(f) If not already required by a collective bargaining agreement, the Mayor shall make reasonable efforts to consult with union representatives concerning affected District government employees.

(g) Nothing in this section may be construed to create a private right enforceable by any person. (Sept. 26, 1995, D.C. Law 11-52, § 701, 42 DCR 3684.)

**Legislative history of Law 11-52.** — Law 11-52, the "Omnibus Budget Support Act of 1995," was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995,

and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

#### **§ 1-1191.4. Standards for contracting officer.**

(a) Any contracting manager or contracting officer who performs the cost/benefit analysis required by § 1-1181.5b(a)(1) shall meet certain training standards and be certified to ensure a level of management skills and experience in doing cost/benefit analyses.

(b) Within 60 days of August 14, 1995, the Mayor shall issue, as a part of the District Government Procurement Regulations, rules for all District government employees who participate in the preparation of any cost/benefit analysis for any proposal to contract out services previously provided by District employees. The rules shall include the provisions contained in subsection (a) of this section. (Mar. 5, 1996, D.C. Law 11-98, § 501(c), 43 DCR 5.)

**Temporary addition of section.** — Section 701(c) of D.C. Law 11-78 added this section.

Section 1601(b) of D.C. Law 11-78 provided that the act shall expire after the 225th day of its having taken effect or on the effective date of the Budget Support Act of 1995, whichever occurs first.

**Legislative history of Law 11-78.** — See note to § 1-1181.5c.

**Legislative history of Law 11-98.** — See note to § 1-1181.5c.

## *Subchapter XII. South Africa Contracting Sanctions.*

### **§ 1-1192.1. Application of subchapter.**

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 1001a, as added May 23, 1986, D.C. Law 6-116, § 2, 33 DCR 2432; June 28, 1994, D.C. Law 10-134, § 6(b), 41 DCR 2597.)

**Temporary repeal of subchapter.** — Section 6(b) of D.C. Law 10-75 repealed this subchapter.

Section 8(b) of D.C. Law 10-75 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the South Africa Sanctions Repeal Act of 1993, whichever occurs first.

**Legislative history of Law 10-75.** — See note to § 1-1181.7.

**Legislative history of Law 10-134.** — Law 10-134, the "South Africa Sanctions Repeal Act

of 1994," was introduced in Council and assigned Bill No. 10-427, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on March 1, 1994, and April 12, 1994, respectively. Signed by the Mayor on April 28, 1994, it was assigned Act No. 10-234 and transmitted to both Houses of Congress for its review. D.C. Law 10-134 became effective on June 28, 1994.

### **§ 1-1192.2. Definitions.**

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 1002a, as added May 23, 1986, D.C. Law 6-116, § 2, 33 DCR 2432; July 22, 1992, D.C. Law 9-127, § 6(b), 39 DCR 3828; June 28, 1994, D.C. Law 10-134, § 6(b), 41 DCR 2597.)

**Legislative history of Law 10-134.** — See note to § 1-1192.1.

### **§ 1-1192.3. Determination of entities with business interests in Republic of South Africa.**

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 1003a, as added May 23, 1986, D.C. Law 6-116, § 2, 33 DCR 2432; July 22, 1992, D.C. Law 9-127, § 6(c), 39 DCR 3828; June 28, 1994, D.C. Law 10-134, § 6(b), 41 DCR 2597.)

**Legislative history of Law 10-134.** — See note to § 1-1192.1.

**§ 1-1192.4. Sanctions.**

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 1004a, as added May 23, 1986, D.C. Law 6-116, § 2, 33 DCR 2432; July 22, 1992, D.C. Law 9-127, § 6(d), 39 DCR 3828; June 28, 1994, D.C. Law 10-134, § 6(b), 41 DCR 2597.)

**Legislative history of Law 10-134.** — See note to § 1-1192.1.

**§ 1-1192.5. Notice and affidavit requirements.**

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 1005a, as added May 23, 1986, D.C. Law 6-116, § 2, 33 DCR 2432; July 22, 1992, D.C. Law 9-127, § 6(e), 39 DCR 3828; June 28, 1994, D.C. Law 10-134, § 6(b), 41 DCR 2597.)

**Legislative history of Law 10-134.** — See note to § 1-1192.1.

**§ 1-1192.6. Rules.**

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 1006a, as added May 23, 1986, D.C. Law 6-116, § 2, 33 DCR 2432; June 28, 1994, D.C. Law 10-134, § 6(b), 41 DCR 2597.)

**Legislative history of Law 10-134.** — See note to § 1-1192.1.

CHAPTER 11B. OFFICE OF THE CHIEF TECHNOLOGY OFFICER.

Sec.

- 1-1195.1. Establishment of Office of the Chief  
Technology Officer.  
1-1195.2. Purpose.

Sec.

- 1-1195.3. Functions.  
1-1195.4. Transfers.  
1-1195.5. Organization.

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

(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 the Chief Technology Officer ("Office") under the supervision of a Chief Technology Officer, who shall carry out the functions and authorities assigned to the Office. The Office of the Chief Technology Officer is established as of July 13, 1998.

(b) The Chief Technology Officer 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 Chief Technology Officer is warranted in the interests of efficiency and sound administration. (Mar. 26, 1999, D.C. Law 12-175, § 1812, 45 DCR 7193.)

**Emergency act amendments.** — For temporary addition of §§ 1-1195.1 to 1-1195.5, see §§ 1412-1416 of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and see §§ 1412-1416 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

Section 2101 of D.C. Act 12-564 provides for the application of the act.

**Legislative history of Law 12-175.** — Law 12-175, the "Fiscal Year 1999 Budget Support Act of 1998," was introduced in Council and

assigned Bill No. 12-618, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 5, 1998, and June 2, 1998, respectively. Signed by the Mayor on June 23, 1998, it was assigned Act No. 12-399 and transmitted to both Houses of Congress for its review. D.C. Law 12-175 became effective on March 26, 1999.

**Establishment of the Office of the Chief Technology Officer.** — Section 1811 of D.C. Law 12-175 provides this chapter may be cited as the "Office of the Chief Technology Officer Establishment Act of 1998."

§ 1-1195.2. Purpose.

The purpose of the Office is to centralize responsibility for the District government's investments in information technology and telecommunications systems to help District departments and agencies provide services more efficiently and effectively. The Office will develop and enforce policy directives and standards regarding information technology and telecommunications systems throughout the District government. The Office will also serve as a source of expertise for District departments and agencies seeking to use information technology and telecommunications systems to improve services. (Mar. 26, 1999, D.C. Law 12-175, § 1813, 45 DCR 7193.)

**Emergency act amendments.** — For temporary addition of §§ 1-1195.1 to 1-1195.5, see note to § 1-1195.1.

**Legislative history of Law 12-175.** — See note to § 1-1195.1.



### § 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; and

(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. (Mar. 26, 1999, D.C. Law 12-175, § 1814, 45 DCR 7193.)

**Emergency act amendments.** — For temporary addition of §§ 1-1195.1 to 1-1195.5, see note to § 1-1195.1.

**Legislative history of Law 12-175.** — See note to § 1-1195.1.

### § 1-1195.4. Transfers.

All positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available to the Chief Information Officer in the Office of the City Administrator pursuant to § 1-1182.9, or to the Department of Administrative Services for the information technology and telecommunications purposes and functions set out in Reorganization Plan No. 5 of 1983, effective March 1, 1984, are hereby transferred to the Office of the Chief Technology Officer. (Mar. 26, 1999, D.C. Law 12-175, § 1815, 45 DCR 7193.)

**Emergency act amendments.** — For temporary addition of §§ 1-1195.1 to 1-1195.5, see note to § 1-1195.1.

**Legislative history of Law 12-175.** — See note to § 1-1195.1.

**§ 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 and telecommunications policies;

(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.)

**Emergency act amendments.** — For temporary addition of §§ 1-1195.1 to 1-1195.5, see note to § 1-1195.1.

**Legislative history of Law 12-175.** — See note to § 1-1195.1.

## CHAPTER 12. CLAIMS AGAINST DISTRICT.

*Subchapter I. General Provisions.*

Sec.

- 1-1201. Service of process.
- 1-1202. Settlement of claims and suits against District.
- 1-1203. Refund where assessments held void.
- 1-1204. Report to Congress; appropriations.
- 1-1205. Effective date.
- 1-1206. Compromise of claim or suit.
- 1-1207. [Repealed].

*Subchapter II. Non-Liability of District Employees.*

- 1-1211. Definitions.
- 1-1212. Governmental immunity for negligent operation of vehicles by District employees.
- 1-1213. Action against employee barred by judgment against District; notice

Sec.

- of claim; administrative disposition of claim as evidence.
- 1-1214. Excessive verdicts.
- 1-1215. Actions against District employees for negligent operation of vehicles barred; indemnification of medical employees; disciplinary actions.
- 1-1216. Liability of employee to District for negligent damage to its property.

*Subchapter III. Unjust Imprisonment.*

- 1-1221. Right to present claim.
- 1-1222. Proof required.
- 1-1223. Damages.
- 1-1224. Application of subchapter — Date of release.
- 1-1225. Same — Entry of guilty plea.

*Subchapter I. General Provisions.***§ 1-1201. Service of process.**

In suits commenced after June 20, 1874, against the District of Columbia, process may be served on the Mayor of the District of Columbia, until otherwise provided by law. (June 20, 1874, 18 Stat. 117, ch. 337, § 2; 1973 Ed., § 1-901.)

**Cross references.** — As to requirement of written notice in action against District for unliquidated damages, see § 12-309.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of

Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Method of service exclusive.** — The method of service of process, provided for in this section, in a suit against the District, is exclusive. *O'Toole v. United States*, 106 F. Supp. 804 (D. Del. 1952), modified, 206 F.2d 912 (3d Cir. 1953).

**Cited in** *Lee v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 509 A.2d 100 (1986); *Morgan v. Barry*, 785 F. Supp. 187 (D.D.C. 1992).

**§ 1-1202. Settlement of claims and suits against District.**

The Mayor of the District of Columbia is empowered to settle, in his discretion, claims and suits, either at law or in equity, against the District of Columbia whenever the cause of action:

(1) Arises out of the negligence or wrongful act, either of commission or omission, of any officer or employee of the District of Columbia for whose negligence or acts the District of Columbia, if a private individual, would be liable *prima facie* to respond in damages, irrespective of whether such negligence occurred or such acts were done in the performance of a municipal or a governmental function of said District: Provided, however, that nothing herein contained shall be construed as depriving the District of Columbia of any defense it may have to any suit, either at law or in equity, which may be instituted against it or to give any person, corporation, partnership, or association any right to institute any suit against the District of Columbia which did not exist prior to June 5, 1930; or

(2) Arises out of the existence of facts and circumstances which place the claim or suit within the doctrines and principles of law decided by the courts in the District of Columbia or by the Supreme Court of the United States to be controlling in the District of Columbia. (Feb. 11, 1929, 45 Stat. 1160, ch. 173, § 1; June 5, 1930, 46 Stat. 500, ch. 400; July 29, 1970, 84 Stat. 575, Pub. L. 91-358, title I, § 157(e)(1); 1973 Ed., § 1-902.)

**Section references.** — This section is referred to in §§ 1-1203 to 1-1205.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Civil suits permitted.** — Act of December 29, 1979, 93 Stat. 1284, Pub. L. 96-170, provided that civil suits under § 1979 of the Revised Statutes (42 U. S. C. § 1983) are permitted against any person acting under color of any law or custom of the District of Columbia who subjects any person within the jurisdiction of the District of Columbia to the deprivation of any right, privilege, or immunity secured by the Constitution and laws occurring after the date of the enactment of Pub. L. 96-170.

**Robert J. Pierce.** — In contrast to the general rule created by this section, D.C. Law 2-106, September 13, 1978, 25 DCR 1383, was enacted to read as follows:

"IN THE COUNCIL OF THE DISTRICT OF COLUMBIA, September 13, 1978, to render payment to Robert J. Pierce for injuries which he received during the March 9, 1977, terrorist takeover of the District Building.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the 'Robert J. Pierce Act of 1978.'

Sec. 2. The Mayor of the District of Columbia is hereby authorized and directed to pay, pursuant to appropriate appropriations, out of the general fund of the District of Columbia, to Robert J. Pierce of the District of Columbia, a sum not to exceed \$480,000.

(a) The payment of such sum shall be in full satisfaction of all claims against the District of Columbia, its employees and agents by Robert J. Pierce, his heirs, executors, administrators and assigns arising out of the personal injuries sustained by him, due to extraordinary circumstances, on March 9, 1977.

(b) Robert J. Pierce was injured, while serving as a volunteer law student intern to the Council of the District of Columbia, during the terrorist takeover of the District Building. Such injuries left him partially paralyzed and permanently disabled.

(c) The receipt of any funds awarded pursuant to this act shall be disregarded in determining the eligibility and financial status of Robert J. Pierce for any public medical or rehabilitative services of the District of Columbia for which he would otherwise be entitled.

Sec. 3. Payment authorized by this legislation shall be in addition to services or benefits payment under the Federal Employees Health Benefits Program.

Sec. 4. (a) No part of the payment made

pursuant to this act in excess of 10% thereof shall be paid or delivered to or received by any agent or attorney for services rendered in connection with all claims against the District of Columbia described above. It shall be unlawful to exceed that per centum ceiling, any contract to the contrary notwithstanding.

(b) Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined any sum not exceeding \$1,000.

Sec. 5. This act shall take effect as provided for acts of the Council of the District of Columbia in § 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act."

**Public duty doctrine.** — The public duty doctrine limits the District's liability in negligence cases where sovereign immunity is not a bar to suit. *Powell v. District of Columbia*, App. D.C., 602 A.2d 1123 (1992).

The District is subject to liability for injuries arising from the negligence of its employees only if the duty owed to the plaintiff was a special duty to that person as an individual or as a member of a class of persons to whom a special duty is owed; the District cannot be sued if the duty it owed was a general duty to the public-at-large. *Powell v. District of Columbia*, App. D.C., 602 A.2d 1123 (1992).

The public duty doctrine applies to law enforcement services and services akin to police and fire protection, and the existence of a user fee does not necessarily create a special relationship. *Powell v. District of Columbia*, App. D.C., 602 A.2d 1123 (1992).

In the area of police services, a special legal duty is created when there is a course of conduct, special knowledge of possible harm, or the actual use of individuals in a criminal investigation. *Powell v. District of Columbia*, App. D.C., 602 A.2d 1123 (1992).

To determine whether the District may be held liable, a court must analyze whether the

duty owed to the victim is a general duty to the public-at-large, in which case the public duty doctrine insulates the District from liability, or a special duty to the plaintiff, in which case the "special relationship" exception to the public duty doctrine applies and the District is subject to suit. *Powell v. District of Columbia*, App. D.C., 602 A.2d 1123 (1992).

**Cited in** *Lake ex rel. Peyser v. District of Columbia*, 72 F.2d 174 (D.C. Cir. 1934); *District of Columbia v. World Fire & Marine Ins. Co.*, App. D.C., 68 A.2d 222 (1949); *Capital Transit Co. v. District of Columbia*, 225 F.2d 38 (D.C. Cir. 1955); *Adams v. District of Columbia*, App. D.C., 122 A.2d 765 (1956); *Harbin v. District of Columbia*, 336 F.2d 950 (D.C. Cir. 1964); *Spencer v. General Hosp.*, 425 F.2d 479 (D.C. Cir. 1969); *Graham v. District of Columbia*, 433 F.2d 536 (D.C. Cir. 1970); *Westminster Investing Corp. v. G.C. Murphy Co.*, 434 F.2d 521 (D.C. Cir. 1970); *Baker v. Washington*, 448 F.2d 1200 (D.C. Cir. 1971); *Carter v. Carlson*, 56 F.R.D. 9 (D.D.C. 1972); *District of Columbia v. Carter*, 409 U.S. 418, 93 S. Ct. 602, 34 L. Ed. 2d 613 (1973); *Marusa v. District of Columbia*, 484 F.2d 828 (D.C. Cir. 1973); *Amos v. District of Columbia*, App. D.C., 309 A.2d 305 (1973); *Wade v. District of Columbia*, App. D.C., 310 A.2d 857 (1973); *Clarke v. District of Columbia*, App. D.C., 311 A.2d 508 (1973); *Watkins v. Washington*, 366 F. Supp. 941 (D.D.C. 1973), *aff'd*, 505 F.2d 477 (D.C. Cir. 1974); *District of Columbia v. North Washington Neighbors, Inc.*, App. D.C., 367 A.2d 143 (1976), *cert. denied*, 434 U.S. 823, 98 S. Ct. 68, 54 L. Ed. 2d 80 (1977); *Shifrin v. Wilson*, 412 F. Supp. 1282 (D.D.C. 1976); *Dellums v. Powell*, 566 F.2d 216 (D.C. Cir. 1977), *cert. denied*, 438 U.S. 916, 98 S. Ct. 3146, 57 L. Ed. 2d 1161, (1978); *Jones v. District of Columbia*, 424 F. Supp. 110 (D.D.C. 1977); *District of Columbia v. Green*, App. D.C., 381 A.2d 578 (1977); *Rieser v. District of Columbia*, 580 F.2d 647 (D.C. Cir. 1978).

## § 1-1203. Refund where assessments held void.

(a) The Mayor of the District of Columbia is hereby authorized and empowered to grant relief in claims for refund of taxes paid, or for cancelation of assessments heretofore made and subsequent to September 1, 1916, in such cases where like assessments, or assessments against property of similar character, have been held to be void or erroneous by decision of the courts in the District of Columbia or the Supreme Court of the United States: Provided, that any claims for refunds of taxes paid before February 11, 1929, or for cancelations of assessments before February 11, 1929, shall be filed within 1 year from February 11, 1929.

(b) Nothing contained in §§ 1-1202 to 1-1205 shall be construed as reducing the period of the statute of limitations. (Feb. 11, 1929, 45 Stat. 1160, ch. 173, § 2; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646,

§ 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 575, Pub. L. 91-358, title I, § 157(e)(2); 1973 Ed., § 1-903.)

**Cross references.** — As to other provisions concerning refund of taxes, see §§ 47-1317 to 47-1319.

**Section references.** — This section is referred to in §§ 1-1204 and 1-1205.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Cited in** *Lake ex rel. Peyser v. District of Columbia*, 72 F.2d 174 (D.C. Cir. 1934).

## § 1-1204. Report to Congress; appropriations.

All settlements entered into by the Mayor of the District of Columbia acting under the terms and provisions of §§ 1-1202 to 1-1205 shall be presented to the Congress, together with a brief statement of the nature of the claim or suit, the amount claimed, and the amount of the settlement, with a summary of the evidence and circumstances under which the settlement was made. Appropriations for the payment of such settlements are hereby authorized, payment thereof to be made in the same manner as are other expenditures for the District of Columbia. (Feb. 11, 1929, 45 Stat. 1160, ch. 173, § 3; July 31, 1951, 65 Stat. 131, ch. 274, § 1; 1973 Ed., § 1-904; Feb. 26, 1981, D.C. Law 3-114, § 2(a), 27 DCR 5628.)

**Section references.** — This section is referred to in §§ 1-1203 and 1-1205.

**Legislative history of Law 3-114.** — Law 3-114 was introduced in Council and assigned Bill No. 3-64, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 12, 1980 and December 9, 1980, respectively. Signed by the Mayor on December 18, 1980, it was assigned Act No. 3-308 and transmitted to both Houses of Congress for its review.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmen-

tal Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

## § 1-1205. Effective date.

Sections 1-1202 to 1-1205 shall take effect from and after February 11, 1929, but nothing herein contained shall be construed as prohibiting the Mayor of the District of Columbia from proceeding according to the terms and provisions hereof to settle any claim or suit pending on February 11, 1929, irrespective of

the date of presentation of the claim to the Mayor of the District of Columbia or the date of the filing of the suit. (Feb. 11, 1929, 45 Stat. 1161, ch. 173, § 4; 1973 Ed., § 1-905.)

**Section references.** — This section is referred to in §§ 1-1203 and 1-1204.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

### § 1-1206. Compromise of claim or suit.

Upon a report by the Corporation Counsel of the District of Columbia showing in detail the just and true amount and condition of any claim or suit which the District of Columbia may on July 31, 1951, or thereafter have against any person, firm, association, or corporation, and the terms upon which the same may be compromised, and stating that in his opinion a compromise of such claim or suit would be for the best interest of the District of Columbia, the Mayor of the District of Columbia hereby is authorized to compromise such claim or suit accordingly: Provided, that this section shall not apply to claims or suits for taxes or special assessments. (Feb. 11, 1929, 45 Stat. 1161, ch. 173, § 5; July 31, 1951, 65 Stat. 131, ch. 274, § 2; June 28, 1967, 81 Stat. 81, Pub. L. 90-33, § 1; July 29, 1970, 84 Stat. 577, Pub. L. 91-358, title I, § 158(f); 1973 Ed., § 1-906; Feb. 26, 1981, D.C. Law 3-114, § 2(b), 27 DCR 5628.)

**Legislative history of Law 3-114.** — See note to § 1-1204.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

### § 1-1207. Damage to personal property of District employee incident to service.

Repealed.

(Aug. 31, 1964, Pub. L. 88-558, § 3(f); Oct. 12, 1968, 82 Stat. 998, Pub. L. 90-561; 1973 Ed., § 1-907; Sept. 13, 1982, 96 Stat. 877, Pub. L. 97-258, § 5(b).)

**Cross references.** — As to reenactment of this provision, see 31 U.S.C. § 3721.

*Subchapter II. Non-Liability of District Employees.*

**§ 1-1211. Definitions.**

As used in §§ 1-1211 to 1-1216 the term:

(1) "Mayor" means the Mayor of the District of Columbia, or his designated agent.

(2) "Court" means the court in the District of Columbia having the necessary civil jurisdiction pursuant to § 11-501 or 11-921.

(3) "District" means the government of the District of Columbia, a municipal corporation.

(4) "Emergency run" means the movement of a District-owned vehicle, by direction of the operator or of some other authorized person or agency, under circumstances which lead the operator or such persons or agency to believe that such vehicle should proceed expeditiously upon a particular mission or to a designated location for the purpose of dealing with a supposed fire or other emergency, an alleged violation of a statute or regulation, or other incident requiring emergency action, or the prompt transportation to a place of treatment or greater safety of an alleged sick or injured person.

(5) "Emergency vehicle" means a vehicle assigned:

(A) To the Fire Department of the District or to the Metropolitan Police Department and not designated by the Mayor as a nonemergency vehicle; or

(B) To other departments or officials of the District and designated by the Mayor as an emergency vehicle.

(6) "Employee" means a person serving as an officer or employee of the District, whether or not paid by the District, or a person formerly so engaged, or the representative of a deceased officer or employee of the District.

(7) "Vehicle" means every type of conveyance or machine capable of movement on land, or in water or air, including an animal being ridden and any animal-drawn machinery or conveyance.

(8) "Medical employees of the District of Columbia" shall include physicians, psychologists, dentists, optometrists, podiatrists, nurses, nursing assistants, emergency medical technician, emergency medical technician/intermediate paramedic, emergency medical technician/paramedic, physicians' assistants, laboratory technicians, physical therapists, osteopaths, chiropractors and chiropractors in the employment of the District of Columbia. (July 14, 1960, 74 Stat. 519, Pub. L. 86-654, § 2; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 575, Pub. L. 91-358, title I, § 157(h); 1973 Ed., § 1-921; Mar. 26, 1976, D.C. Law 1-59, § 2, 22 DCR 5473; Sept. 28, 1977, D.C. Law 2-25, § 4, 24 DCR 3718; Aug. 1, 1981, D.C. Law 4-25, § 4, 28 DCR 2622; April 9, 1997, D.C. Law 11-169, § 2, 43 DCR 4478.)

**Section references.** — This section is referred to in §§ 1-306, 1-1212, 1-1215, and 1-1216.

**Effect of amendments.** — D.C. Law 11-169 inserted "psychologists" in (8).

**Legislative history of Law 1-59.** — Law



1-59 was introduced in Council and assigned Bill No. 1-204, which was referred to the Committee on the Judiciary and the Committee on Criminal Law. The Bill was adopted on first and second readings on December 2, 1975 and December 16, 1975, respectively. Signed by the Mayor on January 9, 1976, it was assigned Act No. 1-84 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 2-25.** — Law 2-25 was introduced in Council and assigned Bill No. 2-136, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 14, 1977 and June 28, 1977, respectively. Signed by the Mayor on July 8, 1977, it was assigned Act No. 2-56 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 4-25.** — Law 4-25 was introduced in Council and assigned Bill No. 4-198, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 5, 1981, and May 19, 1981, respectively. Signed by the Mayor on June 5, 1981, it was assigned Act No. 4-46 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 11-169.** — Law 11-169, the "Commissioner Mental Health Services Psychologists Protection Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-115, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 4, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 19, 1996, it was assigned Act No. 11-316 and transmitted to both Houses of Congress for its review. D.C. Law 11-169 became effective on April 9, 1997.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Emergency vehicle.** — Trial court committed error in instructing the jury that a vehicle must have its siren activated to be an "emergency vehicle." *Abney v. District of Columbia*, App. D.C., 580 A.2d 1036 (1990).

Trial court erred in limiting the definition of an "emergency vehicle" to a police car with both the overhead lights and siren activated. *Abney v. District of Columbia*, App. D.C., 580 A.2d 1036 (1990).

**Cited in** *Biscoe v. Arlington County*, 738 F.2d 1352 (D.C. Cir. 1984), cert. denied, 469 U.S. 1159, 105 S. Ct. 909, 83 L. Ed. 2d 923 (1985); *Banks v. District of Columbia*, 120 WLR 1605 (Super. Ct. 1992); *District of Columbia v. Walker*, App. D.C., 689 A.2d 40 (1997).

## § 1-1212. Governmental immunity for negligent operation of vehicles by District employees.

Hereafter the District of Columbia shall not assert the defense of governmental immunity in any suit at law in which a claim is asserted against it for money only on account of damage to or loss of property or on account of personal injury or death caused by the negligent or wrongful act or omission of any employee of the District occurring as the result of the operation by such employee, within the scope of his office or employment, of a vehicle owned or controlled by the District: Provided, that in the case of a claim arising out of the operation of an emergency vehicle on an emergency run the District shall be liable only for gross negligence. Nothing contained in §§ 1-1211 to 1-1216 shall be construed as depriving the District of any other defense in law or equity which it may have to any such action or give to any person, corporation, partnership, or association any right to institute or maintain any suit against the District which it did not have prior to July 14, 1960. (July 14, 1960, 74 Stat. 519, Pub. L. 86-654, § 3; 1973 Ed., § 1-922.)

**Section references.** — This section is referred to in §§ 1-306, 1-1211, and 1-1213 to 1-1216.

**This section constitutes a reasonable exercise of police power.** *Rohrback v. Goff*, 197 F. Supp. 670 (D.D.C. 1961).

**This subtitle was intended to be applied retroactively** as well as prospectively. *Barrick v. District of Columbia*, App. D.C., 173 A.2d 372 (1961), *aff'd sub nom. Swenson v. Barrick*, 302 F.2d 927 (D.C. Cir. 1962).

**Retrospective application of this section is not unreasonable** where the plaintiff's conduct would not have been different if the immunity rule had been known or its change foreseen at the time of the accident. *Rohrback v. Goff*, 197 F. Supp. 670 (D.D.C. 1961).

**But retroactive application was unconstitutional** where it deprived a motorist of the common-law right of action to recover against a District ambulance driver who was on an emergency run at the time of the accident. *Barrick v. District of Columbia*, App. D.C., 173 A.2d 372 (1961), *aff'd sub nom. Swenson v. Barrick*, 302 F.2d 927 (D.C. Cir. 1962).

**The phrase "arising out of the operation" includes contemporaneous decisions to operate** given that waivers of immunity generally are to be read narrowly. *Abney v. District of Columbia*, App. D.C., 580 A.2d 1036 (1990).

**"Gross negligence."** — The term "gross negligence" in this section 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; this standard connotes that the actor has engaged in conduct so extreme as to imply some sort of bad faith. *District of Columbia v. Walker*, App. D.C., 689 A.2d 40 (1997).

The interpretation of the gross negligence standard in this section is a question of law for the court. *District of Columbia v. Walker*, App. D.C., 689 A.2d 40 (1997).

**Conduct of employees of United States.** — The standard of care to which the United States must be held where federal officer's high-speed chase of a criminal suspect occurred in the District, is that of due care, or negligence, as set forth in District of Columbia regulations. Although the United States may be liable for conduct for which the District of Columbia is immune, this result follows directly from interpretation of the Federal Tort Claims Act. *Hetzel v. United States*, 43 F.3d 1500 (D.C. Cir. 1995).

**Emergency vehicles.** — Negligent supervision claim is one "arising out of" the operation of an emergency vehicle on an emergency run, and the gross negligence standard of this section does apply. *District of Columbia v. Banks*, App. D.C., 646 A.2d 972 (1994).

This section's provision that "in the case of a claim arising out of the operation of an emergency vehicle on an emergency run the District shall be liable only for gross negligence" is nothing more than a qualification to the general waiver of governmental immunity expressed in the first part of this section. *Hetzel v. United States*, 43 F.3d 1500 (D.C. Cir. 1995).

To permit a jury to find the District of Columbia liable for negligent training in connection with the operation of an emergency vehicle on an emergency run on an ordinary negligence standard without a showing that someone acting for the District was grossly negligent would eviscerate the substantive requirements of this section. *Hawkins v. District of Columbia*, 124 WLR 1125 (Super. Ct. 1996).

An officer did not act with gross negligence in causing a collision with a civilian vehicle when he began to cross an intersection on a legitimate emergency at only five to ten miles per hour above the speed limit, with his emergency lights blinking and sirens blaring, his high-beam headlights activated and he applied his brakes as he entered the intersection. *District of Columbia v. Henderson*, App. D.C., 710 A.2d 874 (1998).

**The public duty doctrine does not apply** where the issue is whether a police officer conducting a vehicular chase in a densely populated area was grossly negligent. *Banks v. District of Columbia*, 120 WLR 1605 (Super. Ct. 1992).

**Gross negligence standard of this section does not protect employees.** *Biscoe v. Arlington County*, 738 F.2d 1352 (D.C. Cir. 1984), cert. denied, 469 U.S. 1159, 105 S. Ct. 909, 83 L. Ed. 2d 923 (1985).

**Gross negligence standard not applicable to liability of Virginia county or its police officers** for injuries to an innocent bystander arising out of negligent high-speed pursuit of bank robbery suspect into the District of Columbia. *Biscoe v. Arlington County*, 738 F.2d 1352 (D.C. Cir. 1984), cert. denied, 469 U.S. 1159, 105 S. Ct. 909, 83 L. Ed. 2d 923 (1985).

**Pursuit of fleeing wrongdoer.** — This section contemplates that the District of Columbia shall be liable to a person injured in the pursuit of a fleeing wrongdoer if that injury is the result of the District's gross negligence; the duty not to be grossly negligent can be owed only to persons injured in such a pursuit, and the identities of such persons cannot be known to the District in advance. *District of Columbia v. Banks*, App. D.C., 646 A.2d 972 (1994).

District police officers' conduct in pursuing the underage driver of a stolen vehicle in a high-speed chase into Maryland did not rise to the level of gross negligence; therefore, the District could not be held liable under the District of Columbia Employee Non-Liability

Act for the death of the driver of another vehicle killed in a collision with the stolen vehicle. *District of Columbia v. Walker*, App. D.C., 689 A.2d 40 (1997).

An interpretation of this section that would hold the District liable for gross negligence in training police officers with regard to pursuit procedures, even though the officers involved in the pursuit at issue were merely negligent or not even negligent at all, would in effect impose liability for "operation of an emergency vehicle" that was not itself grossly negligent. *District of Columbia v. Walker*, App. D.C., 689 A.2d 40 (1997).

Under this section, a claim brought against the District for negligently training its police officers with regard to pursuit procedures must meet the standard of gross negligence, and not merely that of ordinary negligence. *District of Columbia v. Walker*, App. D.C., 689 A.2d 40 (1997).

**Jury instructions.** — Instruction to the jury, that plaintiff's negligent supervision claim could have been made out by proving ordinary negligence on the part of sergeant, rather than gross negligence, was contrary to this section and erroneous, however, because the District never objected to the instruction, nor did it express any dissatisfaction with it, either directly or indirectly, the error was harmless. *District of Columbia v. Banks*, App. D.C., 646 A.2d 972 (1994).

**Cited in** *Gibbs v. District of Columbia*, App. D.C., 180 A.2d 891 (1962); *Van Voorhis v. District of Columbia*, 236 F. Supp. 978 (D.D.C. 1965); *Van Voorhis v. District of Columbia*, 240 F. Supp. 822 (D.D.C. 1965); *Weaver v. Irani*, App. D.C., 222 A.2d 846 (1966); *Powell v. District of Columbia*, App. D.C., 602 A.2d 1123 (1992).

### **§ 1-1213. Action against employee barred by judgment against District; notice of claim; administrative disposition of claim as evidence.**

The judgment in any such action shall constitute a complete bar to any action by the claimant by reason of the same subject matter against the employee of the District whose act or omission gave rise to the claim. No suit shall be instituted involving any claim described in § 1-1212 unless the claimant shall have first given notice to the District in accordance with § 12-309 and shall have presented to the District in writing a claim for money damages in connection therewith, and the District has had 6 months from the date of such filing within which to make final disposition of such claim. The administrative disposition of a claim by the District shall not be competent evidence of liability or amount of damages in proceedings on any such claim. (July 14, 1960, 74 Stat. 519, Pub. L. 86-654, § 4; 1973 Ed., § 1-923.)

**Section references.** — This section is referred to in §§ 1-306, 1-1211, 1-1212, 1-1215, and 1-1216.

**Cited in** *District of Columbia Rent-A-Car Co. v. Cochran*, App. D.C., 463 A.2d 696 (1983); *Bond v. Serano*, App. D.C., 566 A.2d 47 (1989).

### **§ 1-1214. Excessive verdicts.**

In any case involving any claim described in § 1-1212 in which the trial court shall consider the verdict excessive, the court may order a remittitur of so much of the amount of such verdict or judgment, as the case may be, as it considers excessive, and either permit the party in whose favor the verdict was rendered or the party recovering such judgment, as the case may be, to file a remittitur. (July 14, 1960, 74 Stat. 520, Pub. L. 86-654, § 5; 1973 Ed., § 1-924.)

**Section references.** — This section is referred to in §§ 1-306, 1-1211, 1-1212, 1-1215, and 1-1216.

**§ 1-1215. Actions against District employees for negligent operation of vehicles barred; indemnification of medical employees; disciplinary actions.**

(a) After the effective date of §§ 1-1211 to 1-1216, no civil action or proceeding shall be brought or be maintained against an employee of the District for loss of or damage to property or for personal injury, including death, resulting from the operation by such employee of any vehicle if it be alleged in the complaint or developed in a later stage of the proceeding that the employee was acting within the scope of his office or employment, unless the District shall, in an action brought against it for such damage or injury, including death, specifically deny liability on the ground that the employee was not, at the time and place alleged, acting within the scope of his office or employment. If in any such civil action or proceeding pending in a court in the District of Columbia as of the effective date of §§ 1-1211 to 1-1216 the District has not been named as a defendant, said District shall be joined as a defendant and after its answer has been filed and subject to the provisions of the preceding sentence, the action shall be dismissed as to the employee and the case shall proceed as if the District had been a party defendant from the inception thereof.

(b) Whenever in a case in which the District of Columbia is not a party, a final judgment and order to pay money damages is entered against a medical employee of the District of Columbia on account of damage to or loss of property or on account of personal injury or death caused by the negligent act or omission of the medical employee within the scope of his employment and performance of professional responsibilities, the District of Columbia shall, to the extent the medical employee is not covered by appropriate insurance purchased by the District of Columbia, indemnify the employee in the amount of said money damages.

(c) Nothing in this section shall be construed to restrict appropriate disciplinary action by the District of Columbia against any employee for a negligent act or omission. (July 14, 1960, 74 Stat. 520, Pub. L. 86-654, § 6; 1973 Ed., § 1-925; Mar. 26, 1976, D.C. Law 1-59, § 3, 22 DCR 5473.)

**Section references.** — This section is referred to in §§ 1-306, 1-1211, 1-1212, and 1-1216.

**Legislative history of Law 1-59.** — See note to § 1-1211.

**This subtitle was intended to be applied retroactively** as well as prospectively. *Barrick v. District of Columbia*, App. D.C., 173 A.2d 372 (1961), *aff'd sub nom. Swenson v. Barrick*, 302 F.2d 927 (D.C. Cir. 1962).

**But retrospective application was unconstitutional** where it deprived motorist of the common-law right of action to recover against a District ambulance driver who was on

an emergency run at the time of the accident. *Barrick v. District of Columbia*, App. D.C., 173 A.2d 372 (1961), *aff'd sub nom. Swenson v. Barrick*, 302 F.2d 927 (D.C. Cir. 1962).

**Section precludes action against coemployee.** *Davis v. Harrod*, 407 F.2d 1280 (D.C. Cir. 1969).

**Cited in** *Gibbs v. District of Columbia*, App. D.C., 180 A.2d 891 (1962); *Van Voorhis v. District of Columbia*, 236 F. Supp. 978 (D.D.C. 1965); *Weaver v. Irani*, App. D.C., 222 A.2d 846 (1966); *Gaines v. Walker*, 986 F.2d 1438 (D.C. Cir. 1993).

## § 1-1216. Liability of employee to District for negligent damage to its property.

Nothing in §§ 1-1211 to 1-1216 shall be construed so as to relieve any District employee from liability to the District for negligent damage to or loss of District property. (July 14, 1960, 74 Stat. 520, Pub. L. 86-654, § 7; 1973 Ed., § 1-926.)

**Section references.** — This section is referred to in §§ 1-306, 1-1211, 1-1212, and 1-1215.

### *Subchapter III. Unjust Imprisonment.*

## § 1-1221. Right to present claim.

Any person unjustly convicted of and subsequently imprisoned for a criminal offense contained in the District of Columbia Code may present a claim for damages against the District of Columbia. (Mar. 5, 1981, D.C. Law 3-143, § 2, 27 DCR 4656.)

**Section references.** — This section is referred to in § 1-1222.

**Legislative history of Law 3-143.** — Law 3-143 was introduced in Council and assigned Bill No. 3-251, which was referred to the Committee on the Judiciary. The Bill was adopted

on first and second readings on July 29, 1980 and September 16, 1980, respectively. Signed by the Mayor on October 14, 1980, it was assigned Act No. 3-264 and transmitted to both Houses of Congress for its review.

## § 1-1222. Proof required.

Any person bringing suit under § 1-1221 must allege and prove:

(1) That his conviction has been reversed or set aside on the ground that he is not guilty of the offense of which he was convicted, or on new trial or rehearing was found not guilty of such offense, as appears from the record or certificate of the court setting aside or reversing such conviction, or that he has been pardoned upon the stated ground of innocence and unjust conviction; and

(2) That, based upon clear and convincing evidence, he did not commit any of the acts charged or his acts or omissions in connection with such charge constituted no offense against the United States or the District of Columbia the maximum penalty for which would equal or exceed the imprisonment served and he did not, by his misconduct, cause or bring about his own prosecution. (Mar. 5, 1981, D.C. Law 3-143, § 3, 27 DCR 4656.)

**Section references.** — This section is referred to in § 1-1223.

**Legislative history of Law 3-143.** — See note to § 1-1221.

**Relief of subchapter not available.** — Defendant who served an excessive sentence due to judicial error, had no cognizable rights under this Act: defendant's sentence was corrected, his conviction was not reversed or set aside and he was not pardoned upon the stated

ground of innocence and unjust conviction, and defendant entered a guilty plea to attempted unauthorized use of a vehicle (UUV), putting him outside the protection of the Act because (1) attempted UUV is an offense against the District; and (2) the Act specifically denies relief to persons who entered guilty pleas. *McAllister v. District of Columbia*, App. D.C., 653 A.2d 849 (1995).

**§ 1-1223. Damages.**

Upon a finding by the judge of unjust imprisonment in accordance with the standards set by § 1-1222, the judge may award damages. Punitive damages may not be awarded. (Mar. 5, 1981, D.C. Law 3-143, § 4, 27 DCR 4656.)

**Legislative history of Law 3-143.** — See note to § 1-1221.

**§ 1-1224. Application of subchapter — Date of release.**

This subchapter shall apply to any person whose release from unjust imprisonment occurred on or after June 1, 1979: Provided, that the provisions of § 12-309 shall not apply to any cause of action for unjust imprisonment arising prior to the effective date of this subchapter. (Mar. 5, 1981, D.C. Law 3-143, § 5, 27 DCR 4656.)

**Legislative history of Law 3-143.** — See note to § 1-1221.

**§ 1-1225. Same — Entry of guilty plea.**

This subchapter shall not apply to any person whose conviction resulted from his entering a plea of guilty unless that plea was pursuant to North Carolina v. Alford, 400 U.S. 25 (1970). (Mar. 5, 1981, D.C. Law 3-143, § 6, 27 DCR 4656.)

**Legislative history of Law 3-143.** — See note to § 1-1221.

**Relief of subchapter not available.** — Defendant who served an excessive sentence due to judicial error, had no cognizable rights under this Act: defendant's sentence was corrected, his conviction was not reversed or set aside and he was not pardoned upon the stated ground of innocence and unjust conviction, and

defendant entered a guilty plea to attempted unauthorized use of a vehicle (UUV), putting him outside the protection of the Act because (1) attempted UUV is an offense against the District; and (2) the Act specifically denies relief to persons who entered guilty pleas. *McAllister v. District of Columbia*, App. D.C., 653 A.2d 849 (1995).

## CHAPTER 13. ELECTIONS.

*Subchapter I. General Provisions.*

Sec.

- 1-1301. Election of electors.
- 1-1302. Definitions.
- 1-1303. Board of Elections and Ethics — Created; composition; term of office; vacancies; reappointment; designation of Chairman [Charter Provision].
- 1-1304. Same — Qualifications; prohibited activities; compensation; removal; time for filling vacancy.
- 1-1305. Same — Occupying another office; compensation from other sources.
- 1-1306. Same — Duties.
- 1-1307. Council authority over elections.
- 1-1308. Election wards.
- 1-1309. Multilingual election materials.
- 1-1310. Board independent agency; facilities; seal.
- 1-1311. Voter.
- 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.
- 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.

Sec.

- 1-1314. Dates for holding elections; votes cast for President and Vice President counted as votes for presidential electors; voting hours; tie votes; filling vacancy where elected official dies, resigns, or becomes unable to serve.
- 1-1315. Recount; judicial review of election.
- 1-1316. Interference with registration and voting.
- 1-1317. Appropriations.
- 1-1318. Corrupt election practices.
- 1-1319. Candidacy for more than 1 office prohibited; multiple nominations; candidacy of officeholder for another office restricted.
- 1-1320. Initiative and referendum process.
- 1-1321. Recall process.
- 1-1322. Timeliness of action.
- 1-1323. Severability.
- 1-1324. Issuance of rules and regulations.
- 1-1325. Applicability of § 1-1320 to initiative petitions circulated on or after October 1, 1978, and before June 7, 1979.
- 1-1326. Effective date.

*Subchapter II. Election Area Boundaries.*

- 1-1331. Establishment of ward task forces on Advisory Neighborhood Commissions.
- 1-1332. Report of ward task forces.
- 1-1333. Adoption of election ward boundaries effective January 1, 1992.
- 1-1334. Residency requirement.

*Subchapter I. General Provisions.***§ 1-1301. Election of electors.**

In the District of Columbia electors of President and Vice President of the United States, the Delegate to the House of Representatives, the members of the Board of Education, the members of the Council of the District of Columbia, the Mayor and the following officials of political parties in the District of Columbia shall be elected as provided in this subchapter:

- (1) National committeemen and national committee women;
- (2) Delegates to conventions and conferences of political parties including delegates to nominate candidates for the Presidency and Vice Presidency of the United States: Provided, that all elections for delegates to conventions and conferences of political parties, upon the request of the said party, shall be scheduled at the same time as primary, general, or special elections already scheduled for other purposes;

(3) Alternates to the officials referred to in paragraphs (1) and (2) of this section, where permitted by political party rules; and

(4) Such members and officials of local committees of political parties as may be designated by the duly authorized local committees of such parties for election at large or by ward in the District of Columbia. (Aug. 12, 1955, 69 Stat. 699, ch. 862, § 1; Oct. 4, 1961, 75 Stat. 817, Pub. L. 87-389, § 1(1); Apr. 22, 1968, 82 Stat. 103, Pub. L. 90-292, § 4(1); Sept. 22, 1970, 84 Stat. 853, Pub. L. 91-405, title II, § 205(e)(1); Dec. 23, 1971, 85 Stat. 788, Pub. L. 92-220, § 1(1); 1973 Ed., § 1-1101; Dec. 24, 1973, 87 Stat. 832, Pub. L. 93-198, title VII, § 751(1); Aug. 18, 1978, D.C. Law 2-101, § 2, 25 DCR 257; Mar. 16, 1982, D.C. Law 4-88, § 2(a), 29 DCR 458.)

**Section references.** — This section is referred to in §§ 1-113, 1-1312, 1-1314, 1-1421, and 1-1431.

**Legislative history of Law 2-101.** — Law 2-101 was introduced in Council and assigned Bill No. 2-218, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 2, 1978 and May 16, 1978, respectively. Signed by the Mayor on June 15, 1978, it was assigned Act No. 2-207 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 4-88.** — Law

4-88, the "District of Columbia Election Code of 1955," was introduced in Council and assigned Bill No. 4-271, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 24, 1981 and December 8, 1981, respectively. Signed by the Mayor on January 20, 1982, it was assigned Act No. 4-142 and transmitted to both Houses of Congress for its review.

**Cited in** *Stevenson v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 683 A.2d 1371 (1996).

## § 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, 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.)

**Cross references.** — As to establishment of election wards by Council, see § 1-1308.

**Section references.** — This section is referred to in §§ 1-260, 1-401, 1-1311, and 31-101.

**Legislative history of Law 1-79.** — Law 1-79 was introduced in Council and assigned Bill No. 1-120, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 3, 1976 and May 18, 1976, respectively. Signed by the Mayor on June 18, 1976, it was assigned Act No. 1-131 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 1-126.** — Law 1-126 was introduced in Council and assigned Bill No. 1-364, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 22, 1976 and December 7, 1976, respectively. Enacted without signature by the Mayor on January 25, 1977, it was assigned Act No. 1-225 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 3-1.** — Law 3-1 was introduced in Council and assigned Bill No. 3-2, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on March 13, 1979 and March 27, 1979, respectively. Signed by the Mayor on April 10, 1979, it was assigned Act No. 3-18 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 4-88.** — See note to § 1-1301.

**Legislative history of Law 5-17.** — Law 5-17 was introduced in Council and assigned Bill No. 5-11, which was referred to the Committee on Government Operations. The Bill was adopted on first, amended first and second readings on April 26, 1983, May 10, 1983 and May 24, 1983, respectively. Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-34 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 10-173.** — Law 10-173, the "National Voter Registration Act Conforming Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-572, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on 10-293, it was assigned Act No. 10-293 and transmitted to both Houses of Congress for its review. D.C. Law 10-173 became effective on September 22, 1994.

**Legislative history of Law 11-30.** — Law 11-30, the "Technical Amendments Act of 1995," was introduced in Council and assigned Bill No. 11-58, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on February 7, 1995, and

March 7, 1995, respectively. Signed by the Mayor on March 22, 1995, it was assigned Act No. 11-32 and transmitted to both Houses of Congress for its review. D.C. Law 11-30 became effective on July 25, 1995.

**References in text.** — "The District of Columbia Self-Government and Governmental Reorganization Act," referred to in paragraphs (8) and (9), is the Act of December 24, 1973, 87 Stat. 774, Pub. L. 93-198.

The National Voter Registration Act, referred to in (17), is classified at Pub. L. 103-31, May 20, 1993, 107 Stat. 77.

**No federal jurisdiction found.** — Federal district court lacked jurisdiction to determine whether the registration of student voters who consider their permanent residence to be outside the District violates D.C. law. *Scolaro v. Dist. of Columbia Bd. of Elections*, 946 F. Supp. 80 (D.D.C. 1996).

**Proposers.** — The provision requiring the proposer to be a resident of the district and a qualified elector cannot be reasonably construed to require the Board to begin the process all over again when a qualified elector is available to substitute for the proposer who had moved away; to construe the statute to so require would place unwarranted and disfavored impediments on the right to vote and would do so for purely technical reasons. *Stevenson v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 683 A.2d 1371 (1996).

**Residency.** — Where Board of Elections and Ethics took extraordinary action in depriving petitioner of her electoral victory and the voters of the Advisory Neighborhood Commission of their chosen representative on the grounds of petitioner's nomadic residence, it was obligated to state with clarity the reasoning behind its decision. *Williams-Godfrey v. District of Columbia Bd. of Elections*, App. D.C., 570 A.2d 737 (1990).

**Notice of residency requirement.** — Even though the Board's voter registration form fails to use the words "resides or is domiciled," the form nevertheless complies with § 1-1311 in that it puts a prospective voter on notice that he or she must be a D.C. resident as defined by law. *Scolaro v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 691 A.2d 77 (1997).

**Jurisdiction of the courts.** — Proposed initiative creating an Office of Public Advocate for Assessments and Taxation with authority to appeal tax assessments by Mayor to Superior Court and Court of Appeals did not expand the jurisdiction of the courts in violation of § 1-233(a)(4). *Hessey v. Burden*, App. D.C., 584 A.2d 1 (1990).

**Cited in** *Smith v. United States*, 361 F.2d 74 (D.C. Cir. 1966); *Convention Ctr. Referendum Comm. v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 441 A.2d 871 (1980), aff'd

on rehearing, App. D.C., 441 A.2d 889 (1981); Dankman v. District of Columbia Bd. of Elections & Ethics, App. D.C., 443 A.2d 507 (1981); District of Columbia Bd. of Elections & Ethics v. Jones, App. D.C., 495 A.2d 752 (1985); Lawrence v. District of Columbia Bd. of Elec-

tions & Ethics, App. D.C., 611 A.2d 529 (1992); Hessey v. Burden, App. D.C., 615 A.2d 562 (1992); Bates v. District of Columbia Bd. of Elections & Ethics, App. D.C., 625 A.2d 891 (1993).

**§ 1-1303. Board of Elections and Ethics — Created; composition; term of office; vacancies; reappointment; designation of Chairman [Charter Provision].**

(a) There is created a District of Columbia Board of Elections and Ethics (hereafter in this subchapter referred to as the "Board"), to be composed of 3 members, no more than 2 of whom shall be of the same political party, appointed by the Mayor, with the advice and consent of the Council. Members shall be appointed to serve for terms of 3 years, except the members 1st appointed under this subchapter. One member shall be appointed to serve for a 1-year term, 1 member shall be appointed to serve for a 2-year term, and 1 member shall be appointed to serve for a 3-year term, as designated by the Mayor.

(b) Any person appointed to fill a vacancy on the Board shall be appointed only for the unexpired term of the member whose vacancy he or she is filling.

(c) A member may be reappointed, and, if not reappointed, the member shall serve until his successor has been appointed and qualifies.

(d) The Mayor shall, from time to time, designate the Chairman of the Board. (Aug. 12, 1955, 69 Stat. 699, ch. 862, § 3; Oct. 4, 1961, 75 Stat. 817, Pub. L. 87-389, § 1(2); 1973 Ed., § 1-1103; Dec. 24, 1973, 87 Stat. 809, Pub. L. 93-198, title IV, § 491; 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(2), 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, 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(c), (p), (q), 29 DCR 458.)

**Charter provisions.** — This section of the D.C. Code is § 491 of the District Charter as enacted by Title IV of the District of Columbia Self-Government and Governmental Reorganization Act, December 24, 1973, 87 Stat. 820, Pub. L. 93-198. The District of Columbia Self-Government and Governmental Reorganization Act is set out in its entirety in Volume 1.

**Cross references.** — As to establishment of Office of Director of Campaign Finance, see § 1-1431.

**Section references.** — This section is referred to in §§ 1-299.2, 1-633.7, 1-1302, and 1-1462.

**Legislative history of Law 1-79.** — See note to § 1-1302.

**Legislative history of Law 1-126.** — See note to § 1-1302.

**Legislative history of Law 2-101.** — See note to § 1-1301.

**Legislative history of Law 4-88.** — See note to § 1-1301.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and

the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Definitions applicable.** — The definitions contained in § 1-202 apply to terms appearing

in the amendment to this section made by the Act of December 24, 1973, 87 Stat. 809, Pub. L. 93-198.

**Cited in** Dankman v. District of Columbia Bd. of Elections & Ethics, App. D.C., 443 A.2d 507 (1981).

### **§ 1-1304. Same — Qualifications; prohibited activities; compensation; removal; time for filling vacancy.**

(a) No person shall be a member of the Board unless he or she qualifies as an elector and resides in the District. No person may be appointed to the Board unless he or she has resided in the District continuously since the beginning of the 3-year period ending on the day he or she is appointed. Members of the Board shall hold no other paid office or employment in the District government and shall hold no active office, position or employment in the federal government. Not more than 2 members shall be members of the same political party.

(b) No person, while a member of the Board, shall:

(1) Campaign for any other public office;

(2) Hold any office in any political party or political committee;

(3) Participate in or contribute to any political campaign of any candidate in any election held under this chapter;

(4) Act in his or her capacity as a member, to directly or indirectly attempt to influence any decision of a District government agency, department, or instrumentality relating to any action which is beyond the jurisdiction of the Board; or

(5) Be convicted of having committed a felony in the District of Columbia; or if the crime is committed elsewhere, conviction of such offense as would be a felony in the District of Columbia.

(c)(1) Each member of the Board, excluding the Chairman, shall receive compensation, as provided in § 1-612.8, while actually in the service of the Board, not to exceed the sum of \$12,500 per annum.

(2) The Chairman of the Board shall receive compensation, as provided in § 1-612.8, while actually in the service of the Board, not to exceed the sum of \$26,500 per annum.

(d)(1) The Mayor may remove any member of the Board who engages in any activity prohibited by subsection (a) or (b) of this section, and appoint a new member to serve until the expiration of the term of the member so removed. When the Mayor believes that any member has engaged in any such activity he or she shall notify such member, in writing, of the charge against him or her and that such member has 7 days in which to request a hearing before the Council on such charge. If such member fails to request a hearing within 7 days after receiving such notice then the Mayor may remove such member and appoint a new member.

(2) The hearing requested by a member may be either open or closed, as requested by such member. In the event such hearing is closed, the vote of the Council as a result of such hearing shall be taken at an open meeting of the

Council. The Council shall begin such hearings within 60 calendar days after receiving notice from the Mayor indicating that a member has requested such a hearing. If two-thirds of the Council vote to remove such member then such member shall be removed.

(e) Any vacancy occurring on the Board shall be filled within 45 days after the occurrence of such vacancy, excluding Saturdays, Sundays, and holidays. (Aug. 12, 1955, 69 Stat. 699, ch. 862, § 4; Sept. 22, 1970, 84 Stat. 854, Pub. L. 91-405, title II, § 205(i); Dec. 23, 1971, 85 Stat. 794, Pub. L. 92-220, § 1(26); 1973 Ed., § 1-1104; Aug. 14, 1974, 88 Stat. 471, Pub. L. 93-376, title VII, § 706(b); Sept. 2, 1976, D.C. Law 1-79, title I, § 102(3), (4), 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title I, § 103(a), title IV, § 402, 24 DCR 2372; Mar. 10, 1978, D.C. Law 2-50, § 2, 24 DCR 4806; 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; Aug. 7, 1980, D.C. Law 3-81, § 2(gg), 27 DCR 2632; Mar. 16, 1982, D.C. Law 4-88, § 2(n), (q), (s), 29 DCR 458.)

**Cross references.** — As to effective date of D.C. Law 2-139, see § 1-637.1.

**Section references.** — This section is referred to in § 1-637.1.

**Legislative history of Law 1-79.** — See note to § 1-1302.

**Legislative history of Law 1-126.** — See note to § 1-1302.

**Legislative history of Law 2-50.** — Law 2-50 was introduced in Council and assigned Bill No. 2-153, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 25, 1977 and November 8, 1977, respectively. There being no action by the Mayor, it was assigned Act No. 2-106 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 2-101.** — See note to § 1-1301.

**Legislative history of Law 2-139.** — Law 2-139 was introduced in Council and assigned

Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 3-81.** — Law 3-81 was introduced in Council and assigned Bill No. 3-236, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 22, 1980 and May 20, 1980, respectively. Signed by the Mayor on June 4, 1980, it was assigned Act No. 3-195 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 4-88.** — See note to § 1-1301.

## § 1-1305. Same — Occupying another office; compensation from other sources.

(a) Except as provided in this subchapter, no person shall be ineligible to serve or to receive compensation as a member of the Board because he occupies another office or position or because he receives compensation (including retirement compensation) from another source.

(b) The right to another office or position or to compensation from another source otherwise secured to such a person under the laws of the United States shall not be abridged by the fact of his service or receipt of compensation as a member of such Board, if such service does not interfere with the discharge of his duties in such other office or position. (1973 Ed., § 1-1104a; Dec. 24, 1973, 87 Stat. 822, Pub. L. 93-198, title VII, § 733; Aug. 14, 1974, 88 Stat. 458, Pub. L. 93-376, title III, § 306(a); Mar. 16, 1982, D.C. Law 4-88, § 2(o), 29 DCR 458.)

**Section references.** — This section is referred to in § 1-637.1.

**Legislative history of Law 4-88.** — See note to § 1-1301.

## § 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. (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.)

**Cross references.** — As to conduct of elections to Advisory Neighborhood Commissions, see §§ 1-257 and 1-260.

As to use of volunteer services, see § 1-304.

As to effective date of D.C. Law 2-139, see § 1-637.1.

**Section references.** — This section is referred to in §§ 1-257, 1-637.1, 1-1319, and 1-1321.

**Temporary amendment of section.** — Section 2 of D.C. Law 12-179 added (h) to read as follows:

“(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 all documentary evidence 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 testimony and the production of evidence in the same manner as authorized pursuant to subparagraph (A) of this paragraph.

“(2) In the case of a refusal to obey a subpoena or order of the Board issued pursuant to this subsection, the Board may petition the Superior Court of the District of Columbia to enforce the subpoena or order. Any person failing to obey the Court’s order may be held in contempt of court.”

Section 4(b) of D.C. Law 12-179 provided that the act shall expire after 225 days of its having taken effect or on the effective date of the District of Columbia Board of Elections and Ethics Subpoena Authority Amendment Act of 1998, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 2 of the District of Columbia Board of Elections and Ethics Subpoena Authority Emergency Amendment Act of 1998 (D.C. Act 12-409, July 22, 1998, 45 DCR 5178), see § 2 of the Board of Elections and Ethics Subpoena Authority Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-462, October 28, 1998, 45 DCR 7816), and see § 2 of the Board of Elections and Ethics Subpoena Authority Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-2, February 8, 1999, 46 DCR 2286).

**Legislative history of Law 1-37.** — Law 1-37 was introduced in Council and assigned Bill No. 1-69, which was referred to the Committee on Governmental Operations. The Bill was adopted on first and second readings on July 29, 1975 and September 9, 1975, respectively. Signed by the Mayor on October 6, 1975, it was assigned Act No. 1-51 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 1-38.** — Law 1-38 was introduced in Council and assigned Bill No. 1-78, which was referred to the Committee on Governmental Operations. The Bill was adopted on first and second readings on July 29, 1975 and September 9, 1975, respectively. Signed by the Mayor on October 6, 1975, it was assigned Act No. 1-52 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 1-45.** — Law 1-45 was introduced in Council and assigned Bill No. 1-184, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 7, 1975 and October 21, 1975, respectively. Signed by the Mayor on November 7, 1975, it was assigned Act No. 1-65 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 1-79.** — See note to § 1-1302.

**Legislative history of Law 1-126.** — See note to § 1-1302.

**Legislative history of Law 2-12.** — Law 2-12 was introduced in Council and assigned Bill No. 2-87, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on March 22, 1977 and April 5, 1977, respectively. Signed by the Mayor on April 26, 1977, it was assigned Act No. 2-33 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 2-101.** — See note to § 1-1301.

**Legislative history of Law 2-139.** — See note to § 1-1304.

**Legislative history of Law 4-35.** — Law 4-35 was introduced in Council and assigned Bill No. 4-229, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 16, 1981 and June 30, 1981, respectively. Signed by the Mayor on July 20, 1981, it was assigned Act No.

4-62 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 4-88.** — See note to § 1-1301.

**Legislative history of Law 4-120.** — Law 4-120 was introduced in Council and assigned Bill No. 4-235, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on April 6, 1982 and April 27, 1982, respectively. Signed by the Mayor on May 11, 1982, it was assigned Act No. 4-183 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 5-17.** — See note to § 1-1302.

**Legislative history of Law 7-36.** — Law 7-36 was introduced in Council and assigned Bill No. 7-221, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 16, 1987 and June 30, 1987, respectively. Signed by the Mayor on July 23, 1987, it was assigned Act No. 7-64 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 7-92.** — Law 7-92 was introduced in Council and assigned Bill No. 7-321, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 8, 1987 and January 5, 1988, respectively. Signed by the Mayor on January 25, 1988, it was assigned Act No. 7-134 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 9-75.** — Law 9-75 was introduced in Council and assigned Bill No. 9-242, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 5, 1991, and December 3, 1991, respectively. Signed by the Mayor on January 3, 1992, it was assigned Act No. 9-127 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 12-179.** — Law 12-179, the "Board of Elections and Ethics Subpoena Authority Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-686. The Bill was adopted on first and second readings on June 16, 1998, and July 7, 1998, respectively. Signed by the Mayor on July 20, 1998, it was assigned Act No. 12-422 and transmitted to both Houses of Congress for its review. D.C. Law 12-179 became effective on March 26, 1999.

**References in text.** — "Section 101 of the Federal Voting Assistance Act of 1955," referred to in (a)(10), was formerly codified at 42 U.S.C. § 1973cc, but was repealed by Pub. L. 99-410, Title II, § 203, August 28, 1986, 100 Stat. 930.

The "Overseas Citizens Voting Rights Act of 1975," referred to in (a)(13), was formerly codified at 42 U.S.C. § 1973dd et seq., but was

repealed by Pub. L. 99-410, Title II, § 203, August 28, 1986, 100 Stat. 930.

**Precinct boundaries approved.** — Pursuant to § 1-1306(a)(8), § 2 of D.C. Law 7-36 approved boundary divisions for Precincts 50, 71, and 112 and the boundary line between Precincts 11 and 12.

**Voting accessibility for the elderly and handicapped.** — Public Law 98-435 enacted the Voting Accessibility for the Elderly and Handicapped Act.

**Adjustments to voting precinct boundaries approved.** — Pursuant to Resolution 9-120 by the Council of the District of Columbia, The "Precinct Boundary Changes Approval Resolution of 1991," the Council of the District of Columbia disapproved in part, and approved in part, the adjustments to voting precinct boundaries as adopted by the Board of Elections and Ethics on September 6, 1991, to be effective January 1, 1992: the Council disapproved the proposed change in the boundary between precinct 127 (Ward 2) and precinct 131 (Ward 6); the Council approved all of the remaining proposed changes affecting precincts 1, 5, 6, 7, 8, 11, 12, 13, 14, 83, 114, 119, 128, 130, 131, 132, 133, and 134, and a map was included of such changes.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Purpose of subsection (g).** — Subsection (g) is a procedural provision meant simply to authorize the use of one-member panels where otherwise the full Board would have to sit, and not to expand the substantive jurisdiction of this court over direct agency appeals. *Lawrence v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 611 A.2d 529 (1992).

**Write-in votes for President.** — The Board should exercise its rule-making power to facilitate write-in votes for candidates for President and Vice President. *Kamins v. Board of Elections*, App. D.C., 324 A.2d 187 (1974).

**Construction of statute by judge not intrusion on Board's authority.** — Where judge responded affirmatively to the Board's request that he perform the judicial task of construing the statute, he did not intrude upon the authority of the Board. *Stevenson v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 683 A.2d 1371 (1996).

**Cited in** *Doe v. Martin*, 404 F. Supp. 753 (D.D.C. 1975); *Hanke v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 353 A.2d

301 (1976); *Foley v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 358 A.2d 305 (1976); *Dankman v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 443 A.2d 507 (1981); *White v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 537 A.2d 1133 (1988); *Scolaro v. Dist. of Columbia Bd. of Elections*, 946 F. Supp. 80 (D.D.C. 1996); *Scolaro v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 691 A.2d 77 (1997).

## § 1-1307. Council authority over elections.

Notwithstanding any other provision of this subchapter or of any other law, the Council shall have authority to enact any act or resolution with respect to matters involving or relating to elections in the District. (1973 Ed., § 1-1105a; Dec. 24, 1973, 87 Stat. 836, Pub. L. 93-198, title VII, § 752.)

**Section references.** — This section is referred to in §§ 1-208 and 1-637.1.

**Definitions applicable.** — The definitions contained in § 1-202 apply to this section.

## § 1-1308. Election wards.

(a)(1) Not later than 10 days after receiving the official report of the federal decennial census ("census report") for the District of Columbia ("District") by the United States Bureau of the Census, the Mayor shall transmit the census report to the Council, including all information pertaining to the official total population of the District and the official population size of each of the census tracts, census blocks, and election wards in the District.

(2) The Mayor and the District of Columbia Board of Elections and Ethics ("Board") shall provide the Council with technical and analytical services necessary for decennial redistricting, including but not limited to, statistical and demographic analysis of official census data and production of computerized election district maps.

(3) The Mayor and the Board shall make available to the public, at cost, copies of the census data base and any maps to be used for redistricting in hard copy or machine readable form.

(b) The Council shall, by act after public hearing, make any adjustment in the boundaries of election wards that is necessary as a result of population shifts and changes, not later than 90 days after the Council's receipt of the census report, or not later than July 14th of the year in which the census report is received, whichever is later.

(c) The Council shall divide the District into 8 compact and contiguous election wards, each of which shall be approximately equal in population size.

(d) The total District population and the population of the District's defined sub-units, as determined by the census report, or any official adjustment of the census report, shall be the exclusive permissible population data for apportionment of election wards.

(e) The boundaries of each of the 8 election wards shall conform to the greatest extent possible with the boundaries of the census tracts that are established by the United States Bureau of the Census.

(f) No redistricting plan or proposed amendment to a redistricting plan shall result in district populations with a deviation range more than 10% or a relative deviation greater than plus-or-minus 5%, unless the deviation results from the limitations of census geography or from the promotion of a rational public policy, including but not limited to respect for the political geography of the District, the natural geography of the District, neighborhood cohesiveness, or the development of compact and contiguous districts.

(g) No redistricting plan or proposed amendment to a redistricting plan shall be considered if the plan or amendment has the purpose and effect of diluting the voting strength of minority citizens.

(h) Any adjustment made less than 180 days prior to a regularly scheduled election shall not be effective for that election, or, if that election is a primary election, for the general election following the primary election. (1973 Ed., § 1-1105b; Dec. 16, 1975, D.C. Law 1-38, § 2, 22 DCR 3433; June 23, 1981, D.C. Law 4-14, § 3, 28 DCR 2132; Mar. 16, 1982, D.C. Law 4-87, § 5(b), 29 DCR 433; Mar. 16, 1982, D.C. Law 4-88, § 2(q), 29 DCR 458; Mar. 10, 1983, D.C. Law 4-199, § 6, 30 DCR 119; June 22, 1983, D.C. Law 5-13, § 4, 30 DCR 2433; Mar. 8, 1991, D.C. Law 8-240, § 2, 38 DCR 337.)

**Section references.** — This section is referred to in §§ 1-637.1, 1-1332, and 1-2603.1.

**Legislative history of Law 1-38.** — See note to § 1-1306.

**Legislative history of Law 4-14.** — Law 4-14 was introduced in Council and assigned Bill No. 4-97, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on April 7, 1981 and April 28, 1981, respectively. Signed by the Mayor on May 1, 1981, it was assigned Act No. 4-28 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 4-87.** — See note to § 1-1331.

**Legislative history of Law 4-88.** — See note to § 1-1301.

**Legislative history of Law 4-199.** — Law 4-199 was introduced in Council and assigned Bill No. 4-427, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-283 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 5-13.** — Law 5-13 was introduced in Council and assigned Bill No. 5-158, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 12, 1983 and April 26, 1983, respectively. Signed by the Mayor on May 4, 1983, it was assigned Act No. 5-27 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 8-240.** — Law 8-240 was introduced in Council and assigned Bill No. 8-560, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-323 and transmitted to both Houses of Congress for its review.

**District boundaries established.** — Pursuant to § 1-254 and this section, § 2 of D.C. Law 5-13 established the boundaries of both Advisory Neighborhood Commission areas and single-member districts within Advisory Neighborhood Commission areas.

## § 1-1309. Multilingual election materials.

(a) As used in this section, the term “non-English speaking person” shall mean a person whose native speaking language is a language other than English, and who continues to use his or her native language as his or her primary means of oral and written communication.

(b) In election wards in the District of Columbia in which non-English speaking persons who speak the same language constitute 5 percent or more of the eligible voting population, as determined by the Statistical Office of the District of Columbia government, the Board of Elections and Ethics (hereinafter in this section referred to as the "Board") shall cause all election materials, including, but not limited to, ballots, voting instructions, and voter pamphlets, to be supplied in both the native language of such non-English speaking eligible voters and English.

(c) The Board may by regulation adopt lesser percentages of non-English speaking persons in a particular ward or precinct who would be sufficient to obtain election materials in a language other than English, and may by regulation, establish procedures to allow non-English speaking persons to participate in the electoral process where such non-English speaking persons do not constitute 5 percent or more of the eligible voting population in 1 ward or precinct. (1973 Ed., § 1-1105c; Sept. 2, 1976, D.C. Law 1-79, title IV, §§ 402, 403, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title IV, § 402, 24 DCR 2372; Mar. 16, 1982, D.C. Law 4-88, §§ 2(q), 6, 29 DCR 458.)

**Section references.** — This section is referred to in § 1-637.1.

**Legislative history of Law 1-79.** — See note to § 1-1302.

**Legislative history of Law 1-126.** — See note to § 1-1302.

**Legislative history of Law 4-88.** — See note to § 1-1301.

## § 1-1310. Board independent agency; facilities; seal.

(a) In the performance of its duties, or in matters of procurement the Board shall not be subject to the direction of any nonjudicial officer of the District, except as provided in the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (D.C. Code § 1-601.1 et seq.).

(b) The District government shall furnish to the Board, upon request of the Board, such space and facilities as are available in public buildings in the District to be used as registration or polling places, and such records, information, services, personnel, offices, and equipment, and such other assistance and facilities as may be necessary to enable the Board properly to perform its functions. Privately owned space, facilities and equipment may be rented by the Office of Contracting and Procurement on behalf of the Board for the registration, polling, and other functions of the Board.

(c) Subject to the approval of the Mayor of the District of Columbia, the Board is authorized to adopt and use a seal. (Aug. 12, 1955, 69 Stat. 700, ch. 862, § 6; Oct. 4, 1961, 75 Stat. 817, Pub. L. 87-389, § 1(7); 1973 Ed., § 1-1106; Mar. 3, 1979, D.C. Law 2-139, § 3205(ggg), 25 DCR 5740; Apr. 12, 1997, D.C. Law 11-259, § 308, 44 DCR 1423.)

**Cross references.** — As to effective date of D.C. Law 2-139, see § 1-637.1.

**Section references.** — This section is referred to in § 1-637.1.

**Effect of amendments.** — Section 308 of D.C. Law 11-259 inserted "or in matters of procurement" in (a); and rewrote the second sentence in (b).

**Legislative history of Law 2-139.** — See note to § 1-1304.

**Legislative history of Law 11-259.** — Law 11-259, the "Procurement Reform Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-705, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings

on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on January 3, 1997, it was assigned Act No. 11-526 and transmitted to both Houses of Congress for its review. D.C. Law 11-259 became effective on April 9, 1997.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

## § 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 Registration 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 responsi-

bilities 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.)

**Section references.** — This section is referred to in §§ 1-260, 1-1302, 1-1306, 1-1312, and 1-1318.

**Legislative history of Law 1-37.** — See note to § 1-1306.

**Legislative history of Law 1-126.** — See note to § 1-1302.

**Legislative history of Law 2-101.** — See note to § 1-1301.

**Legislative history of Law 4-88.** — See note to § 1-1301.

**Legislative history of Law 4-120.** — See note to § 1-1306.

**Legislative history of Law 5-17.** — See note to § 1-1302.

**Legislative history of Law 7-92.** — See note to § 1-1306.

**Legislative history of Law 9-32.** — Law 9-32 was introduced in Council and assigned Bill No. 9-191, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 4, 1991, and June 18, 1991, respectively. Signed by the Mayor on July 2, 1991, it was assigned Act No. 9-59 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 9-75.** — See note to § 1-1306.

**Legislative history of Law 10-68.** — Law 10-68, the "Technical Amendments Act of 1993," was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

**Legislative history of Law 10-173.** — See note to § 1-1302.

**Legislative history of Law 11-30.** — See note to § 1-1302.

**Legislative history of Law 11-110.** — Law 11-110, the "Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

**References in text.** — The National Voter Registration Act, referred to in (b) and (d), is

Pub. L. 103-31, May 20, 1993, 107 Stat 77 which is codified primarily as 42 U.S.C. §§ 1973gg et seq.

**Presumption of eligibility.** — Addresses listed in the Georgetown University Student Directory were insufficient proof to overcome the presumption that challenged student voters were properly registered and eligible to vote. *Scolaro v. District of Columbia Bd. of Elec. & Ethics*, App. D.C., 717 A.2d 891 (1998).

**Notice of residency requirement.** — Even though the Board's voter registration form fails to use the words "resides or is domiciled," the form nevertheless complies with this section in that it puts a prospective voter on notice that he or she must be a D.C. resident as defined by law. *Scolaro v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 691 A.2d 77 (1997).

**Challenge of voters at polls.** — Failure to challenge, under this section, all voters who have been registered more than 90 days before an election does not foreclose a challenge to the same voters later at the polls, pursuant to § 1-1313, 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).

**Specially questioning student applicants prohibited.** — This section does not obligate the Board to question student applicants specially in order to ferret out nonresident registrants. *Scolaro v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 691 A.2d 77 (1997).

**Cited in** *Allen v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 663 A.2d 489 (1995).

## **§ 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, Councilmembers, 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 who has had its candidate elected as President of the United States after January 1, 1950, shall be entitled to nominate candidates for presidential electors. 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. (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.)

**Cross references.** — As to election of Advisory Neighborhood Commission members, see §§ 1-256 to 1-258, and 1-267.

**Section references.** — This section is referred to in §§ 1-1306, 1-1311, 1-1313, 1-1320, and 1-1321.

**Legislative history of Law 1-79.** — See note to § 1-1302.

**Legislative history of Law 1-126.** — See note to § 1-1302.

**Legislative history of Law 4-88.** — See note to § 1-1301.

**Legislative history of Law 4-120.** — See note to § 1-1306.

**Legislative history of Law 5-17.** — See note to § 1-1302.

**Legislative history of Law 7-92.** — See note to § 1-1306.

**Legislative history of Law 9-1.** — Law 9-1 was introduced in Council and assigned Bill

No. 9-97. The Bill was adopted on first and second readings on February 5, 1991, and March 5, 1991, respectively. Signed by the Mayor on March 15, 1991, it was assigned Act No. 9-6 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 9-49.** — Law 9-49 was introduced in Council and assigned Bill No. 9-110, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on July 2, 1991, and October 1, 1991, respectively. Signed by the Mayor on October 21, 1991, it was assigned Act No. 9-89 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 9-75.** — See note to § 1-1306.

**Legislative history of Law 10-173.** — See note to § 1-1302.

**Legislative history of Law 10-254.** — Law 10-254, the "Term Limits Initiative of 1995," was submitted to the electors of the District of Columbia as Initiative No. 49. The results of the voting, certified by the Board of Elections and Ethics on November 8, 1994, were 83,865 for the Initiative and 52,116 against the Initiative. It was transmitted to both Houses of Congress for its review on February 7, 1995.

**References in text.** — The "Term Limits Initiative of 1995," referred to in (b)(1)(C)(i), is D.C. Law 10-254, which is codified as this section.

**Purpose of Law 10-254.** — Section 2 of Initiative Measure 49 provided that the purpose of the act is to promote a citizen government by fostering increased competition through rotation in office and to prevent the establishment of entrenched incumbency at all levels of government.

**States have legitimate interests in having candidates make preliminary showings of substantial public support** to avoid overloaded ballots, frivolous candidacies, wasteful election costs, and voter confusion. *Orange v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 629 A.2d 575 (1993).

**The government has a legitimate interest in preventing election fraud.** *Orange v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 629 A.2d 575 (1993).

**Rationale of subsection (o)(3).** — The reason paragraph (3) of subsection (o) was enacted was the result of the Board of Elections and Ethics' inability otherwise, within the narrow time limit provided for validating challenged petitions, to determine efficiently whether a name and address among the potential thousands on a nominating petition represented an actual registered voter. *Orange v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 629 A.2d 575 (1993).

**Due process rights not violated.** — Application of subsection (o)(3) did not infringe upon

the due process or First Amendment rights of either the petitioner or the voters who sought to place his name on the ballot. *Orange v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 629 A.2d 575 (1993).

**Subsection (o)(3) is nondiscriminatory** since all candidates have the same opportunities and face the same restrictions; the election law does not prefer incumbents over challengers, party candidates over independents, or perennial aspirants over political newcomers. *Orange v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 629 A.2d 575 (1993).

**Petition not invalidated for "formal error".** — Where the Board found that all the signatures on the nominating petitions of a candidate were from the proper ward, the omission of the ward numbers from 2 petition forms is a "formal error" and does not require invalidation of the petitions. *Mosley v. Board of Elections*, App. D.C., 283 A.2d 210 (1971).

In the absence of any assertion that the nominating process was obstructed or polluted because of the omission of the date of initiation from the front page of the nominating petitions of a candidate, the omission of the dates is only a "formal error" and is capable of being waived by the Board. *Mosley v. Board of Elections*, App. D.C., 283 A.2d 210 (1971).

**Petitions circulated by ineligible person.** — Criminal prosecution is the only statutory sanction when one who is not a registered voter circulates a nominating petition; accordingly, a Board rule which purports to invalidate nominating petitions circulated by an ineligible person, is inconsistent with the statutory scheme, and signatures invalidated pursuant to that rule must therefore be counted. *Harvey v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 581 A.2d 757 (1990).

**Section does not discriminate against independent candidates.** — The requirements of this section that a candidate, seeking to have his name placed on the general election ballot as an independent candidate for Delegate to the House of Representatives from the District of Columbia, obtain more signatures than a candidate seeking a spot on the ballot in a primary election does not place unreasonable restriction on an independent's candidacy or arbitrarily discriminate against independents in favor of candidates for major parties, in violation of equal protection. *Moore v. Board of Elections*, 319 F. Supp. 437 (D.D.C. 1970).

**But presence of invalid signatures will not automatically invalidate petition.** — The presence of some invalid signatures on a nominating petition does not necessarily make the petition deficient if it contains the required numbers of valid signatures. *Board of Elections v. Democratic Cent. Comm.*, App. D.C., 300 A.2d 725 (1973).

**Political party lacks standing to object to method of checking signatures.** — The central committee of political party and its chairman lack standing to bring an action for injunctive relief against the Board's refusal to check the validity of signatures on nominating petitions in the manner desired by the party, in the absence of an allegation of injury in fact. *Board of Elections v. Democratic Cent. Comm.*, App. D.C., 300 A.2d 725 (1973).

**Requiring address of signers.** — A direction to candidates to secure registration addresses of persons who sign nominating petitions is a reasonable means of facilitating the Board's verification process; however, a Board rule which provided that a signature shall not be counted as valid unless, among other things, the voter's residence address "as listed on the Board's records" appears on the petition is cast in absolute terms and as it precludes a candidate from proving by other means that such persons are in fact duly registered, challenges based on noncompliance with that rule must be dismissed. *Harvey v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 581 A.2d 757 (1990).

**Challenge not made by "qualified elector" invalid.** — A written challenge which was filed with the Board by the Board's executive secretary who did not present his challenge as a "qualified elector" was invalid because it was not filed by a "qualified elector." *Crawford v. Board of Elections*, App. D.C., 325 A.2d 451 (1974).

**Time of challenge.** — Subsection (o) allows challenges to "the validity" of any petition by establishing a mechanism for review of challenges to the placing of a proposed nominee on the ballot both as to qualifications and to procedural formalities. In this manner, all challenges then formulated can be considered contemporaneously by the court. *Lawrence v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 611 A.2d 529 (1992).

A petition which seeks review prior to the point of time discussed in subsection (o), the court lacks jurisdiction to consider it. *Lawrence v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 611 A.2d 529 (1992).

**Filing of challenges.** — This section distinguishes between petitions (in particular, nominating petitions) and challenges to petitions; while the latter must be filed during the 10-day posting period, they do not fall textually within the requirement that "petition[s]" be filed no later than 5:00 p.m. on the final day. *Pree v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 645 A.2d 603 (1994).

Challenges are deemed to have been timely filed if the challenger (or his representative) is personally within offices of the District of Columbia Board of Elections and Ethics by 4:45 p.m. on the final day for filing and possesses the

challenge documents. The fact that processing of those documents may result in their actual receipt (as evidenced by a time stamp) after 5:00 p.m. does not make the filing untimely. *Pree v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 645 A.2d 603 (1994).

**Write-in votes for presidential candidates allowed.** — This section is the exclusive means through which presidential and vice presidential candidates may have their names printed on the ballot, but does not restrict the right of citizens, by write-in votes, to vote for candidates for whom qualified electors have been appointed but whose names are not printed on the ballot. *Kamins v. Board of Elections*, App. D.C., 324 A.2d 187 (1974).

**Write-in nominations not limited to party membership.** — No statute, rule, or regulation expressly limits write-in nominations to membership in the party for which the ballot is cast. *Leckie v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 457 A.2d 388 (1983).

**Intervenor in initiative petition challenge not accorded all rights of petitioner.** — In a challenge of an unfavorable Board decision on the validity of an initiative petition, there is no sound justification for according an intervenor all the rights of a petitioner, and, thereby, eviscerating the requirements of standing. *Dankman v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 443 A.2d 507 (1981).

**Three-day period for review of Board decision construed.** — An application for review of an order of the Board's determination that a candidate's nominating petition challenged by an elector satisfied the code requirements and which was filed on the Wednesday following the receipt by the elector of the order on the preceding Saturday was not filed within the 3-day period of paragraph (2) of subsection (o) of this section for review of determinations of the Board, and therefore the District of Columbia Court of Appeals was without jurisdiction. *Moore v. Board of Elections*, App. D.C., 325 A.2d 452 (1974).

**Review on appeal limited to reasonableness standard.** — Since the Board has undertaken to define and apply its own regulations, the Court of Appeals is governed by the prescribed reasonableness standard and cannot substitute its own judgment for reasonable Board action. *In re Haworth*, App. D.C., 258 A.2d 447 (1969).

**Court may not substitute its judgment for Board's reasonable application of regulation.** — When the Board of Elections and Ethics attempts to apply its own regulations, the District of Columbia Court of Appeals cannot substitute its judgment if the Board's application is reasonable. *Dankman v. District of*

Columbia Bd. of Elections & Ethics, App. D.C., 443 A.2d 507 (1981).

Cited in District of Columbia Republican Comm. v. Board of Elections, 336 F.2d 939 (D.C. Cir. 1964); Hobson v. Board of Elections, 444 F.2d 874 (D.C. Cir.), cert. denied, 402 U.S. 988, 91 S. Ct. 1664, 29 L. Ed. 2d 154 (1971); Barry v.

District of Columbia Bd. of Elections & Ethics, 448 F. Supp. 1249 (D.D.C.), appeal dismissed, 580 F.2d 695 (D.C. Cir. 1978); Hawkins v. Butler-Truesdale, App. D.C., 584 A.2d 1241 (1990); Bates v. District of Columbia Bd. of Elections & Ethics, App. D.C., 625 A.2d 891 (1993).

**§ 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.**

(a) Voting in all elections shall be secret.

(b)(1) Except as provided in paragraph (2) of this subsection, the vote of a person who is a registered qualified elector of the District shall be valid only if the vote is cast in the voting precinct that serves his or her current residence address.

(2) The Board shall permit any duly registered voter to vote by absentee ballot who may be absent from the District on election day, or, who, as a condition of his or her employment with the Board on any election day, is required to be absent from the voting precinct in which he or she is registered to vote, or who because of his or her physical condition, is unable to vote in person at the polling place in his or her voting precinct on election day, or any other reason the Board, by regulation, may authorize.

(c) Any candidate or group of candidates may, not less than 2 weeks prior to such election, petition the Board for credentials authorizing watchers at 1 or more polling places and at the place or places where the vote is to be counted for the next election during voting hours and until the count has been completed. The Board shall formulate rules and regulations not inconsistent with this chapter to prescribe the form of watchers' credentials, to govern the conduct of such watchers, and to limit the number of watchers so that the conduct of the election will not of the election will not be unreasonably obstructed. Such rules and regulations should provide fair opportunity for watchers for all candidates or groups of candidates to challenge prospective voters whom the watchers believe to be unqualified to vote, to question the accuracy in the vote count, and otherwise to observe the conduct of the election at the polling place and the counting of votes.

(d) If the official in charge of the polling place, after hearing both parties to any such challenge or acting on his or her own initiative with respect to a prospective voter, reasonably believes the prospective voter is unqualified to vote, he or she shall allow the voter to cast a paper ballot marked "challenged", and shall provide the prospective voter with written notification of his or her rights of appeal as provided in subsection (e) of this section. Ballots so cast shall be segregated, and no such ballot shall be counted until the challenge has been removed as provided in subsection (e) of this section; provided, however,

that the official in charge of the polling place shall not allow the prospective voter to cast a "challenged" ballot unless such voter:

(1) Signs an affidavit under penalty of perjury, that he or she is a registered qualified elector in the District; and

(2) Provides identification indicating that he or she is a resident of the precinct in which the ballot is to be cast.

(d-1) Any individual who alleges that their name has been erroneously omitted from the list of registered voters, or alleges that their name, address or party affiliation is erroneously printed on the list of registered voters, shall be permitted to cast a ballot. Ballots so cast shall be placed in a sealed envelope. The outside of the envelope shall contain the signature of the voter and such information as the Board deems necessary to determine that the individual is qualified to have the vote counted. The official in charge of the polling place shall provide the voter with written notification of appeal rights as provided in subsection (e) of this section, should the Board determine that the voter is not qualified to vote in the election.

(e) A voter's act of signing a challenged or special ballot envelope shall be deemed the filing of an appeal by the voter of the refusal by the Board's chief voter registration official to permit the voter to vote on election day by regular ballot, and a waiver of personal notice from the Board of any denial or refusal to a later count of the challenged or special ballot. No earlier than 8 days and not later than 10 days after the date of any election held under this subchapter, the Board shall conduct a hearing on the petition of any voter who cast a challenged or special ballot in the election to have that voter's vote counted in the same manner as all other ballots cast in that election. The Board shall inform the voter of the dates scheduled for the hearings and the manner by which the voter may learn whether the Board has decided to count or reject the voter's challenged or special ballot. The notice shall be in writing and shall be provided to the voter at the time of voting. No later than the second Wednesday following the election, the Board shall cause to be placed in its main office, in the main public library, and at least one branch public library located in each ward, an alphabetical list of those persons whose challenged or special ballots have been rejected with the reason or reasons for the rejection. The Board shall publish notice of the availability of the list in at least one newspaper of general circulation on the Tuesday following the date of the election. In addition, not later than the Tuesday following the election, during regular business hours, the Board shall maintain a telephone service by which any voter who has voted a special or challenged ballot may learn whether the challenged or special ballot will be counted or has been rejected. At the hearing, the petitioner may appear and give testimony on the question of the decision not to count the challenged or special ballot. The Board shall make a determination within 2 days after the date of 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 date of the Board's decision. The decision of the Court in any such case shall be final and not appealable.

(f) If a qualified elector is unable to record his or her vote by marking the ballot or operating the voting machine an official of the polling place shall, on

the request of the voter, enter the voting booth and comply with the voter's directions with respect to recording his or her vote. Upon the request of any such voter, a second official of the polling place shall also enter the voting booth and witness the recordation of the voter's directions. The official or officials shall in no way influence or attempt to influence the voter's decisions, and shall tell no one how the voter voted. The official in charge of the voting place shall make a return of all such voters, giving their names and disabilities.

(g)(1) No person shall vote more than once in any election nor shall any person vote in a primary or party election held by a political party other than that to which he or she has declared himself or herself to be a member.

(2) A name written on a ballot in any election shall not be counted as valid unless the individual whose name is written on the ballot has complied with the requirements of § 1-1312(r).

(h) In the event that the total number of candidates of one party nominated to an office or group of offices of that party pursuant to § 1-1312(a) or § 1-1321(i) does not exceed the number of such offices to be filled, the Board may, prior to election day and, notwithstanding the provisions of § 1-1312(c) or § 1-1321(i), declare the candidates so nominated to be elected without opposition, in which case the fact of their election pursuant to this subsection shall appear for the information of the voters on any ballot prepared by the Board for their party for the election of other candidates in the same election.

(i) Copies of the regulations of the Board with respect to voting shall be made available to prospective voters at each polling place.

(j) The Board shall receive the ballots cast and deposit them in a secure place where they shall be safely kept for 12 months. Inspection of such ballots shall be made in accordance with regulations of the Board. Whenever the ballots shall have remained in the custody of the Board for 12 months, and no election contest or other proceeding is pending in which the ballots may be needed as evidence, the Board may destroy such ballots. (Aug. 12, 1955, 69 Stat. 702, ch. 862, § 9; Oct. 4, 1961, 75 Stat. 819, Pub. L. 87-389, § 1(14, 15, 16, 17); July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; Apr. 22, 1968, 82 Stat. 104, Pub. L. 90-292, § 4(6); July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Sept. 22, 1970, 84 Stat. 853, Pub. L. 91-405, title II, § 205(c), (d), (g), (h), (l); Dec. 23, 1971, 85 Stat. 792, Pub. L. 92-220, § 1(17); 1973 Ed., § 1-1109; Aug. 14, 1973, 87 Stat. 313, Pub. L. 93-92, § 1(15); Dec. 16, 1975, D.C. Law 1-37, § 2(6), (7), 22 DCR 3430; Apr. 23, 1977, D.C. Law 1-126, 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(g), (n), (p), (q), 29 DCR 458; July 1, 1982, D.C. Law 4-120, § 2(d), 29 DCR 2064; June 29, 1984, D.C. Law 5-96, § 2, 31 DCR 2554; Mar. 16, 1988, D.C. Law 7-92, § 3(l), 35 DCR 716; Mar. 11, 1992, D.C. Law 9-75, § 2(d), 39 DCR 310; Feb. 5, 1994, D.C. Law 10-68, § 7(b), 40 DCR 6311; Sept. 22, 1994, D.C. Law 10-173, § 2(d), 41 DCR 5154; July 25, 1995, D.C. Law 11-30, § 2(c), 42 DCR 1547; Apr. 9, 1997, D.C. Law 11-255, § 6(a), 44 DCR 1271.)

**Section references.** — This section is referred to in §§ 1-257, 1-1311, 1-1318, and 1-1321.

**Effect of amendments.** — D.C. Law 11-255 substituted “§ 1-1321(i)” for “§ 1-1312(i)” twice in (h).

**Legislative history of Law 1-37.** — See note to § 1-1306.

**Legislative history of Law 1-126.** — See note to § 1-1302.

**Legislative history of Law 2-101.** — See note to § 1-1301.

**Legislative history of Law 4-88.** — See note to § 1-1301.

**Legislative history of Law 4-120.** — See note to § 1-1306.

**Legislative history of Law 5-96.** — Law 5-96 was introduced in Council and assigned Bill No. 5-384, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on April 10, 1984 and April 30, 1984, respectively. Signed by the Mayor on May 9, 1984, it was assigned Act No. 5-137 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 7-92.** — See note to § 1-1306.

**Legislative history of Law 9-75.** — See note to § 1-1306.

**Legislative history of Law 10-68.** — See note to § 1-1311.

**Legislative history of Law 10-173.** — See note to § 1-1302.

**Legislative history of Law 11-30.** — See note to § 1-1302.

**Legislative history of Law 11-255.** — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on Novem-

ber 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

**Subsection (b) should be liberally construed** so as not to deny innocent voters their right to vote, or to upset an election for technical reasons. *Curtis v. Bindeman*, App. D.C., 261 A.2d 515 (1970).

**Challenge of voters at polls.** — Failure to challenge, under § 1-1311, all voters who have been registered more than 90 days before an election does not foreclose a challenge to the same voters later at the polls, pursuant to this section, 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).

**Precertification hearing optional.** — A precertification hearing on a challenge to a registrant, though useful, will be a legally optional remedy, not an administratively required one. *Scolaro v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 691 A.2d 77 (1997).

**Ballots marked in incorrect precinct.** — Ballots which were marked in voting precincts other than the precincts in which the voters resided may be counted where the ballots were assigned and counted by the Board as if they had actually been marked and deposited in the correct precinct and there were no instances of double voting. *Curtis v. Bindeman*, App. D.C., 261 A.2d 515 (1970).

## **§ 1-1314. Dates for holding elections; votes cast for President and Vice President counted as votes for presidential electors; voting hours; tie votes; filling vacancy where elected official dies, resigns, or becomes unable to serve.**

(a)(1) The elections of the officials referred to in paragraphs (1), (2), and (3) of § 1-1301, and of officials designated pursuant to paragraph (4) of such section, and the primary under § 1-1306(b) shall be held on the 1st Tuesday in May of each presidential election year.

(2) The electors of President and Vice President of the United States shall be elected on the Tuesday next after the 1st Monday in November in every 4th year succeeding every election of a President and Vice President of the United States. Each vote cast for a candidate for President or Vice President whose name appears on the general election ballot shall be counted as a vote cast for the candidates for presidential electors of the party supporting such presidential and vice presidential candidate. Candidates receiving the highest number of votes in such election shall be declared the winners, except that in the case of a tie it shall be resolved in the same manner as is provided in subsection (c) of this section.

(3)(A) Except as otherwise provided in the case of special elections under this subchapter or § 206(a) of the District of Columbia Delegate Act, primary elections of each political party for the office of Delegate to the House of Representatives shall be held on the 1st Tuesday in May of each even-numbered year which is a presidential election year, and in other even-numbered years, on the 1st Tuesday after the 2nd Monday in September; and general elections for such office shall be held on the Tuesday next after the 1st Monday in November of each even-numbered year.

(B) Except as otherwise provided in the case of special elections under this act primary elections of each political party for the office of member of the Council shall be held on the 1st Tuesday after the 2nd Monday in September in 1974, and every 2nd year thereafter, and general election for such offices shall be held on the 1st Tuesday after the 1st Monday in November in 1974 and every 2nd year thereafter.

(C) Except as otherwise provided in the case of a special election under this act, primary elections of each political party for the office of Mayor and Chairman shall be held on the 1st Tuesday after the 2nd Monday in September of every 4th year, commencing with calendar year 1974, and the general election for such office shall be held on the 1st Tuesday after the 1st Monday in November in 1974 and every 4th year thereafter.

(4) With respect to special elections required or authorized by this subchapter, the Board may establish the dates on which such special elections are to be held and prescribe such other terms and conditions as may, in the Board's opinion, be necessary or appropriate for the conduct of such elections in a manner comparable to that prescribed for other elections held pursuant to this subchapter.

(5) General elections of members of the Board of Education shall be held on the 1st Tuesday after the 1st Monday in November of each odd-numbered calendar year through 1987, and thereafter in each even-numbered calendar year, on the same day and month.

(b)(1) All elections prescribed by this subchapter shall be conducted by the Board in conformity with the provisions of this subchapter. In all elections held pursuant to this subchapter, the polls shall be open from 7:00 a.m. to 8:00 p.m. Candidates who receive the highest number of votes, other than candidates for election as political party officials or delegates to national conventions nominating candidates for President and Vice President of the United States, shall be declared winners. If after the date of an election and prior to the certification of the election results, the qualified candidate who has received the highest number of votes dies, withdraws, or is found to be ineligible to hold the office, or in the event no candidate qualifies for election, the Board shall declare no winner, and the office shall become vacant as of the date of the beginning of the term of office for which the election was held. With respect to a primary election, the position of candidate shall be vacant until filled pursuant to subsection (d) of this section.

(2)(A) No person shall canvass, electioneer, circulate petitions, post any campaign material or engage in any activity that interferes with the orderly conduct of the election within a polling place or within a 50-foot distance from



the entrance and exit of a polling place. The Board, by regulation, shall establish procedures for determination and clear marking of the 50-foot distance.

(B) A person who violates the provisions of this paragraph shall, upon conviction, be fined not less than \$50 or more than \$500 or imprisoned for not more than 30 days, or both.

(c) In the case of a tie vote, the resolution of which will affect the outcome of any election, the candidates receiving the tie vote shall cast lots before the Board at 12:00 noon on a date to be set by the Board. This date shall be set no sooner than 2 days following determination by the Board of the results of the election which resulted in a tie. The candidate to whom the lot shall fall shall be declared the winner. If the candidate or candidates fail to appear by 12:00 noon on said day, the Board shall cast lots for him or her or them. For purpose of casting lots, any candidate may appear in person, or by proxy appointed in writing.

(d)(1) In the event that any official, other than Delegate, Mayor, member of the Council, member of the Board of Education, or winner of a primary election for the office of Delegate, Mayor, or member of the Council, elected pursuant to this subchapter dies, resigns, or becomes unable to serve during his or her term of office leaving no person elected pursuant to this subchapter to serve the remainder of the unexpired term of office, the successor or successors to serve the remainder of the term shall be chosen pursuant to the rules of the duly authorized party committee, except that the successor shall have the qualifications required by this subchapter for the office.

(2)(A) In the event that a vacancy occurs in the office of Delegate before May 1 of the last year of the Delegate's term of office, the Board shall hold a special election to fill the unexpired term. The special election shall be held on the first Tuesday that occurs more than 114 days after the date on which the vacancy is certified by the Board unless the Board determines that the vacancy could be filled more practicably in a special election held on the same day as the next District-wide special, primary, or general election that is to occur within 60 days of the date on which the special election would otherwise have been held under the provisions of this subsection. The person elected to fill the vacancy in the office of Delegate shall take office the day on which the Board certifies his or her election.

(B) In the event that a vacancy occurs in the office of Delegate on or after May 1 of the last year of the Delegate's term of office, the Mayor shall appoint a successor to complete the remainder of the term of office.

(3) In the event of a vacancy in the office of United States Representative or United States Senator elected pursuant to § 1-113 and that vacancy cannot be filled pursuant to paragraph (1) of this subsection, the Mayor shall appoint, with the advice and consent of the Council, a successor to complete the remainder of the term of office.

(e) In the event of a vacancy on the Board of Education, the Board of Elections and Ethics shall hold a special election to fill the unexpired term of the vacant office. The special election shall be held on the 1st Tuesday that occurs more than 114 days after the date on which the vacancy is certified by

the Board of Elections and Ethics, unless the Board determines that the vacancy could be filled more practicably in a special election held on the same day as the next special, primary, or general election that is to occur within 60 days of the date on which a special election would otherwise have been held under the provisions of this subsection. The person elected as a member to fill a vacancy on the Board of Education shall take office the day on which the Board of Elections and Ethics certifies his or her election.

(f) Notwithstanding the provisions of subsection (e) of this section, if a vacancy on the Board of Education occurs on or after February 1st of the last year of the term of the vacant office, a special election shall not be held and the Board of Education may appoint a person to fill such vacancy until the unexpired term ends. Any person appointed under this subsection shall have the same qualifications for holding such office as were required of his or her immediate predecessor. (Aug. 12, 1955, 69 Stat. 702, ch. 862, § 10; Oct. 4, 1961, 75 Stat. 819, Pub. L. 87-389, § 1(18, 19, 20); Apr. 22, 1968, 82 Stat. 105, Pub. L. 90-292, § 4(7); Sept. 22, 1970, 84 Stat. 850, Pub. L. 91-405, title II, §§ 203(c), 205(e)(2); Dec. 23, 1971, 85 Stat. 792, Pub. L. 92-220, § 1(18)-(21); 1973 Ed., § 1-1110; Aug. 14, 1973, 87 Stat. 313, Pub. L. 93-92, § 1(16)-(19); Dec. 24, 1973, 87 Stat. 834, Pub. L. 93-198, title VII, § 751(4)-(8); Aug. 29, 1974, 88 Stat. 794, Pub. L. 93-395, § 3(a); Sept. 2, 1976, D.C. Law 1-79, title V, § 504, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title II, § 201, 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(h), (n)-(q), (s), 29 DCR 458; Sept. 26, 1984, D.C. Law 5-116, § 5, 31 DCR 4018; Mar. 16, 1988, D.C. Law 7-92, § 3(m), 35 DCR 716; Dec. 10, 1991, D.C. Law 9-49, § 2(b), 38 DCR 6572; Sept. 22, 1994, D.C. Law 10-173, § 2(e), 41 DCR 5154.)

**Cross references.** — As to date of election of Advisory Neighborhood Commission members, see §§ 1-257 and 1-268.

As to sale of alcoholic beverages on election days, see § 25-107.

**Section references.** — This section is referred to in §§ 1-258, 1-294, 1-1312, 1-1321, and 31-101.

**Legislative history of Law 1-79.** — See note to § 1-1302.

**Legislative history of Law 1-126.** — See note to § 1-1302.

**Legislative history of Law 2-101.** — See note to § 1-1301.

**Legislative history of Law 4-88.** — See note to § 1-1301.

**Legislative history of Law 5-116.** — Law 5-116 was introduced in Council and assigned Bill No. 5-61, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 26, 1984 and July 10, 1984, respectively. Signed by the Mayor on July 13, 1984, it was assigned Act No. 5-168 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 7-92.** — See note to § 1-1306.

**Legislative history of Law 9-1.** — See note to § 1-1312.

**Legislative history of Law 9-49.** — See note to § 1-1312.

**Legislative history of Law 10-173.** — See note to § 1-1302.

**References in text.** — "Section 206(a) of the District of Columbia Delegate Act," referred to in subsection (a)(3)(A) of this section, is § 206(a) of the Act of September 22, 1970, Pub. L. 91-405, and provided for the nomination and election of the 1st Delegate to the House of Representatives from the District of Columbia.

**Voting accessibility for the elderly and handicapped.** — Public Law 98-435 enacted the Voting Accessibility for the Elderly and Handicapped Act.

**Write-in votes.** — Paragraph (2) of subsection (a) of this section means that the Board need not count votes for candidates for whom no slate of electors has been filed but does not preclude the counting of write-in votes in favor of candidates for whom a slate of electors has been filed. *Kamins v. Board of Elections*, App. D.C., 324 A.2d 187 (1974).

There is nothing in this section which precludes the counting of write-in and sticker

votes in a presidential election where such votes were cast for candidates for whom a valid slate of elections had been filed, and such votes should have been counted. *Kamins v. Board of Elections*, App. D.C., 324 A.2d 187 (1974).

### § 1-1315. Recount; judicial review of election.

(a) If within 7 days after the Board certifies the results of an election, any qualified candidate at such election petitions the Board to have the votes cast at such election recounted in 1 or more voting precincts, the Board shall order such recount. In each such case, the petitioner shall deposit a fee of \$50 for each precinct petitioned to be recounted. If the total cost of the recount is less than the amount so deposited, the difference shall be refunded. If the total cost of the recount is greater than the deposit, the petitioner shall remit payment for such additional costs within 15 days of receipt of notification from the Board that additional costs have been incurred. If the result of the election is changed as a result of the recount, the entire amount deposited by the petitioner shall be refunded. In no case, however, shall the petitioner be required to pay the cost of any recount in any such election if the difference in the number of votes received by the petitioner in connection with any office and the number of votes received by the person certified as having been elected to that office, in the case of an election from a ward, is less than 1 per centum or 50 votes, whichever is less, or in the case of an election at large, is less than 1 per centum or 350 votes, whichever is less.

(b) Within 7 days after the Board certifies the results of an election, any person who voted in the election may petition the District of Columbia Court of Appeals to review such election. In response to such a petition, the Court may set aside the results so certified and declare the true results of the election, or void the election in whole or in part. To determine the true results of an election the Court may order a recount or take other appropriate action, whether or not a recount has been conducted or requested pursuant to subsection (a) of this section. The Court shall void an election only for fraud, mistake, the making of expenditures by a candidate, or the willful receipt of contributions in violation of the District of Columbia Campaign Finance Reform and Conflict of Interest Act (D.C. Code § 1-1401 et seq.), or other defect, serious enough to vitiate the election as a fair expression of the will of the registered qualified electors voting therein. If the Court voids an election it may order a special election, which shall be conducted in such manner (comparable to that prescribed for regular elections), and at such time, as the Board shall prescribe. The decision of such Court shall be final and not appealable. (Aug. 12, 1955, 69 Stat. 703, ch. 862, § 11; Apr. 22, 1968, 82 Stat. 106, Pub. L. 90-292, § 4(8); Dec. 23, 1971, 85 Stat. 793, Pub. L. 92-220, § 1(22); 1973 Ed., § 1-1111; Aug. 14, 1973, 87 Stat. 313, Pub. L. 93-92, § 1(20); Aug. 18, 1978, D.C. Law 2-101, § 2, 25 DCR 257; Sept. 13, 1980, D.C. Law 3-93, § 2, 27 DCR 3497; Mar. 16, 1982, D.C. Law 4-88, § 2(q)-(s), 29 DCR 458.)

**Legislative history of Law 2-101.** — See note to § 1-1301.

**Legislative history of Law 3-93.** — Law 3-93 was introduced in Council and assigned

Bill No. 3-300, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 3, 1980 and June 17, 1980, respectively.

Signed by the Mayor on July 9, 1980, it was assigned Act No. 3-215 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 4-88.** — See note to § 1-1301.

**Purpose of judicial review of election.** — The court's review of the election merely insures that no voter was disenfranchised through improper interpretation on part of the Board of Elections and Ethics, and that the results certified by the Board were, in fact, the true results. *Gollin v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 359 A.2d 590 (1976); *Pendleton v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 449 A.2d 301 (1982).

**Duty of court to discern intent of voters.** — In fulfilling its statutory duty to determine whether the results of a presidential preference primary, as certified by the Board of Elections and Ethics, are in fact the true results, it is the duty of the court to attempt to discern the intent of the voters. The standard to be applied in determining the voters' intent is one of reasonable certainty. *Gollin v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 359 A.2d 590 (1976).

**Deference to Board's findings.** — Deference to the Board of Elections findings is especially appropriate where the decision was based in part on its assessment of the credibility of the witnesses. *Allen v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 663 A.2d 489 (1995).

Insofar as the Board of Election's legal conclusions are concerned, the appellate court must defer to its interpretation of the statute which it administers, and, especially, of the regulations which it has promulgated, so long as that interpretation is not plainly wrong or inconsistent with the legislative purpose. *Allen v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 663 A.2d 489 (1995).

**Standard of review.** — Where the Board of Elections has certified the result of an election, that certification is not lightly set aside. In election contests, it is the duty of the court to validate the election if possible; that is to say, the election must be held valid unless plainly illegal. *Allen v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 663 A.2d 489 (1995).

**Jurisdiction to review.** — The appellate court's jurisdiction under subsection (b) to review an election is independent of its general jurisdiction to review orders and decisions of public agencies under § 11-722 and thus is not subject to the usual D.C. Administrative Procedure Act limitation on its jurisdiction to review contested cases. *Scolaro v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 691 A.2d 77 (1997).

**Requirements.** — In order to obtain relief, petitioner must prove not only defects or irregularities in the election, but that the flawed election led to a result that is not "true." *Scolaro v. District of Columbia Bd. of Elec. & Ethics*, App. D.C., 717 A.2d 891 (1998).

**Administrative remedies exhausted by participation at Board hearing.** — Petitioners seeking review of the refusal of the Board of Elections and Ethics to count over 8,000 ballots cast in a presidential preference primary exhausted whatever administrative remedies they had when they participated in the hearing conducted by the Board and urged that the votes be counted. *Gollin v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 359 A.2d 590 (1976).

**Unsworn allegations of electoral irregularity insufficient to void election.** — Even though it was a matter of common knowledge that there were problems with election machinery in primary election, unsworn allegations that the election procedures in 1 ward constituted an election fiasco, that a voting circular violated fair campaign practices, and that 1 precinct was located in a physically inadequate room were insufficient to warrant the voiding of the election in the ward or to warrant the institution by the court of an ad hoc fact-finding process. *Morgan v. Martin*, App. D.C., 327 A.2d 827 (1974).

**And insufficient to enable court to review election.** — Unsworn allegations in a petition that the winning candidate in the primary made unfair and illegal use of certain facilities of a nonprofit organization, and that the Board of Elections should have removed the name or indicated the withdrawal of another candidate was not sufficient to enable the court to utilize its review powers over the election procedure. *Morgan v. Martin*, App. D.C., 327 A.2d 827 (1974).

**Procedural requirements applicable to contested cases under § 1-1501 et seq. apply to proceedings before the Board under subsection (a) of this section and the Board is required to base its decision on substantial evidence of record.** *Pendleton v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 449 A.2d 301 (1982).

**Court is without jurisdiction to hear untimely appeal.** — Petition for review by Court of Appeals to set aside an election for advisory neighborhood commissioner was not timely filed and Court was therefore without jurisdiction to hear the appeal. *White v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 537 A.2d 1133 (1988).

**Notice was reasonably calculated to apprise petitioner of date of certification of election results.** — District of Columbia Board of Elections and Ethics provided notice reasonably calculated to apprise petitioner of

the date when the Board certified the election results. *White v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 537 A.2d 1133 (1988).

**Decisions of Board rendered pursuant to subsection (a) are reviewable** by the Court of Appeals under § 1-1510. *Pendleton v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 449 A.2d 301 (1982).

**Objections not raised before Board.** — In the absence of exceptional circumstances, the appellate court will not entertain contentions not raised before the agency. *Allen v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 663 A.2d 489 (1995).

**Fraud.** — Fraud must be proved by clear and convincing evidence. *Allen v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 663 A.2d 489 (1995).

To sustain a case of fraud petitioners were required to show that one or more of the challenged voters made a willful misrepresentation to the Board, known by that voter to be false, and that he or she did so with the intent to deceive the Board and to induce the Board to permit him or her to vote unlawfully. *Allen v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 663 A.2d 489 (1995).

Petitioners must show that the record, viewed in the light most favorable to the candidate whose election was being challenged, compelled a finding, by clear and convincing evidence, that one or more of the challenged

voters voted fraudulently. *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, the challenger must be afforded an evidentiary hearing unless the issues raised can be disposed of directly by the court, as a matter of law, without a fact-finding. *Scolaro v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 691 A.2d 77 (1997).

An evidentiary hearing on a voter registration challenge should be referred to the superior court as a special master. *Scolaro v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 691 A.2d 77 (1997).

**Proof insufficient.** — Addresses listed in the Georgetown University Student Directory were insufficient proof to overcome the presumption that challenged student voters were properly registered and eligible to vote. *Scolaro v. District of Columbia Bd. of Elec. & Ethics*, App. D.C., 717 A.2d 891 (1998).

**Cited in** *Curtis v. Bindeman*, App. D.C., 261 A.2d 515 (1970); *Common Cause v. Democratic Nat'l Comm.*, 333 F. Supp. 803 (D.D.C. 1971); *Leckie v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 457 A.2d 388 (1983); *Hawkins v. Butler-Truesdale*, App. D.C., 584 A.2d 1241 (1990); *Bates v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 625 A.2d 891 (1993).

## § 1-1316. Interference with registration and voting.

No one shall interfere with the registration or voting of another person, except as it may be reasonably necessary in the performance of a duty imposed by law. (Aug. 12, 1955, 69 Stat. 703, ch. 862, § 12; 1973 Ed., § 1-1112.)

**Section references.** — This section is referred to in § 1-1318.

**Cited in** *Scolaro v. District of Columbia Bd.*

*of Elections & Ethics*, App. D.C., 691 A.2d 77 (1997).

## § 1-1317. Appropriations.

There are hereby authorized to be appropriated, out of any money in the Treasury to the credit of the District of Columbia not otherwise appropriated, such sums as are necessary to carry out the purposes of this subchapter. (Aug. 12, 1955, 69 Stat. 704, ch. 862, § 13; Oct. 4, 1961, 75 Stat. 819, Pub. L. 87-389, § 1(21, 22, 23); Sept. 22, 1970, 84 Stat. 854, Pub. L. 91-405, title II, § 205(3) (m), (n); Dec. 23, 1971, 85 Stat. 793, Pub. L. 92-220, § 1(23)-(25), (27); 1973 Ed., § 1-1113; Aug. 14, 1974, 88 Stat. 471, Pub. L. 93-376, title VII, § 706(a).)

**Section references.** — This section is referred to in § 1-1318.

**Cited in** *Common Cause v. Democratic Nat'l Comm.*, 333 F. Supp. 803 (D.D.C. 1971).

**§ 1-1318. Corrupt election practices.**

(a) Any person who shall register, or attempt to register, or vote or attempt to vote under the provisions of this subchapter and make any false representations as to his or her qualifications for registering or voting or for holding elective office, or be guilty of violating § 1-1311(d)(2)(D), § 1-1313, § 1-1316, or § 1-1317 or be guilty of bribery or intimidation of any voter at an election, or being registered, shall vote or attempt to vote more than once in any election so held, or shall purloin or secrete any of the votes cast in an election, or attempt to vote in an election held by a political party other than that to which he or she has declared himself or herself to be affiliated, or, if employed in the counting of votes in any election held pursuant to this subchapter, knowingly make a false report in regard thereto, and every candidate, person, or official of any political committee who shall knowingly make any expenditure or contribution in violation of Chapter 14 of Title 1, shall, upon conviction, be fined not more than \$10,000 or be imprisoned not more than 5 years, or both.

(b)(1) Any person who signs an initiative, referendum or recall petition with any other than his or her own name, or who signs a petition for an initiative, referendum or recall measure, knowing that he or she is not a registered qualified elector in the District of Columbia, or who makes a false statement as to his or her residency on any such petition, shall upon conviction be fined not more than \$10,000 or be imprisoned not more than 1 year, or both.

(2) Any public officer, involved in any part of the election process, who willfully violates any of the provisions of § 1-1320 or 1-1321, shall be fined not more than \$10,000 or be imprisoned not more than 1 year, or both.

(3) Any person who: (A) For any consideration, compensation, gratuity, reward or thing of value or promise thereof, signs or promises to sign or declines to sign, or promises not to sign any initiative, referendum, or recall petition; or (B) pays or offers or promises to pay, or gives or offers or promises to give any consideration, compensation, gratuity, reward, or thing of value to any person to induce him or her to sign or not to sign, his or her signatures upon any initiative, referendum, or recall petition, or to vote for or against, or to abstain from voting on, any initiative, referendum, or recall measure; or (C) by any other corrupt means or practice, or by threats or intimidation, interferes with, or attempts to interfere with, the right of any qualified registered elector to sign or not to sign any initiative, referendum, or recall petition, or to vote for or against, or to abstain from voting on any initiative, referendum, or recall measure; or (D) makes any false statement to the Board concerning any initiative, referendum, or recall petition, or the signatures appended thereto shall be fined not more than \$10,000 or be imprisoned not more than 1 year, or both.

(4) Any proposer or circulator of an initiative, referendum, or recall petition who willfully violates any provision of §§ 1-1320 and 1-1321 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 §§ 1-1320 and 1-1321 shall constitute a separate offense. Violations of §§ 1-1320 and 1-1321 shall be prosecuted in the name of the District of Columbia by the Corporation Counsel of the District of Columbia.

(c) The provisions of this section shall be supplemental to, and not in derogation of, any penalties under other laws of the District of Columbia. (Aug. 12, 1955, 69 Stat. 704, ch. 862, § 14; Oct. 4, 1961, 75 Stat. 820, Pub. L. 87-389, § 1(24); Sept. 22, 1970, 84 Stat. 854, Pub. L. 91-405, title II, § 205(k); 1973 Ed., § 1-1114; Dec. 16, 1975, D.C. Law 1-37, § 2(8), 22 DCR 3430; Apr. 23, 1977, D.C. Law 1-126, title IV, § 402, 24 DCR 2372; Aug. 18, 1978, D.C. Law 2-101, § 2, 25 DCR 257; June 7, 1979, D.C. Law 3-1, § 2(b), 25 DCR 9454; Mar. 16, 1982, D.C. Law 4-88, § 2(i), (n), (o), (q), 29 DCR 458; Sept. 22, 1994, D.C. Law 10-173, § 2(f), 41 DCR 5154; July 25, 1995, D.C. Law 11-30, § 2(d), 42 DCR 1547.)

**Section references.** — This section is referred to in §§ 1-1302, 1-1311, and 1-1471.

**Legislative history of Law 1-37.** — See note to § 1-1306.

**Legislative history of Law 1-126.** — See note to § 1-1302.

**Legislative history of Law 2-101.** — See note to § 1-1301.

**Legislative history of Law 3-1.** — See note to § 1-1302.

**Legislative history of Law 4-88.** — See note to § 1-1301.

**Legislative history of Law 10-173.** — See note to § 1-1302.

**Legislative history of Law 11-30.** — See note to § 1-1302.

**Validity of Board rule regarding circulation of initiative petitions.** — Board Rule 1607.9, 27 D.C. Reg. 3224 (July 25, 1980), which states that failure of a circulator to comply with § 1-1320(h) does not invalidate the signatures on an initiative petition, is valid.

*Citizens Against Legalized Gambling v. District of Columbia Bd. of Elections & Ethics*, 501 F. Supp. 786 (D.D.C. 1980).

**Signature on petition not invalidated despite noncompliance with § 1-1320(h).** — Noncompliance with § 1-1320(h) by the circulator of a petition need not, as a matter of law, invalidate any signature so long as the criminal sanctions are pursued. *Citizens Against Legalized Gambling v. District of Columbia Bd. of Elections & Ethics*, 501 F. Supp. 786 (D.D.C. 1980).

**Cited in** *Dankman v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 443 A.2d 507 (1981); *District of Columbia Comm. on Legalized Gambling v. Rauh*, C.A. No. 79-3296 (Dec. 10, 1979); *Harvey v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 581 A.2d 757 (1990); *Scolaro v. Dist. of Columbia Bd. of Elections*, 946 F. Supp. 80 (D.D.C. 1996); *Scolaro v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 691 A.2d 77 (1997).

## **§ 1-1319. Candidacy for more than 1 office prohibited; multiple nominations; candidacy of officeholder for another office restricted.**

(a) No person shall be a candidate for more than 1 office on the Board of Education or the Council or Mayor in any election for the members of the Board of Education or the Council or Mayor, and no person shall be a candidate for more than 1 office on the Council or for the Mayor in any primary election. If a person is nominated for more than 1 such office, he or she shall, within 3 days after the Board has sent him notice that he or she has been so nominated, designate in writing the office for which he or she wishes to run, in which case he or she will be deemed to have withdrawn all other nominations. In the event that such person fails within such 3-day period to file such a designation with the Board, all such nominations of such person shall be deemed withdrawn.

(b) Notwithstanding the provisions of subsection (a) of this section, a person holding the office of Mayor, Delegate, Chairman or member of the Council, or member of the Board of Education shall, while holding such office, be eligible as a candidate for any other of such offices in any primary or general election. In the event that said person is elected in a general election to the office for

which he or she is a candidate, that person shall, within 24 hours of the date that the Board certifies said person's election, pursuant to subsection (a)(11) of § 1-1306, either resign from the office that person currently holds or shall decline to accept the office for which he or she was a candidate. In the event that said person elects to resign, said resignation shall be effective not later than 24 hours before the date upon which that person would assume the office to which he or she has been elected. (Aug. 12, 1955, ch. 862, § 15; Apr. 22, 1968, 82 Stat. 106, Pub. L. 90-292, § 4(9); 1973 Ed., § 1-1115; Dec. 24, 1973, 87 Stat. 835, Pub. L. 93-198, title VII, § 751(9), (10); Apr. 23, 1977, D.C. Law 1-126, title IV, § 402, 24 DCR 2372; Jan. 2, 1979, D.C. Law 2-101, § 2, 25 DCR 257; Mar. 16, 1982, D.C. Law 4-88, § 2(j), (o), (q), 29 DCR 458; Mar. 14, 1985, D.C. Law 5-159, § 22, 32 DCR 30.)

**Legislative history of Law 1-126.** — See note to § 1-1302.

**Legislative history of Law 2-101.** — See note to § 1-1301.

**Legislative history of Law 4-88.** — See note to § 1-1301.

**Legislative history of Law 5-159.** — Law 5-159 was introduced in Council and assigned Bill No. 5-540, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 20, 1984 and December 4, 1984, respectively. Signed by the Mayor on December 10, 1984, it was assigned Act No. 5-224 and transmitted to both Houses of Congress for its review.

**Constitutional rights of office-seekers.** — The fact that the offices affected by this section were only recently made elective does not diminish the constitutional rights associated with seeking those offices, for although Congress was not constitutionally required to grant self-government to the District, having done so it could not impose unconstitutional conditions or unnecessarily burden the 1st

Amendment rights inherent in democratic self-government. *Barry v. District of Columbia Bd. of Elections & Ethics*, 448 F. Supp. 1249 (D.D.C.), appeal dismissed, 580 F.2d 695 (D.C. Cir. 1978).

**Campaigning prior to the nomination deadline is not prohibited by this section.** *Barry v. District of Columbia Bd. of Elections & Ethics*, 448 F. Supp. 1249 (D.D.C.), appeal dismissed, 580 F.2d 695 (D.C. Cir. 1978).

**Simultaneous candidacies for mayoralty and Council seat formerly permissible.** — This section before the 1978 amendment prohibited simultaneous candidacies for more than 1 office on the Board of Education or the Council but did not bar one from seeking both the mayoralty and a Council seat in the same election. *Barry v. District of Columbia Bd. of Elections & Ethics*, 448 F. Supp. 1249 (D.D.C.), appeal dismissed, 580 F.2d 695 (D.C. Cir. 1978).

**Cited in** *Barry v. District of Columbia Bd. of Elections & Ethics*, 580 F.2d 695 (D.C. Cir. 1978).

## § 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 such initiative or referendum petition sheet is a qualified registered elector of the District of Columbia; 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 qualified registered electors of the District of Columbia pursuant to subsection (h) of this section.

(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.)

**Section references.** — This section is referred to in §§ 1-257, 1-1311, 1-1318, 1-1325, 1-1326, and 1-1414.

**Legislative history of Law 3-1.** — See note to § 1-1302.

**Legislative history of Law 4-88.** — See note to § 1-1301.

**Legislative history of Law 7-92.** — See note to § 1-1306.

**Legislative history of Law 7-231.** — Law 7-231 was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned

Act No. 7-285 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 9-75.** — See note to § 1-1306.

**Legislative history of Law 10-68.** — See note to § 1-1311.

**Legislative history of Law 10-173.** — See note to § 1-1302.

**Legislative history of Law 11-30.** — See note to § 1-1302.

**References in text.** — "Title IV of the District of Columbia Self-Government and Governmental Reorganization Act," referred to in paragraphs (1) and (3) of subsection (b), is Title IV of the Act of December 24, 1973, 88 Stat. 785-811, Pub. L. 93-198.

**D.C. Law Review.** — For article, "The Dis-

trict of Columbia's response to homelessness: Depending on the kindness of strangers," see 2 D.C. L. Rev. 47 (1993).

**Inhibition of First Amendment activity from this section is insubstantial**, as there are numerous alternative opportunities for expression, and there are significant justifications for the section. Under these circumstances, the section must be upheld. *Citizens Against Legalized Gambling v. District of Columbia Bd. of Elections & Ethics*, 501 F. Supp. 786 (D.D.C. 1980).

**Subsection (o) not void on equal protection grounds.** — The fact that opponents to another form of ballot contest may, in practice, have an easier time in their challenge does not render the 10-day period of subsection (o) of this section void on equal protection grounds. *Citizens Against Legalized Gambling v. District of Columbia Bd. of Elections & Ethics*, 501 F. Supp. 786 (D.D.C. 1980).

**"Proper subject."** — All legislation enacted by initiative need not be held constitutional by the Board of Elections and Ethics or the Superior Court before that initiative may be classified as a "proper subject" pursuant to subsection (b) of this section. *Hessey v. Burden*, App. D.C., 615 A.2d 562 (1992).

**Proposed Taxpayers' Right to Know Act** qualified as a "proper subject of initiative" under subsection (b) of this section. *Hessey v. Burden*, App. D.C., 615 A.2d 562 (1992).

A proposed initiative's inconsistency with the current District of Columbia Code has no bearing on the question of whether the proposed initiative is a "proper subject." *Hessey v. Burden*, App. D.C., 615 A.2d 562 (1992).

A proposed ballot initiative that would prohibit the District government from "booting" and thereby impounding motor vehicles as a fine-collection measure and would also require an "amnesty from time-to-time" from increased penalties for late payment of traffic fines, is not a proper subject of initiative under governing law. *Dorsey v. District of Columbia Bd. of Elec. & Ethics*, App. D.C., 648 A.2d 675 (1994).

**Phrase "hold in favor of" in paragraph (3) of subsection (b) of this section** does not encompass an order or judgment of the Superior Court from which a timely appeal is taken, until and unless that judgment is affirmed. *District of Columbia Bd. of Elections & Ethics v. Jones*, App. D.C., 495 A.2d 752 (1985).

**Applicability of subsection (e)(3).** — Paragraph (3) of subsection (e) does not allow fee awards to be granted to successful respondents in elector's appeals, whether they be proposers or someone else. *Johnson v. Danneman*, App. D.C., 547 A.2d 981 (1988).

Paragraph (3) of subsection (e) does not authorize a fee award to proposers who intervene in defense of proposed initiative language.

*Johnson v. Danneman*, App. D.C., 547 A.2d 981 (1988).

Attorney's fees under paragraph (3) of subsection (e) may not be assessed against a losing challenger. *Johnson v. Danneman*, App. D.C., 547 A.2d 981 (1988).

**Initiative legislation should be liberally construed** to extend its operation rather than to reduce it. *Citizens Against Legalized Gambling v. District of Columbia Bd. of Elections & Ethics*, 501 F. Supp. 786 (D.D.C. 1980).

**Amendments to the charter**, such as the right of initiative, must be construed in light of the statutory scheme established by the charter in the District of Columbia Self-Government and Governmental Reorganization Act, so that the court must consider congressional intent in approving the amendment, and the court must address the intent of the Council. *Hessey v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 601 A.2d 3 (1991).

Under subsection (b)(1), an initiative, like an act of the Council, cannot directly amend the charter, and cannot interfere with the ability of the Council to carry out its responsibilities under the charter. *Hessey v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 601 A.2d 3 (1991).

**Administrative decisions of executive or administrative entity not subject to initiative or referendum.** — Where an entity entrusted with executive and/or administrative functions merely seeks to carry out a previously adopted legislative policy, it is improper to submit its purely administrative decisions to the electorate for their approval, vis-a-vis the initiative or referendum. *Convention Ctr. Referendum Comm. v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 441 A.2d 871 (1980), *aff'd* on rehearing, App. D.C., 441 A.2d 889 (1981).

**Petition procedure for initiative established by this section provides that:** (1) Any voter may submit a proposed initiative to the Board; (2) once the proposal has been assigned a name and a number, and a summary of the initiative has been approved by the proposer and the Board, then the proposer has 180 days in which to obtain the signatures necessary to have the initiative placed on the ballot; (3) the petition must be signed by 5 percent of all registered voters in the District, and, to ensure that there is broad-based support, the names submitted must include at least 5 percent of the registered voters in 5 of the city's 8 wards; (4) once the names are submitted, and once it has been determined that the subject of the proposed initiative is appropriate for an initiative vote, the Board has 30 days in which to certify whether or not the petition requirement has been met; and (5) three days after a petition is submitted, the Board must post the petition for 10 days for



public inspection. During this 10-day period, any voter may challenge the validity of the petition. *Citizens Against Legalized Gambling v. District of Columbia Bd. of Elections & Ethics*, 501 F. Supp. 786 (D.D.C. 1980).

**The number of registered electors required to qualify an initiative or referendum measure for the ballot** shall be determined in accordance with the requirements set forth in § 1-282(a) of the Initiative, Referendum and Recall Charter Amendments Act of 1977 (§§ 1-281 to 1-287 and §§ 1-291 to 1-295); and to the extent that subsection (i) of this section conflicts with § 1-282(a), the latter controls. *Price v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 645 A.2d 594 (1994).

**Right to ensure initiative has wide base of support not extending to individuals.** — A state has a right to ensure that an initiative has a wide base of support before it is considered by the electorate, but that right does not necessarily extend to individual groups having an interest in the subject matter of the initiative. *Citizens Against Legalized Gambling v. District of Columbia Bd. of Elections & Ethics*, 501 F. Supp. 786 (D.D.C. 1980).

**Unilateral revision of initiative bill not authorized.** — Neither the Charter Amendments nor the Initiative Procedures Act expressly authorizes the proposers of an initiative, the Board, or the courts to unilaterally revise the substance of an initiative bill after circulation of petitions to the voters. *Convention Ctr. Referendum Comm. v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 441 A.2d 889 (1981).

In most circumstances neither the proposer, the Board, nor a court can surmise with any confidence or accuracy that petition-signers would have approved a version of the initiative different from the one summarized on the petitions. *Convention Ctr. Referendum Comm. v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 441 A.2d 889 (1981).

**Challenge period begins with acceptance of petition.** — Since the Board of Elections and Ethics' 30-day certification period starts only after its acceptance of a petition for filing, then likewise the challenge period must begin with the acceptance of the petition. *Dankman v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 443 A.2d 507 (1981).

**Excepted initiatives lack guarantee of negotiated summary statement.** — Initiatives falling within the narrow exception from certain procedural requirements of § 1-1325 lack the guarantee that the Board and the proposer will have negotiated a summary statement of the initiative bill before the proposer circulates the petitions to the community. *Convention Ctr. Referendum Comm. v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 441 A.2d 889 (1981).

**Jurisdiction to review challenges to initiative petitions.** — The Initiative Procedures Act itself establishes the manner by which review of a determination of the validity of a circulated initiative may be sought. That avenue is available upon the timely filing of a written challenge to an initiative, followed by a determination of validity by the Board of Elections and Ethics within 15 days. This procedure, and not the Administrative Procedure Act, provides the basis for jurisdiction to review challenges to initiative petitions. *Davies v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 596 A.2d 992 (1991).

**De novo examination.** — The Superior Court has the power to conduct its own independent, de novo examination of a proposed initiative once it has acquired jurisdiction of the case. *Hessey v. Burden*, App. D.C., 615 A.2d 562 (1992).

**Scope of examination.** — The Board of Elections and Ethics, in deciding whether to accept or reject a proposed initiative, must consider and rule on all challenges to the initiative when they are raised, regardless of the merits of any one. *Hessey v. Burden*, App. D.C., 615 A.2d 562 (1992).

**Standing.** — Opponents of an initiative had standing to invoke the Superior Court's equity jurisdiction. *Hessey v. Burden*, App. D.C., 615 A.2d 562 (1992).

**Validity of Board rule regarding circulation of initiative petitions.** — Board Rule 1607.9, 27 D.C. Reg. 3234 (July 25, 1980), which states that failure of a circulator to comply with subsection (h) of this section does not invalidate the signatures on an initiative petition, is valid. *Citizens Against Legalized Gambling v. District of Columbia Bd. of Elections & Ethics*, 501 F. Supp. 786 (D.D.C. 1980).

**Signature on petition not invalidated despite noncompliance with this section.** — Noncompliance with subsection (h) of this section by the circulator of a petition need not, as a matter of law, invalidate any signature so long as the criminal sanctions are pursued. *Citizens Against Legalized Gambling v. District of Columbia Bd. of Elections & Ethics*, 501 F. Supp. 786 (D.D.C. 1980).

**Restoration of unemployment benefits cut by 1983 Amendments Act not proper subject of initiative process** pursuant to the Initiative Procedures Act since such a restoration would require the appropriation of funds. *District of Columbia Bd. of Elections & Ethics v. Jones*, App. D.C., 481 A.2d 456 (1984).

**Permissive intervention in initiative related mandamus action improperly denied.** — The trial court abused its discretion in denying an association of private district employers permissive intervention in a mandamus action which sought to compel the Board of Elections to accept an initiative designed to

restore unemployment benefits cut by the 1983 Amendments Act. District of Columbia Bd. of Elections & Ethics v. Jones, App. D.C., 481 A.2d 456 (1984).

**Creation of Office of Public Advocate for Assessments and Taxation.** — Proposed initiative creating an Office of Public Advocate for Assessments and Taxation with authority to appear and advocate on behalf of public interest and taxpayers in administrative tax assessment proceedings before the Board of Equalization and Review, and to appeal tax assessments

by the Mayor to Superior Court and Court of Appeals, did not impermissibly infringe on the Mayor's responsibility for assessment of taxable property. Hessey v. Burden, App. D.C., 584 A.2d 1 (1990).

**Cited in** Harvey v. District of Columbia Bd. of Elections & Ethics, App. D.C., 581 A.2d 757 (1990); Atkinson v. District of Columbia Bd. of Elections & Ethics, App. D.C., 597 A.2d 863 (1991); Fountain v. Kelly, App. D.C., 630 A.2d 684 (1993); Committee for Voluntary Prayer v. Wimberly, App. D.C., 704 A.2d 1199 (1997).

## § 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. The 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 qualifies. 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.)

**Section references.** — This section is referred to in §§ 1-113, 1-1311, 1-1318, 1-1326, and 1-1414.

**Effect of amendments.** — D.C. Law 11-255 substituted a semicolon for a colon at the end of the introductory language of (e).

**Legislative history of Law 3-1.** — See note to § 1-1302.

**Legislative history of Law 4-88.** — See note to § 1-1301.

**Legislative history of Law 7-92.** — See note to § 1-1306.

**Legislative history of Law 8-203.** — Law 8-203 was introduced in Council and assigned Bill No. 8-626, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on

November 20, 1990, and December 4, 1990, respectively. Signed by the Mayor on December 14, 1990, it was assigned Act No. 8-277 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 9-75.** — See note to § 1-1306.

**Legislative history of Law 10-173.** — See note to § 1-1302.

**Legislative history of Law 11-110.** — See note to § 1-1311.

**Legislative history of Law 11-255.** — See note to § 1-1313.

**Cited in** *Harvey v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 581 A.2d 757 (1990).

## § 1-1322. Timeliness of action.

For purposes of this or any other act administered by the Board of Elections and Ethics, if the final date for any action falls on a Saturday, Sunday, or legal holiday, such action shall be considered timely if taken on the next regular business day immediately thereafter. (1973 Ed., § 1-1118; June 7, 1979, D.C. Law 3-1, § 6, 25 DCR 9454.)

**Legislative history of Law 3-1.** — See note to § 1-1302.

**Acts administered by Board.** — Chapter 13 (except §§ 1-1307 and 1-1308) and Chapter

14 of Title 1 are administered by the Board of Elections and Ethics.

## § 1-1323. Severability.

If any provision of this subchapter or any section, sentence, clause, phrase or word or the application thereof, shall in any circumstances be held invalid, the validity of the remainder of the act and of the application of any such provision, section, sentence, clause, phrase or word shall not be affected. (1973 Ed., § 1-1119; June 7, 1979, D.C. Law 3-1, § 7, 25 DCR 9454.)

**Legislative history of Law 3-1.** — See note to § 1-1302.

## § 1-1324. Issuance of rules and regulations.

The Board of Elections and Ethics shall issue rules and regulations to effect the provisions of this subchapter, in accordance with the District of Columbia Administrative Procedure Act (D.C. Code § 1-1501 et seq.). (1973 Ed., § 1-1119.1; June 7, 1979, D.C. Law 3-1, § 8, 25 DCR 9454; Mar. 16, 1982, D.C. Law 4-88, § 7, 29 DCR 458.)

**Legislative history of Law 3-1.** — See note to § 1-1302.

**Legislative history of Law 4-88.** — See note to § 1-1301.

**Construction of statute by judge not intrusion on Board's authority.** — Where judge responded affirmatively to the Board's request that he perform the judicial task of

construing the statute, he did not intrude upon the authority of the Board. *Stevenson v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 683 A.2d 1371 (1996).

**Cited in** *Dankman v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 443 A.2d 507 (1981).

## § 1-1325. Applicability of § 1-1320 to initiative petitions circulated on or after October 1, 1978, and before June 7, 1979.

With respect to any initiative petition circulated on or after October 1, 1978, and before June 7, 1979, that is presented to or offered for filing to the Board of Elections and Ethics, § 1-1320 shall apply: Except, that:

(1) The provisions of subsections (h)(1), (j)(1), (j)(3), (k)(1)(B) and (k)(1)(C) of § 1-1320 shall not be applied in the case of such petition;

(2) Subsection (b) of § 1-1320 shall not apply to the extent that it would require the assignment and use of a serial number prior to the circulation and filing of such petition;

(3) Subsections (c) through (f) of § 1-1320 shall not apply to the extent that they would require the approval of a summary statement, short title, and legislative form for an initiative measure prior to the circulation and filing of such petitions; and

(4) Subsection (g) of § 1-1320 shall not apply to such petition: Provided, however, that each sheet of the petition shall include a statement declaring that each person signing must be or is a registered voter in the District of Columbia. (1973 Ed., § 1-1119.2; June 7, 1979, D.C. Law 3-1, § 9, 25 DCR 9454.)

**Legislative history of Law 3-1.** — See note to § 1-1302.

**Excepted initiatives lack guarantee of negotiated summary statement.** — Initiatives falling within this section's narrow exception from certain procedural requirements lack the guarantee that the Board and the proposer

will have negotiated a summary statement of the initiative bill before the proposer circulates the petitions to the community. *Convention Ctr. Referendum Comm. v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 441 A.2d 889 (1981).

## § 1-1326. Effective date.

This subchapter shall take effect at the end of the 30-day period provided for the Congressional review of acts of the Council of the District of Columbia in § 1-233(c)(1): Provided, however, that no initiative, referendum or recall measure may be initiated as provided in §§ 1-1320 and 1-1321 until on or after October 1, 1978. (1973 Ed., § 1-1119.3; June 7, 1979, D.C. Law 3-1, § 10, 25 DCR 9454.)

**Legislative history of Law 3-1.** — See note to § 1-1302.



*Subchapter II. Election Area Boundaries.***§ 1-1331. Establishment of ward task forces on Advisory Neighborhood Commissions.**

(a) Each member of the Council of the District of Columbia ("Council") elected from a ward shall appoint a broadly-based ward task force on Advisory Neighborhood Commissions ("ward task force") for his or her ward.

(b) In appointing the members of a ward task force, each Councilmember shall give full consideration to assuring fair representation for all racial and ethnic minorities, women, and geographical areas in his or her ward.

(c) Each member of a ward task force shall be a registered voter and resident of the ward for which his or her ward task force is appointed.

(d) Each member of the Council elected at-large and the Chairman of the Council may appoint a person to each ward task force.

(e) Ward task force members shall serve until the ward task force files its final report with the Council unless the Council, by resolution, extends the term of the ward task force.

(f) Each ward task force member shall serve without compensation. (Mar. 16, 1982, D.C. Law 4-87, § 2, 29 DCR 433; Mar. 10, 1983, D.C. Law 4-199, § 5, 30 DCR 119.)

**Section references.** — This section is referred to in § 1-254.

**Legislative history of Law 4-87.** — Law 4-87, the "Redistricting Procedure Act of 1981," was introduced in Council and assigned Bill No. 4-181, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1981 and

December 8, 1981, respectively. Approved without the signature of the Mayor on January 19, 1981, it was assigned Act No. 4-141 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 4-199.** — See note to § 1-1308.

**§ 1-1332. Report of ward task forces.**

(a)(1) Each ward task force shall submit a report to the Council not later than 90 days after approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto) of legislation that reapportions the boundaries of the election wards pursuant to § 1-1308.

(2) The Mayor and the District of Columbia Board of Elections and Ethics ("Board") shall provide each ward task force with technical and analytical services necessary for decennial redistricting, including, but not limited to, statistical and demographic analysis of official census data and production of computerized election district maps.

(3) The Mayor and the Board shall make available to the public, at cost, copies of the census data base and any maps to be used for redistricting in hard copy or machine readable form.

(b) The report submitted by a ward task force shall contain:

(1) Alternative recommendations for the adjustment of the boundaries of Advisory Neighborhood Commission area and single-member districts for that ward; and

(2) Other recommendations with respect to the operation of advisory neighborhood commissions.

(c) In developing its report, each ward task force shall comply with the requirements of this section and the requirements of § 1-254.

(d) The total District population and the population of defined sub-units of the District population as determined by the federal decennial census, or any official adjustment to the federal decennial census, shall be the exclusive permissible population data for apportionment of single-member districts.

(e) No redistricting plan or proposed amendment to a redistricting plan shall result in district populations with a deviation range greater than 10% or a relative deviation greater than plus-or-minus 5%, unless the deviation results from the limitations of census geography or from the promotion of a rational public policy, including, but not limited to, respect for the political geography of the District, the natural geography of the District, neighborhood cohesiveness, or the development of compact and contiguous districts.

(f) No redistricting plan or proposed amendment to a redistricting plan shall be considered if the plan or amendment has the purpose and effect of diluting the voting strength of minority citizens. (Mar. 16, 1982, D.C. Law 4-87, § 3, 29 DCR 433; Mar. 10, 1983, D.C. Law 4-199, § 5, 30 DCR 119; Mar. 8, 1991, D.C. Law 8-240, § 4, 38 DCR 337.)

**Legislative history of Law 4-87.** — See note to § 1-1331.

**Legislative history of Law 8-240.** — See note to § 1-1308.

**Legislative history of Law 4-199.** — See note to § 1-1308.

### **§ 1-1333. Adoption of election ward boundaries effective January 1, 1992.**

The Council adopts the following election ward boundaries to be effective January 1, 1992, and to be used in all elections held after February 1, 1992, in the District of Columbia:

#### **WARD I**

Starting at the intersection of Kingle Road, N.W. and Piney Branch Parkway, N.W.; thence in an easterly direction along said Piney Branch Parkway, N.W., to Sixteenth Street, N.W.; thence south along said Sixteenth Street, N.W., to Spring Road, N.W.; thence in an easterly direction along said Spring Road, N.W., to New Hampshire Avenue, N.W.; thence in a northeasterly direction along said New Hampshire Avenue, N.W., to Rock Creek Church Road, N.W.; thence in an easterly direction along said Rock Creek Church Road, N.W., to Park Place, N.W.; thence in a southerly direction along said Park Place, N.W., to Michigan Avenue, N.W.; thence in an easterly direction along said Michigan Avenue, N.W., to First Street, N.W.; thence south along said First Street, N.W., to Bryant Street, N.W.; thence in a westerly direction along said Bryant Street, N.W., to Second Street, N.W.; thence south along said Second Street, N.W., to Florida Avenue, N.W.; thence in a westerly direction along said Florida Avenue, N.W., to Seventh Street, N.W.; thence south along

said Seventh Street, N.W., to S Street, N.W.; thence west along said S Street, N.W., to Eighteenth Street, N.W.; thence north along said Eighteenth Street, N.W., to Florida Avenue, N.W., thence in a southwesterly direction along said Florida Avenue, N.W., to Massachusetts Avenue, N.W.; thence in a northwesterly direction along said Massachusetts Avenue, N.W., to Sheridan Circle, N.W.; thence in a southwesterly direction along the southern boundary of Sheridan Circle to Twenty-Third Street, N.W.; thence in a southerly direction along said Twenty-Third Street, N.W., to Q Street, N.W.; thence following said Q Street, N.W., in a westerly direction to the center line of Rock Creek; thence in a generally northern direction along said Rock Creek to Connecticut Avenue, N.W.; thence in a northwesterly direction along said Connecticut Avenue, N.W., to the northern boundary of the National Zoological Park; thence in an easterly direction along the northern boundary of said National Zoological Park to Rock Creek; thence along said Rock Creek to Klinge Road, N.W.; thence in a northeasterly direction along said Klinge Road, N.W., to the point of beginning at the intersection of said Klinge Road, N.W. and Piney Branch Parkway, N.W.

## WARD II

Starting at the intersection of the center line of Q Street, N.W., and the center line of Rock Creek; thence east along said Q Street, N.W., to Twenty-Third Street, N.W.; thence in a northerly direction along said Twenty-Third Street, N.W., to Sheridan Circle; thence in a southeasterly direction along the southern boundary of said Sheridan Circle to Massachusetts Avenue, N.W.; thence in a southerly direction along said Massachusetts Avenue, N.W., to Florida Avenue, N.W.; thence in a northerly direction along said Florida Avenue, N.W., to Eighteenth Street, N.W.; thence south along Eighteenth Street, N.W., to S Street, N.W.; thence east along said S Street, N.W., to Seventh Street, N.W.; thence north along said Seventh Street, N.W., to Florida Avenue, N.W.; thence in an easterly direction along said Florida Avenue, N.W., to New Jersey Avenue, N.W.; thence in a southerly direction along said New Jersey Avenue, N.W., to New York Avenue, N.W.; thence in an easterly direction along said New York Avenue, N.W., to North Capitol Street; thence south along said North Capitol Street to Massachusetts Avenue, N.W.; thence northwesterly along said Massachusetts Avenue, N.W., to Fourth Street, N.W.; thence south along said Fourth Street, N.W., to H Street, N.W.; thence west along said H Street, N.W., to Sixth Street, N.W.; thence south along said Sixth Street, N.W., to Pennsylvania Avenue, N.W.; thence southeasterly along said Pennsylvania Avenue, N.W., to Constitution Avenue, N.W.; thence east along said Constitution Avenue, N.W., to North Capitol Street; thence south along said North Capitol Street and along a line extending south through the Capitol grounds to South Capitol Street; thence south along said South Capitol Street and continuing southeasterly along said South Capitol Street to the midpoint of the Frederick Douglass Memorial Bridge/center line of the Anacostia River; thence in a southwesterly direction along the center line of said Anacostia River and the projection of that center line to the Commonwealth of Virginia-District of Columbia boundary line at the Commonwealth of Virginia shore of

the Potomac River; thence in a northwesterly direction along said Commonwealth of Virginia-District of Columbia boundary line to its intersection with an extension of the Whitehaven Parkway; thence in a northeasterly direction along said extension of Whitehaven Parkway to Reservoir Road, N.W.; thence in a northeasterly direction along said Whitehaven Parkway, N.W., to Foxhall Road, N.W.; thence north along said Foxhall Road, N.W., to W Street, N.W.; thence in an easterly direction along said W Street, N.W., and along a westerly line extending W Street, N.W., through Glover Archbold Park to the eastern boundary of Glover Archbold Park; thence in a southerly direction along said eastern boundary of Glover Archbold Park to the southern boundary of the eastern leg of Glover Archbold Park; thence in an easterly direction along the southern boundary of the eastern leg of Glover Archbold Park to Whitehaven Parkway, N.W.; thence east along Whitehaven Parkway, N.W., to Thirty-Fifth Street, N.W.; thence in a northerly direction along said Thirty-Fifth Street, N.W., to Wisconsin Avenue, N.W.; thence in a southeasterly direction along said Wisconsin Avenue, N.W., to Whitehaven Street, N.W.; thence in an easterly direction along said Whitehaven Street, N.W., to the northwest boundary of Dumbarton Oaks Park; thence in an easterly direction along said northwest boundary of Dumbarton Oaks Park to Whitehaven Street, N.W.; thence in an easterly direction along said Whitehaven Street, N.W., to Massachusetts Avenue, N.W.; thence in a southeasterly direction along said Massachusetts Avenue, N.W., to the center line of Rock Creek; thence in a southeasterly direction along said center line of Rock Creek to the point of beginning at its intersection with Q Street, N.W.

### WARD III

Starting at the intersection of the center line of Rock Creek with the State of Maryland-District of Columbia boundary line; thence in a southerly direction along Rock Creek to the intersection of the center line of Rock Creek and the extension of the northern boundary of the National Zoological Park; thence in a westerly direction along said northern boundary of the National Zoological Park to Connecticut Avenue, N.W.; thence in a southeasterly direction along Connecticut Avenue, N.W., to the center line of Rock Creek; thence along the center line of Rock Creek to its intersection with the center line of Massachusetts Avenue, N.W.; thence in a northwesterly direction along said Massachusetts Avenue, N.W., to Whitehaven Street, N.W.; thence west along said Whitehaven Street, N.W., to the northwestern boundary of Dumbarton Oaks Park; thence in a westerly direction along said northwestern boundary of said Dumbarton Oaks Park to Whitehaven Street, N.W.; thence in a westerly direction along said Whitehaven Street, N.W., to Wisconsin Avenue, N.W.; thence in a northwesterly direction along said Wisconsin Avenue, N.W., to Thirty-Fifth Street, N.W.; thence south along said Thirty-Fifth Street, N.W., to Whitehaven Parkway N.W.; thence west along said Whitehaven Parkway N.W., to the southern boundary of the eastern leg of Glover Archbold Park; thence in a westerly direction along said southern boundary of the eastern leg of Glover Archbold Park to a point where it intersects with the eastern

boundary of Glover Archbold Park; thence in a northerly direction along said eastern boundary of Glover Archbold Park to an easterly line extending W Street, N.W., through Glover Archbold Park; thence westerly along the extended line of W Street, N.W., to W Street, N.W.; thence west along W Street, N.W., to Foxhall Road, N.W.; thence in a southeasterly direction along said Foxhall Road, N.W., to Whitehaven Parkway, N.W.; thence in a southwesterly direction along said Whitehaven Parkway, N.W., to Reservoir Road, N.W.; thence following an extension of said Whitehaven Parkway, N.W., in a southwesterly direction to the Commonwealth of Virginia-District of Columbia boundary line at the Commonwealth of Virginia shore of the Potomac River; thence in a northwesterly direction along said Commonwealth of Virginia-District of Columbia boundary line where it follows the Commonwealth of Virginia shore of the Potomac River to the western corner of the District of Columbia; thence in a northeasterly direction along the State of Maryland-District of Columbia boundary line to the point of beginning at its intersection with the center line of Rock Creek.

#### WARD IV

Starting at the intersection of the center line of Rock Creek with the State of Maryland-District of Columbia boundary line; thence in a southerly direction along said Rock Creek to Klinge Road, N.W.; thence in a northeasterly direction along said Klinge Road, N.W., to Piney Branch Parkway, N.W.; thence in an easterly direction along said Piney Branch Parkway, N.W., to Sixteenth Street, N.W.; thence south along said Sixteenth Street, N.W., to Spring Road, N.W.; thence in an easterly direction along said Spring Road, N.W., to New Hampshire Avenue, N.W.; thence in a northeasterly direction along said New Hampshire Avenue, N.W., to Rock Creek Church Road, N.W.; thence in an easterly direction along said Rock Creek Church Road, N.W., to Park Place N.W.; thence in a southerly direction along said Park Place, N.W., to Michigan Avenue, N.W.; thence in an easterly direction along said Michigan Avenue, N.W., and N.E., to Harewood Road, N.E.; thence in a northerly direction along said Harewood Road, N.E., to Taylor Street, N.E.; thence east along said Taylor Street, N.E., to Hawaii Avenue, N.E.; thence in a northwesterly direction along said Hawaii Avenue, N.E., to Fort Totten Drive, N.E.; thence in a northwesterly direction along said Fort Totten Drive, N.E., to Bates Road, N.E.; thence in an easterly direction along said Bates Road, N.E., to the center line of the railroad right of way; thence in a northerly direction along the center line of said railroad right of way to Riggs Road, N.E.; thence in an easterly direction along said Riggs Road, N.E., to South Dakota Avenue, N.E.; thence in a southeasterly direction along said South Dakota Avenue, N.E., to Kennedy Street, N.E.; thence in an easterly direction along said Kennedy Street, N.E., to the State of Maryland-District of Columbia boundary line; thence in a northwesterly direction along said boundary line to the northern corner of the District of Columbia; thence in a southwesterly direction along said State of Maryland-District of Columbia boundary line to the point of beginning at its intersection with the center line of Rock Creek.

## WARD V

Starting at the intersection of First Street, N.W., and Michigan Avenue, N.W.; thence south along said First Street, N.W., to Bryant Street, N.W.; thence in a westerly direction along said Bryant Street, N.W., to Second Street, N.W.; thence south on said Second Street, N.W., to Florida Avenue, N.W.; thence in a westerly direction along said Florida Avenue, N.W., to New Jersey Avenue, N.W.; thence in a southerly direction along said New Jersey Avenue N.W., to New York Avenue, N.W.; thence in an easterly direction along said New York Avenue, N.W., and N.E., to Florida Avenue, N.E.; thence in an easterly direction along said Florida Avenue, N.E., to Benning Road, N.E.; thence in an easterly direction along said Benning Road, N.E., to the center line of the Anacostia River; thence in a northerly direction along the Anacostia River to the intersection of its center line with the State of Maryland-District of Columbia boundary line; thence in a northwesterly direction along said boundary line to Kennedy Sreet, N.E.; thence in a westerly direction along said Kennedy Street, N.E., to South Dakota Avenue, N.E.; thence in a northwesterly direction along said South Dakota Avenue, N.E., to Riggs Road, N.E.; thence in a westerly direction along said Riggs Road, N.E., to the center line of the railroad right of way; thence in a southerly direction along the center line of said railroad right of way to Bates Road, N.E.; thence in a westerly direction along said Bates Road, N.E., to Fort Totten Drive, N.E.; thence in a southeasterly direction along said Fort Totten Drive, N.E., to Hawaii Avenue, N.E.; thence in a southeasterly direction along said Hawaii Avenue, N.E., to Taylor Street, N.E.; thence in a westerly direction along said Taylor Street, N.E., to Harewood Road, N.E.; thence in a southerly direction along said Harewood Road, N.E., to Michigan Avenue, N.E.; thence in a westerly direction along said Michigan Avenue, N.E., and N.W., to the point of beginning at its intersection with First Street, N.W.

## WARD VI

Starting at the corner of North Capitol Street and New York Avenue, N.W.; thence south along said North Capitol Street to Massachusetts Avenue, N.W.; thence northwesterly along said Massachusetts Avenue, N.W., to Fourth Street, N.W.; thence south along said Fourth Street, N.W., to H Street, N.W.; thence west along said H Street, N.W., to Sixth Street, N.W.; thence south along Sixth Street, N.W., to Pennsylvania Avenue, N.W.; thence southeasterly along Pennsylvania Avenue, N.W., to Constitution Avenue, N.W.; thence east along said Constitution Avenue, N.W., to North Capitol Street; thence south along said North Capitol Street along a line extending south through the Capitol grounds to South Capitol Street; thence south along said South Capitol Street and continuing southeasterly along said South Capitol Street to the midpoint of the Frederick Douglass Memorial Bridge/center line of the Anacostia River; thence in a northeasterly direction along said center line of the Anacostia River to the westerly (southbound) roadway of the Eleventh Street Bridge; thence in a southerly direction along said westerly (southbound) roadway of the Eleventh Street Bridge to the center line of the Baltimore and

Ohio Railroad right of way; thence in a southwesterly direction along the center line of said railroad right of way to W Street, S.E.; thence in a southeasterly direction along said W Street, S.E., to Martin Luther King, Jr., Avenue, S.E.; thence along Martin Luther King, Jr., Avenue, S.E., to Morris Road, S.E.; thence in a southeasterly direction along said Morris Road, S.E., to Erie Street, S.E.; thence in an easterly direction along said Erie Street, S.E., to Fort Place, S.E.; thence in a northeasterly direction along said Fort Place, S.E., to Bruce Place, S.E.; thence in a northeasterly direction along said Bruce Place, S.E., to the eastern boundary of Fort Stanton Park; thence in a northeasterly direction along said eastern boundary of Fort Stanton Park to Good Hope Road, S.E.; thence in an easterly direction along said Good Hope Road, S.E., to Altamont Street, S.E.; thence north along said Altamont Street, S.E., to Naylor Road, S.E.; thence in a northwesterly direction along said Naylor Road, S.E., to Twenty-Fifth Street, S.E.; thence north along said Twenty-Fifth Street, S.E., to Minnesota Avenue, S.E.; thence in a northerly direction along said Minnesota Avenue, S.E., to M Place, S.E.; thence west along M Place, S.E., and extending along M Place, S.E., west to the Anacostia Freeway; thence north along said Anacostia Freeway to the Conrail railroad tracks; thence south along said Conrail railroad tracks, to the center line of the Anacostia River; thence in a northerly direction along the center line of said Anacostia River to Benning Road, N.E.; thence in a westerly direction along said Benning Road, N.E., to Florida Avenue, N.E.; thence in a westerly direction along said Florida Avenue, N.E., to New York Avenue, N.E.; thence in a southwesterly direction along said New York Avenue, N.E., to the point of beginning at the corner of North Capitol Street and New York Avenue, N.W.

#### WARD VII

Starting at the intersection of the State of Maryland-District of Columbia boundary line and the center line of the Anacostia River; thence in a southerly direction along the center line of said Anacostia River to the Conrail railroad tracks; thence in a northerly direction along said Conrail railroad tracks to the Anacostia Freeway; thence south along said Anacostia Freeway to the extension of M Place, S.E.; thence east along said M Place, S.E., to Minnesota Avenue, S.E.; thence south along said Minnesota Avenue, S.E., to Twenty-Fifth Street, S.E.; thence south along said Twenty-Fifth Street, S.E., to Naylor Road, S.E.; thence in a southeasterly direction along said Naylor Road, S.E., to the State of Maryland-District of Columbia boundary line; thence in a northeasterly direction along said State of Maryland-District of Columbia boundary line to the eastern corner of the District of Columbia; thence in a northwesterly direction along the State of Maryland-District of Columbia boundary line to the point of beginning at its intersection with the center line of the Anacostia River.

#### WARD VIII

Starting at the intersection of the Commonwealth of Virginia-District of Columbia boundary line on the Commonwealth of Virginia shore of the

Potomac River with the projection of the center line of the Anacostia River; thence in a northeasterly direction along the center line of said Anacostia River to the western (southbound) roadway of the Eleventh Street Bridge; thence in a southerly direction along said western (southbound) roadway of the Eleventh Street Bridge to the center line of the Baltimore and Ohio Railroad right of way; thence in a southwesterly direction along the center line of said railroad right of way to W Street, S.E.; thence in a southeasterly direction along said W Street, S.E., to Martin Luther King, Jr., Avenue, S.E.; thence in a southwesterly direction along said Martin Luther King, Jr., Avenue, S.E., to Morris Road, S.E.; thence in a southeasterly direction along said Morris Road, S.E., to Erie Street, S.E.; thence in an easterly direction along said Erie Street, S.E., to Fort Place, S.E.; thence in a northeasterly direction along said Fort Place, S.E., to Bruce Place, S.E.; thence in a northeasterly direction along said Bruce Place, S.E., to the eastern boundary of Fort Stanton Park; thence in a northeasterly direction along said eastern boundary of Fort Stanton Park to Good Hope Road, S.E.; thence in an easterly direction along said Good Hope Road, S.E., to Altamont Street, S.E.; thence north along said Altamont Street, S.E., to Naylor Road, S.E.; thence in a southeasterly direction along said Naylor Road, S.E., to the State of Maryland-District of Columbia boundary line; thence in a southwesterly direction along said State of Maryland-District of Columbia boundary line to the southern corner of the District of Columbia on the Commonwealth of Virginia shore of the Potomac River; thence along the Commonwealth of Virginia-District of Columbia boundary line to the point of beginning at its intersection with the projection of the center line of the Anacostia River.

Except where otherwise indicated, the boundary line is the center of the street. (Mar. 16, 1982, D.C. Law 4-87, § 4, 29 DCR 433; Aug. 17, 1991, D.C. Law 9-26, § 2, 38 DCR 4198; Mar. 11, 1992, D.C. Law 9-65, § 2, 39 DCR 8.)

**Legislative history of Law 4-87.** — See note to § 1-1331.

**Legislative history of Law 9-26.** — Law 9-26 was introduced in Council and assigned Bill No. 9-158, which was referred to the Committee on Regional Authorities and the Committee of the Whole. The Bill was adopted on first and second readings on June 4, 1991, and June 18, 1991, respectively. Signed by the Mayor on July 2, 1991, it was assigned Act No. 9-53 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 9-63.** — Law 9-63 was introduced in Council and assigned Bill No. 9-321. The Bill was adopted on first and

second readings on October 1, 1991, and November 5, 1991, respectively. Signed by the Mayor on November 25, 1991, it was assigned Act No. 9-106 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 9-65.** — Law 9-65 was introduced in Council and assigned Bill No. 9-314, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 5, 1991, and December 3, 1991, respectively. Signed by the Mayor on December 20, 1991, it was assigned Act No. 9-116 and transmitted to both Houses of Congress for its review.

## § 1-1334. Residency requirement.

No official elected from any ward or from any single-member district shall be required to forfeit his or her office solely by reason of a change in boundaries which places the residence of such official outside the ward or single-member district from which he or she was elected. Such official shall be permitted to



complete his or her term of office, but in future elections he or she may be a candidate only in the ward or single-member district in which he or she resides. (Mar. 16, 1982, D.C. Law 4-87, § 6, 29 DCR 433.)

**Legislative history of Law 4-87.** — See note to § 1-1331.

CHAPTER 14. ELECTION CAMPAIGNS; LOBBYING; CONFLICT OF INTEREST.

*Subchapter I. General Provisions.*

Sec.

1-1401. Definitions.

*Subchapter II. Financial Disclosures.*

- 1-1411. Political committees.
- 1-1412. Principal campaign committee.
- 1-1413. Designation of campaign depositories; petty cash fund.
- 1-1414. Statement of organization of political committees.
- 1-1415. Registration statement of candidate; depository information.
- 1-1416. Reports of receipts and expenditures by political committees and candidates.
- 1-1417. Reports by others than political committees and candidates.
- 1-1418. Formal requirements respecting reports and statements.
- 1-1419. Exemption for total expenses under \$250.
- 1-1420. Identification of campaign literature.
- 1-1421. Candidate's liability for financial obligation incurred by political committee.

*Subchapter III. Director of Campaign Finance.*

- 1-1431. Office of Director of Campaign Finance established; enforcement of chapter.
- 1-1432. Powers of Director.
- 1-1433. Duties of Director.
- 1-1434. Assistance of Comptroller General.
- 1-1435. District of Columbia Board of Elec-

Sec.

tions and Ethics created; penalties; advisory opinions.

*Subchapter IV. Finance Limitations.*

- 1-1441. [Repealed].
- 1-1441.1. Contribution limitations.
- 1-1441.2. Partnership contributions.
- 1-1441.3. Reporting requirements.
- 1-1442. "Person" defined.
- 1-1443. Constituent services.

*Subchapter V. Lobbying.*

- 1-1451. Definitions.
- 1-1452. Persons required to register.
- 1-1453. Exceptions.
- 1-1454. Registration form.
- 1-1455. Activity reports.
- 1-1456. Prohibited activities.
- 1-1457. Penalties; prohibition from serving as lobbyist; citizen suits.

*Subchapter VI. Conflict of Interest and Disclosure.*

- 1-1461. Conflict of interest.
- 1-1462. Disclosure of financial interest.

*Subchapter VII. Miscellaneous Provisions.*

- 1-1471. Penalties; prosecutions.
- 1-1471.1. Document under oath.
- 1-1472. Use of surplus campaign funds.
- 1-1473. Authority of Council.

*Subchapter VIII. Limitations on Honoraria and Royalties.*

- 1-1481. Limitations on honoraria and royalties.

*Subchapter I. General Provisions.*

§ 1-1401. Definitions.

When used in this chapter, unless otherwise provided:

(1) The term "election" means a primary, general, or special election held in the District of Columbia for the purpose of nominating an individual to be a candidate for election to office or for the purpose of electing a candidate to office or for the purpose of deciding an initiative, referendum, or recall measure, and includes a convention or caucus of a political party held for the purpose of nominating such a candidate.

(2) The term "candidate" means an individual who seeks nomination for election, or election, to office, whether or not such individual is nominated or elected, and, for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, if he or she has: (A) Obtained or authorized any other person to obtain nominating petitions to qualify himself or herself for nomination for election, or election, to office; (B) received

contributions or made expenditures, or has given his or her consent for any other person to receive contributions or make expenditures, with a view to bringing about his or her nomination for election, or election, to office; or (C) reason to know, or knows, that any other person has received contributions or made expenditures for that purpose, and has not notified that person in writing to cease receiving contributions or making expenditures for that purpose. A person who is deemed to be a candidate for the purposes of this chapter shall not be deemed, solely by reason of that status, to be a candidate for the purposes of any other federal law.

(3) The term "office" means the office of Mayor of the District of Columbia, Chairman or member of the Council of the District of Columbia, member of the Board of Education of the District of Columbia, or an official of a political party.

(4) The term "official of a political party" means:

(A) National committeemen and national committeewomen;

(B) Delegates to conventions of political parties nominating candidates for the Presidency and Vice Presidency of the United States;

(C) Alternates to the officials referred to in subparagraphs (A) and (B) of this paragraph, where permitted by political party rules; and

(D) Such members and officials of local committees of political parties as may be designated by the duly authorized local committees of such parties for election, by public ballot, at large or by ward in the District of Columbia.

(5) The term "political committee" means any proposer, individual, committee (including a principal campaign committee), club, association, organization, or other group of individuals organized for the purpose of, or engaged in: promoting or opposing a political party, promoting or opposing the nomination or election of an individual to office, or promoting or opposing any initiative, referendum, or recall.

(6)(A) The term "contribution" means:

(i) A gift, subscription (including any assessment, fee, or membership dues), loan (except a loan made in the regular course of business by a business engaged in the business of making loans), advance, or deposit of money or anything of value, made for the purpose of financing, directly or indirectly, the election campaign of a candidate or any operations of a political committee or the campaign, or any operations of a political committee involved in such a campaign, to obtain signatures on any initiative, referendum, or recall measure, or to bring about the ratification or defeat of any initiative, referendum, or recall measure;

(ii) A contract, promise, or agreement, whether or not legally enforceable, to make a contribution for any such purpose;

(iii) A transfer of funds between political committees; or

(iv) The payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to such candidate or committee without charge, or for less than reasonable value, for any such purpose or the furnishing of goods, advertising, or services to a candidate's campaign without charge, or at a rate which is less than the rate normally charged for such services.

(B) Notwithstanding the foregoing, such term shall not be construed to include:

(i) Services provided without compensation, by individuals (including accountants and attorneys) volunteering a portion or all of their time on behalf of a candidate or political committee;

(ii) Personal services provided without compensation by individuals volunteering a portion or all of their time to a candidate or political committee;

(iii) Communications by an organization, other than a political party, solely to its members and their families on any subject;

(iv) Communications (including advertisements) to any person on any subject by any organization which is organized solely as an issue-oriented organization, which communications neither endorse nor oppose any candidate for office;

(v) Normal billing credit for a period not exceeding 30 days;

(vi) Services of an informational or polling nature, and related thereto, designed to seek the opinion(s) of voters concerning the possible candidacy of qualified electors for public office, prior to such qualified elector's becoming a candidate as provided in this chapter;

(vii) The use of real or personal property, and the costs of invitations, food and beverages voluntarily provided by an individual to a candidate in rendering voluntary personal services on the individual's residential premises for related activities; or

(viii) The sale of any food or beverage by a vendor for use in a candidate's campaign at a charge less than the normal comparable charge if such charge for use in a candidate's campaign is at least equal to the cost of such food or beverage to the vendor; to the extent that the provisions of sub-subparagraphs (vii) and (viii) of this subparagraph do not exceed \$500 each with respect to any candidate's election.

(7) The term "expenditure" means:

(A) A purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made for the purpose of financing, directly or indirectly, the election campaign of a candidate or any operations of a political committee or the election campaign, or any operations of a political committee involved in such a campaign, to obtain signatures on any initiative, referendum, or recall petition, or to bring about the ratification or defeat of any initiative, referendum, or recall measure;

(B) A contract, promise, or agreement, whether or not legally enforceable, to make an expenditure;

(C) A transfer of funds between political committees; and

(D) Notwithstanding the foregoing provisions of this paragraph, such term shall not be construed to include the incidental expenses (as defined by the Board) made by or on behalf of individuals in the course of volunteering their time on behalf of a candidate or political committee or the use of real or personal property and the cost of any food or beverage voluntarily provided by an individual to a candidate in rendering voluntary personal services on the individual's residential premises for candidate-related activity if the cumulative value of such activities by such individual on behalf of any candidate do not exceed \$500 with respect to any election.

(8) The term "person" means an individual, partnership, committee, corporation, labor organization, and any other organization.

(9) The term "Director" means the Director of Campaign Finance of the District of Columbia Board of Elections and Ethics created by subchapter III of this chapter.

(10) The term "political party" means an association, committee, or organization which nominates a candidate for election to any office and qualifies under Chapter 13 of this title, to have the names of its nominees appear on the election ballot as the candidate of that association, committee, or organization.

(11) The term "Board" means the District of Columbia Board of Elections and Ethics established under Chapter 13 of this title and redesignated by § 1-1435. (1973 Ed., § 1-1121; Aug. 14, 1974, 88 Stat. 447, Pub. L. 93-376, title I, § 102; Sept. 2, 1976, D.C. Law 1-79, title VIII, § 806, 23 DCR 2050; 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; June 7, 1979, D.C. Law 3-1, § 3(a), 25 DCR 9454; Mar. 16, 1982, D.C. Law 4-88, § 3(a), (p), (r), (s), 29 DCR 458.)

**Section references.** — This section is referred to in §§ 1-119, 1-1302, 1-1306, 1-1315 and 1-1451.

**Legislative history of Law 1-79.** — Law 1-79 was introduced in Council and assigned Bill No. 1-120, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 3, 1976 and May 18, 1976, respectively. Signed by the Mayor on June 18, 1976, it was assigned Act No. 1-131 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 1-126.** — Law 1-126 was introduced in Council and assigned Bill No. 1-364, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 22, 1976 and December 7, 1976, respectively. Enacted without signature by the Mayor on January 25, 1977, it was assigned Act No. 1-225 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 2-101.** — Law 2-101 was introduced in Council and assigned Bill No. 2-218, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 2, 1978 and May 16, 1978, respectively. Signed by the Mayor on June 15, 1978, it was assigned Act No. 2-207 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 3-1.** — Law 3-1 was introduced in Council and assigned Bill No. 3-2, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on March 13, 1979 and March 27, 1979, respectively. Signed by the Mayor on April 10, 1979, it was assigned Act No. 3-18 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 4-88.** — Law 4-88 was introduced in Council and assigned Bill No. 4-271, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 24, 1981 and December 8, 1981, respectively. Signed by the Mayor on January 20, 1982, it was assigned Act No. 4-142 and transmitted to both Houses of Congress for its review.

**Applicability of chapter to Law 11-144.** — Section 4 of D.C. Law 11-144, the Contribution Limitation Initiative Amendment Act of 1996, provided that D.C. Code § 1-1401 et seq. shall apply to the act. D.C. Law 11-144 repeals § 1-1441 and amends §§ 1-1441.1, 1-1441.3, and 1-1442.

**Cited in** *Doe v. Martin*, 404 F. Supp. 753 (D.D.C. 1975); *W.H. Brewton & Sons v. Kennedy*, 110 WLR 1681 (Super. Ct. 1982); *Scolaro v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 691 A.2d 77 (1997).

## *Subchapter II. Financial Disclosures.*

### **§ 1-1411. Political committees.**

(a) Every political committee shall have a chairman and a treasurer. No contribution and no expenditure shall be accepted or made by or on behalf of a political committee at a time when there is a vacancy in the office of treasurer

thereof and no other person has been designated and has agreed to perform the functions of treasurer. No expenditure shall be made for or on behalf of a political committee without the authorization of its chairman or treasurer, or their designated agents.

(b) Every person who receives a contribution of \$50 or more for or on behalf of a political committee shall, on demand of the treasurer, and in any event within 5 days after receipt of such contribution, submit to the treasurer of such committee a detailed account thereof, including the amount, the name and address (including the occupation and the principal place of business, if any) of the person making such contribution, and the date on which such contribution was received. All funds of a political committee shall be segregated from, and may not be commingled with, any personal funds of officers, members, or associates of such committee.

(c) Except for accounts of expenditures made out of the petty cash fund provided for under § 1-1413(b), the treasurer of a political committee, and each candidate, shall keep a detailed and exact account of:

(1) All contributions made to or for such political committee or candidate;

(2) The full name and mailing address (including the occupation and the principal place of business, if any) of every person making a contribution of \$50 or more, and the date and amount thereof;

(3) All expenditures made by or on behalf of such committee or candidate; and

(4) The full name and mailing address (including the occupation and the principal place of business, if any) of every person to whom any expenditure is made, the date and amount thereof and the name and address of, and office sought by, each candidate on whose behalf such expenditure was made.

(d) The treasurer or candidate shall obtain and preserve such receipted bills and records as may be required by the Board.

(e) Each political committee and candidate shall include on the face or front page of all literature and advertisement soliciting funds the following notice: "A copy of our report is filed with the Director of Campaign Finance of the District of Columbia Board of Elections and Ethics." (1973 Ed., § 1-1131; Aug. 14, 1974, 88 Stat. 449, Pub. L. 93-376, title II, § 201; Sept. 2, 1976, D.C. Law 1-79, title VIII, § 803, 23 DCR 2050; Mar. 16, 1982, D.C. Law 4-88, § 3(r), 29 DCR 458.)

**Section references.** — This section is referred to in § 1-1419.

**Legislative history of Law 1-79.** — See note to § 1-1401.

**Legislative history of Law 4-88.** — See note to § 1-1401.

**Disclosure of contribution records prohibited.** — This section's requirements regard-

ing the keeping of records for each contribution of \$50 or more has an implicit provision against the disclosure of those records, except for that which is inextricably and unavoidably involved in the process of verification and audit. *Doe v. Martin*, 404 F. Supp. 753 (D.D.C. 1975).

Cited in *W.H. Brewton & Sons v. Kennedy*, 110 WLR 1681 (Super. Ct. 1982).

## § 1-1412. Principal campaign committee.

(a) Each candidate for office shall designate in writing 1 political committee as his or her principal campaign committee. The principal campaign committee shall receive all reports made by any other political committee accepting

contributions or making expenditures for the purpose of influencing the nomination for election, or election, of the candidate who designated it as his or her principal campaign committee. The principal committee may require additional reports to be made to it by any such political committee and may designate the time and number of all reports. No political committee may be designated as the principal campaign committee of more than 1 candidate, except a principal campaign committee supporting the nomination or election of a candidate as an official of a political party may support the nomination or election of more than 1 such candidate, but may not support the nomination or election of a candidate for any public office.

(b) Each statement (including the statement of organization required under § 1-1414) or report that a political committee is required to file with or furnish to the Director under the provisions of this chapter shall also be furnished, if that political committee is not a principal campaign committee, to the campaign committee for the candidate on whose behalf that political committee is accepting or making, or intends to accept or make, contributions or expenditures.

(c) The treasurer of each political committee which is a principal campaign committee, and each candidate, shall receive all reports and statements filed with or furnished to it or him or her by other political committees, consolidate, and furnish the reports and statements to the Director, together with the reports and statements of the principal campaign committee of which he or she is treasurer or which was designated by him or her, in accordance with the provisions of this subchapter and regulations prescribed by the Board. (1973 Ed., § 1-1132; Aug. 14, 1974, 88 Stat. 450, Pub. L. 93-376, title II, § 202; 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.)

**Legislative history of Law 1-126.** — See note to § 1-1401.

**Legislative history of Law 4-88.** — See note to § 1-1401.

### **§ 1-1413. Designation of campaign depositories; petty cash fund.**

(a) Each political committee, and each candidate accepting contributions or making expenditures, shall designate, in the registration statement required under § 1-1414 or 1-1415, 1 or more national banks located in the District of Columbia as the campaign depository or depositories of that political committee or candidate. Each such committee or candidate shall maintain a checking account or accounts at such depository or depositories and shall deposit any contributions received by the committee or candidate into that account or accounts. No expenditures may be made by such committee or candidate except by check drawn payable to the person to whom the expenditure is being made on that account or accounts, other than petty cash expenditures as provided in subsection (b) of this section.

(b) A political committee or candidate may maintain a petty cash fund out of which may be made expenditures not in excess of \$50 to any person in connection with a single purchase or transaction. A record of petty cash

receipts and disbursements shall be kept in accordance with requirements established by the Board and such statements and reports thereof shall be furnished to the Director as it may require. Payments may be made into the petty cash fund only by check drawn on the checking account or accounts maintained at a campaign depository of such political committee or candidate. (1973 Ed., § 1-1133; Aug. 14, 1974, 88 Stat. 451, Pub. L. 93-376, title II, § 203; Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257; Mar. 16, 1982, D.C. Law 4-88, § 3(r), 29 DCR 458.)

**Section references.** — This section is referred to in § 1-1411.

**Legislative history of Law 4-88.** — See note to § 1-1401.

**Legislative history of Law 2-101.** — See note to § 1-1401.

## § 1-1414. Statement of organization of political committees.

(a) Each political committee shall file with the Director a statement of organization within 10 days after its organization. Each such committee in existence on August 14, 1974, shall file a statement of organization with the Director at such time as the Director may prescribe.

(b) The statement of organization shall include:

- (1) The name and address of the political committee;
- (2) The names, addresses, and relationships of affiliated or connected organizations;
- (3) The area, scope, or jurisdiction of the political committee;
- (4) The name, address, and position of the custodian of books and accounts;
- (5) The name, address, and position of other principal officers, including officers and members of the finance committee, if any;
- (6) The name, address, office sought, and party affiliation of:
  - (A) Each candidate whom the committee is supporting; and
  - (B) Any other individual, if any, whom the committee is supporting for nomination for election or election, to any public office whatever; or, if the committee is supporting the entire ticket of any party, the name of the party; or, if the committee is supporting or opposing any initiative or referendum, the summary statement and short title thereof, prepared in accordance with § 1-1320; or, if the committee is supporting or opposing any recall measure, the name and office of the public official whose recall is sought or opposed in accordance with § 1-1321;
- (7) A statement whether the political committee is a continuing one;
- (8) The disposition of residual funds which will be made in the event of dissolution;
- (9) The name and address of the bank or banks designated by the committee as the campaign depository or depositories, together with the title and number of each account and safety deposit box used by that committee at the depository or depositories, and the identification of each individual authorized to make withdrawals or payments out of each such account or box; and



(10) Such other information as shall be required by the Director.

(c) Any change in information previously submitted in a statement of organization shall be reported to the Director within the 10-day period following the change.

(d) Any political committee which, after having filed 1 or more statements of organization, disbands or determines it will no longer receive contributions or make expenditures during the calendar year shall so notify the Director. (1973 Ed., § 1-1134; Aug. 14, 1974, 88 Stat. 451, Pub. L. 93-376, title II, § 204; Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257; June 7, 1979, D.C. Law 3-1, § 3(b), 25 DCR 9454; Mar. 16, 1982, D.C. Law 4-88, § 3(b), (r), 29 DCR 458.)

**Section references.** — This section is referred to in §§ 1-1320, 1-1321, 1-1412, and 1-1413.

**Legislative history of Law 2-101.** — See note to § 1-1401.

**Legislative history of Law 3-1.** — See note to § 1-1401.

**Legislative history of Law 4-88.** — See note to § 1-1401.

**Cited in** Convention Ctr. Referendum Comm. v. District of Columbia Bd. of Elections & Ethics, App. D.C., 441 A.2d 889 (1981).

## § 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 (pursuant to § 1-1441(c)) 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.)

**Section references.** — This section is referred to in §§ 1-1413 and 1-1419.

**Legislative history of Law 1-126.** — See note to § 1-1401.

**Legislative history of Law 2-101.** — See note to § 1-1401.

**Legislative history of Law 4-88.** — See note to § 1-1401.

**References in text.** — Section 1-1441, re-

ferred to in (a), was repealed by D.C. Law 11-144, § 2, 43 DCR 2174, effective June 13, 1996.

**Cited in** Democratic Cent. Comm. v. Metropolitan Area Transit Comm'n, 941 F.2d 1217 (D.C. Cir. 1991); Lawrence v. District of Columbia Bd. of Elections & Ethics, App. D.C., 611 A.2d 529 (1992).

**§ 1-1416. Reports of receipts and expenditures by political committees and candidates.**

(a) The treasurer of each political committee supporting a candidate, the treasurer of each political committee engaged in obtaining signatures on any initiative, referendum, or recall petition, or engaged in promoting or opposing the ratification of any initiative, referendum, or recall measure placed before the electors of the District of Columbia, and each candidate, required to register under this chapter, shall file with the Director, and with the applicable principal campaign committee, reports of receipts and expenditures on forms to be prescribed or approved by the Director. Except for the 1st such report which shall be filed on the 21st day after August 14, 1974, such reports shall be filed on the 10th day of March, June, August, October, and December in each year during which there is held an election for the office such candidate is seeking, and on the 8th day next preceding the date on which such election is held, and also by the 31st day of January of each year. In addition such reports shall be filed on the 31st day of July of each year in which there is no such election. Such reports shall be complete as of such date as the Director may prescribe, which shall not be more than 5 days before the date of filing, except that any contribution of \$200 or more received after the closing date prescribed by the Director for the last report required to be filed prior to the election shall be reported within 24 hours after its receipt.

(b) Each report under this section shall disclose:

(1) The amount of cash on hand at the beginning of the reporting period;

(2) The full name and mailing address (including the occupation and the principal place of business, if any) of each person who has made 1 or more contributions to or for such committee or candidate (including the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events) within the calendar year in an aggregate amount or value in excess of \$50 or more, together with the amount and date of such contributions;

(3) The total sum of individual contributions made to or for such committee or candidate during the reporting period and not reported under paragraph (2) of this subsection;

(4) The name and address of each political committee or candidate from which the reporting committee or the candidate received, or to which that committee or candidate made, any transfer of funds, together with the amounts and dates of all transfers;

(5) Each loan to or from any person within the calendar year in an aggregate amount or values of \$50 or more, together with the full names and mailing addresses (including the occupation and the principal place of business, if any) of the lender and endorsers, if any, and the date and amount of such loans;

(6) The net amount of proceeds from:

(A) The sale of tickets to each dinner, luncheon, rally, and other fundraising events organized by such committee;

(B) Mass collections made at such events; and

(C) Sales by such committee of items such as political campaign pins, buttons, badges, flags, emblems, hats, banners, literature, and similar materials;

(7) Each contribution, rebate, refund, or other receipt of \$50 or more not otherwise listed under paragraphs (2) through (6) of this subsection;

(8) The total sum of all receipts by or for such committee or candidate during the reporting period;

(9) The full name and mailing address (including the occupation and the principal place of business, if any) of each person to whom expenditures have been made by such committee or on behalf of such committee or candidate within the calendar year in an aggregate amount or value of \$10 or more, the amount, date, and purpose of each such expenditure and the name and address of, and office sought by, each candidate on whose behalf such expenditure was made;

(10) The total sum of expenditures made by such committee or candidate during the calendar year;

(11) The amount and nature of debts and obligations owed by or to the committee, in such form as the Director may prescribe and a continuous reporting of its debts and obligations after the election at such periods as the Director may require until such debts and obligations are extinguished; and

(12) Such other information as may be required by the Director.

(c) The reports to be filed under subsection (a) of this section shall be cumulative during the calendar year to which they relate, but where there has been no change in an item reported in a previous report during such year, only the unchanged amount need be carried forward. If no contributions or expenditures have been accepted or expended during a calendar year, the treasurer of the political committee or candidate shall file a statement to that effect.

(d) In the case of reports filed by a committee or committees on behalf of initiative, referendum, or recall measures under this section, such reports shall be filed on such dates as the Board may by rule prescribe, but in no event, shall more than 4 separate reports be required during the consideration of a particular initiative, referendum, or recall measure by any political committee or committees collecting signatures, or supporting or opposing such measures. (1973 Ed., § 1-1136; Aug. 14, 1974, 88 Stat. 452, Pub. L. 93-376, title II, § 206; Aug. 18, 1978, D.C. Law 2-101, § 3, 25 DCR 257; Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257; June 7, 1979, D.C. Law 3-1, § 3(c), 25 DCR 9454; Mar. 16, 1982, D.C. Law 4-88, § 3(c), (q)-(s), 29 DCR 458.)

**Section references.** — This section is referred to in §§ 1-1320, 1-1321, 1-1417, and 1-1461.

**Legislative history of Law 2-101.** — See note to § 1-1401.

**Legislative history of Law 3-1.** — See note to § 1-1401.

**Legislative history of Law 4-88.** — See note to § 1-1401.

**Disclosure of contribution records pro-**

**hibited.** — This section's requirements regarding the keeping of records for each contribution of \$50 or more has an implicit provision against the disclosure of those records, except for that which is inextricably and unavoidably involved in the process of verification and audit. *Doe v. Martin*, 404 F. Supp. 753 (D.D.C. 1975).

**Cited in** Convention Ctr. Referendum Comm. v. District of Columbia Bd. of Elections & Ethics, App. D.C., 441 A.2d 889 (1981).

**§ 1-1417. Reports by others than political committees and candidates.**

Every person (other than a political committee or candidate) who makes contributions or expenditures, other than by contribution to a political committee or candidate, in an aggregate amount of \$50 or more within a calendar year shall file with the Director a statement containing the information required by § 1-1416. Statements required by this section shall be filed on the dates on which reports by political committees are filed, but need not be cumulative. (1973 Ed., § 1-1137; Aug. 14, 1974, 88 Stat. 453, Pub. L. 93-376, title II, § 207.)

**§ 1-1418. Formal requirements respecting reports and statements.**

(a) A report or statement required by this subchapter to be filed by a treasurer of a political committee, a candidate, or by any other person, shall be verified by the oath or affirmation of the person filing such report or statement.

(b) A copy of a report or statement shall be preserved by the person filing it for a period to be designated by the Board in a published regulation.

(c) The Board, shall, by published regulations of general applicability, prescribe the manner in which contributions and expenditures in the nature of debts and other contracts, agreements, and promises to make contributions or expenditures shall be reported. Such regulations shall provide that they be reported in separate schedules. In determining aggregate amounts of contributions and expenditures, amounts reported as provided in such regulations shall not be considered until actual payment is made. (1973 Ed., § 1-1138; Aug. 14, 1974, 88 Stat. 454, Pub. L. 93-376, title II, § 208; Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257.)

**Legislative history of Law 2-101.** — See note to § 1-1401.

**§ 1-1419. Exemption for total expenses under \$250.**

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 \$250 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 \$250 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.)

**Legislative history of Law 1-126.** — See note to § 1-1401.

**Legislative history of Law 4-88.** — See note to § 1-1401.

## § 1-1420. Identification of campaign literature.

All newspaper or magazine advertising, posters, circulars, billboards, handbills, bumper stickers, sample ballots, initiative, referendum, or recall petitions, and other printed matter with reference to or intended for the support or defeat of a candidate or group of candidates for nomination or election to any public office, or for the support or defeat of any initiative, referendum, or recall measure, shall be identified by the words "paid for by" followed by the name and address of the payer or the committee or other person and its treasurer on whose behalf the material appears. (1973 Ed., § 1-1140; Aug. 14, 1974, 88 Stat. 454, Pub. L. 93-376, title II, § 210; June 7, 1979, D.C. Law 3-1, § 3(d), 25 DCR 9454; Mar. 16, 1982, D.C. Law 4-88, § 3(s), 29 DCR 458.)

**Legislative history of Law 3-1.** — See note to § 1-1401.

**Legislative history of Law 4-88.** — See note to § 1-1401.

## § 1-1421. Candidate's liability for financial obligation incurred by political committee.

No provision of this chapter shall be construed as creating liability on the part of any candidate for any financial obligation incurred by a political committee. For the purposes of this chapter, and § 1-1301 et seq., actions of an agent acting for a candidate shall be imputed to the candidate: Provided, however, that the actions of such agent may not be imputed to the candidate in the presence of a provision of law requiring a willful and knowing violation of this chapter or § 1-1301 et seq., unless the agency relationship to engage in such an act is shown by clear and convincing evidence. (1973 Ed., § 1-1141; Aug. 14, 1974, 88 Stat. 454, Pub. L. 93-376, title II, § 211; Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257.)

**Legislative history of Law 2-101.** — See note to § 1-1401.

**Liability does not arise from fact of candidacy alone.** — This section means that liability does not arise from the fact of candidacy alone, but it does not by its terms deal with any possible liability on the part of the candidate if he has authorized or ratified a debt. *W.H. Brewton & Sons v. Kennedy*, 110 WLR 1681 (Super. Ct. 1982).

**Liability pursuant to contract law.** — No provision of this chapter creates any liability on the part of a candidate, but that does not mean that liability cannot be otherwise created, such as pursuant to the ordinary law of contracts.

*Media Placement Consultants, Inc. v. Turner*, 120 WLR 685 (Super. Ct. 1992).

**Discovery.** — A creditor of a political committee should have the opportunity through pretrial discovery to determine exactly what the relationship was between the candidate and his campaign manager, and his finance chairman, as to actual authority and as to whether the candidate had any actual knowledge of the subject matter of the contract at issue and, in fact, either authorized it in advance, or ratified it after it was entered. *Media Placement Consultants, Inc. v. Turner*, 120 WLR 685 (Super. Ct. 1992).

*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 of Campaign Finance (hereinafter in this chapter referred to as the "Director"). The Commissioner of the District of Columbia shall appoint, by and with the advice and consent of the Senate, the Director, except that on and after January 2, 1975, appointments to the office of Director, including vacancies therein, shall be made by the Mayor, with the advice and consent of the Council. The Director shall serve for a term of 4 years, subject to removal for cause by the Commissioner or the Mayor, as the case may be, and may be reappointed for a like term or terms, with the advice and consent of the Council, except that in the case of the Director serving as such on January 1, 1975, such Director's term shall terminate upon the expiration of June 1, 1979, unless sooner so removed for cause. Any appointment to fill a vacancy in the office of Director shall be for the unexpired portion of the term. The Director shall be entitled to receive compensation at the maximum rate as may be established from time to time for Grade 16 of the General Schedule in § 5332 of Title 5 of the United States Code, or equivalent compensation pursuant to the provisions of subchapter XII of Chapter 6 of this title, and shall be responsible for the administrative operations of the Board pertaining to this chapter and shall perform such other duties as may be delegated or assigned to him or her from time to time by regulations or orders of the Board. However, 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.)

**Cross references.** — As to effective date of D.C. Law 2-139, see § 1-637.1.

**Section references.** — This section is referred to in §§ 1-604.6, 1-637.1, and 1-1432.

**Legislative history of Law 2-101.** — See note to § 1-1401.

**Legislative history of Law 2-139.** — Law 2-139 was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 4-88.** — See note to § 1-1401.

**Legislative history of Law 5-17.** — Law 5-17 was introduced in Council and assigned Bill No. 5-11, which was referred to the Committee on Government Operations. The Bill was adopted on first, amended first and second readings on April 26, 1983, May 10, 1983 and May 24, 1983, respectively. Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-34 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 11-22.** — Law 11-22, the "District of Columbia Campaign Finance Reform and Conflict of Interest Act of 1974 Temporary Amendment Act of 1995," was introduced in Council and assigned Bill No. 11-149. The Bill was adopted on first and second readings on March 7, 1995, and April 4, 1995, respectively. Signed by the Mayor on April 17, 1995, it was assigned Act No. 11-41 and transmitted to both Houses of Congress for its review. D.C. Law 11-22 became effective on June 17, 1995.

**Legislative history of Law 11-51.** — Law 11-51, the "District of Columbia Campaign Finance Reform and Conflict of Interest Temporary Amendment Act of 1995," was introduced in Council and assigned Bill No. 11-313. The Bill was adopted on first and second readings on June 6, 1995, and June 20, 1995, respectively. Vetoed by the Mayor on July 6, 1995, Council overrode the veto on July 11, 1995, and the Bill was assigned Act No. 11-93 and transmitted to both Houses of Congress for its review. D.C. Law 11-51 became effective on September 22, 1995.

## § 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;

(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.)

**Cross references.** — As to authority to accept volunteer services, see § 1-304 et seq.

**Legislative history of Law 2-12.** — Law 2-12 was introduced in Council and assigned Bill No. 2-87, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on March 22, 1977 and April 5, 1977, respectively. Signed by the Mayor on April 26, 1977, it was

assigned Act No. 2-33 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 2-101.** — See note to § 1-1401.

**Legislative history of Law 4-88.** — See note to § 1-1401.

**Cited in** *Scolaro v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 691 A.2d 77 (1997).

## § 1-1433. Duties of Director.

The Director shall:

(1) Develop and furnish (upon request) prescribed forms for the making of the reports and statements required to be filed with him or her under 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 subchapter;

(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.)

**Section references.** — This section is referred to in § 1-1431.

**Legislative history of Law 1-126.** — See note to § 1-1401.

**Legislative history of Law 4-88.** — See note to § 1-1401.

**Legislative history of Law 11-22.** — See note to § 1-1431.

**§ 1-1434. Assistance of Comptroller General.**

The Board and Director may, in the performance of its functions under this chapter, request the assistance of the Comptroller General of the United States, including such investigations and audits as the Board and Director may determine necessary, and the Comptroller General shall provide such assistance with or without reimbursement, as the Board and Director and the Comptroller General shall agree. (1973 Ed., Aug. 14, 1974, 88 Stat. 456, Pub. L. 93-376, title III, § 304.)

**§ 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 \$50 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 \$500.

(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.)

**Section references.** — This section is referred to in §§ 1-619.3 and 1-1401.

**Legislative history of Law 1-126.** — See note to § 1-1401.

**Legislative history of Law 2-101.** — See note to § 1-1401.

**Legislative history of Law 4-88.** — See note to § 1-1401.

**Legislative history of Law 11-22.** — See note to § 1-1431.

**Cited in** Doe v. Martin, 404 F. Supp. 753 (D.D.C. 1975); Convention Ctr. Referendum Comm. v. Board of Elections & Ethics, App. D.C., 399 A.2d 550 (1979); Lawrence v. District of Columbia Bd. of Elections & Ethics, App. D.C., 611 A.2d 529 (1992).

### *Subchapter IV. Finance Limitations.*

## **§ 1-1441. General limitations.**

Repealed.

(1973 Ed., § 1-1161; Aug. 14, 1974, 88 Stat. 459, Pub. L. 93-376, title IV, § 401; Sept. 23, 1975, D.C. Law 1-16, § 2, 22 DCR 1987; Oct. 10, 1975, D.C. Law 1-21, § 7(a), 22 DCR 2069; Oct. 30, 1975, D.C. Law 1-27, § 3(a), (b), 22 DCR 2471; Sept. 2, 1976, D.C. Law 1-79, title VIII, § 802, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title I, § 104, title IV, § 402, 24 DCR 2372; Aug. 18, 1978, D.C. Law 2-101, § 3, 25 DCR 257; June 7, 1979, D.C. Law 3-1, § 3(e), 25 DCR 9454; Mar. 16, 1982, D.C. Law 4-88, § 3(g), (r), (s), 29 DCR 458; Sept. 26, 1984, D.C. Law 5-111, § 2(a), 31 DCR 3952; June 13, 1996, D.C. Law 11-144, § 2, 43 DCR 2174.)

**Legislative history of Law 11-144.** — Law 11-144, the “Contribution Limitation Initiative Amendment Act of 1996,” was introduced in Council and Assigned Bill No. 11-427, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on March 5, 1996, and April 2, 1996, respectively. Signed by the Mayor on April 18, 1996, it was assigned Act No. 11-261 and transmitted to both Houses of Congress for

its review. D.C. Law 11-144 became effective on June 13, 1996.

**Applicability of chapter to Law 11-144.** — Section 4 of D.C. Law 11-144, the Contribution Limitation Initiative Amendment Act of 1996, provided that D.C. Code § 1-1401 et seq. shall apply to the act. D.C. Law 11-144 repeals § 1-1441 and amends §§ 1-1441.1, 1-1441.3, and 1-1442.

## § 1-1441.1. Contribution limitations.

(a) No person shall make any contribution which, and no person shall receive any contribution from any person which, when aggregated with all other contributions received from that person, relating to a campaign for nomination as a candidate or election to public office, including both the primary and general election or special elections, exceeds:

(1) In the case of a contribution in support of a candidate for Mayor or for the recall of the Mayor, \$2,000;

(2) In the case of a contribution in support of a candidate for Chairman of the Council or for the recall of the Chairman of the Council, \$1,500;

(3) In the case of a contribution in support of a candidate for member of the Council elected at-large or for the recall of a member of the Council elected at-large, \$1,000;

(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

(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.

(6) In the case of a contribution in support of a candidate for a member of an Advisory Neighborhood Commission, \$25.

(b)(1) No person shall make any contribution in any 1 election for Mayor, Chairman of the Council, each member of the Council, and each member of the Board of Education (including primary and general elections, but excluding special elections), which when combined with all other contributions made by

that person in that election to candidates and political committees exceeds \$8,500.

(2) All contributions to a candidate's principal political committee shall be treated as contributions to the candidate and shall be subject to the contribution limitations contained in this section.

(c) In no case shall any person receive or make any contribution in legal tender in an amount of \$25 or more.

(d)(1) No person shall make contributions to any one political committee in any one election (including primary and general elections, but excluding special elections) that, in the aggregate, exceeds \$5,000.

(2) For the purposes of this subsection, the term "political committee" does not include an individual.

(e) No person shall make a contribution in the name of another person, and no person shall knowingly accept a contribution made by one person in the name of another person.

(f) Any expenditure made by any person advocating the election or defeat or any candidate for office which is not made at the request or suggestion of the candidate, any agent or the candidate, or any political committee authorized by the candidate to make expenditures or receive contributions for the candidate is not considered a contribution to or an expenditure by or on behalf of the candidate for the purposes of the limitations specified in this subchapter.

(g) All contributions made by any person directly or indirectly to or for the benefit of a particular candidate or that candidate's political committee, which are in any way earmarked, encumbered, or otherwise directed through an intermediary or conduit to that candidate or political committee, shall be treated as contributions from that person to that candidate or political committee and shall be subject to the limitations established by this section.

(h)(1) No candidate or member of the immediate family of a candidate may make a loan or advance from his or her personal funds for use in connection with a campaign of that candidate for nomination for election, or for election, to a public office unless that loan or advance is evidenced by a written instrument fully disclosing the terms, conditions, and parts to the loan or advance. The amount of any loan or advance shall be included in computing and applying the limitations contained in this section only to the extent of the balance of the loan or advance which is unpaid at the time of determination.

(2) For purposes of this subsection, the term "immediate family" means the candidate's spouse, parent, brother, sister, or child, and the spouse of a candidate's parent, brother, sister or child.

(i) No contributions made to support or oppose initiative, referendum, or recall measures shall be affected by the provisions of this section. (Mar. 17, 1993, D.C. Law 9-204, § 3, 40 DCR 1; June 13, 1996, D.C. Law 11-144, § 3(a), 43 DCR 2174.)

**Legislative history of Law 9-204.** — Law 9-204, the "District of Columbia Campaign Contribution Limitation Initiative of 1992," was submitted to the electors of the District of

Columbia on November 3, 1992, as Initiative No. 41. The results of the voting, certified by the Board of Elections and Ethics on December 23, 1992, were 122,502 for the Initiative and

66,843 against the Initiative. It was transmitted to both Houses of Congress for its review on January 13, 1993.

**Legislative history of Law 11-144.** — See note to § 1-1441.

**Addition by Initiative 41.** — D.C. Law 9-204 was enacted by the electors of the District of Columbia in Initiative Measure 41.

**Applicability of chapter to Law 11-144.** — Section 4 of D.C. Law 11-144, the Contribution Limitation Initiative Amendment Act of 1996, provided that D.C. Code § 1-1401 et seq. shall apply to the act. D.C. Law 11-144 repeals § 1-1441 and amends §§ 1-1441.1, 1-1441.3, and 1-1442.

**Increase of contribution limits rendered challenge moot.** — Passage of legislation sig-

nificantly increasing contribution limits rendered moot the District's appeal of a District court order enjoining enforcement of an initiative imposing strict contribution limits. *National Black Police Ass'n v. District of Columbia*, 108 F.3d 346 (D.C. Cir. 1997).

A District court decision holding as unconstitutional an initiative strictly limiting campaign contributions was vacated where, pending appeal, legislation was passed that significantly increased contribution limits. *National Black Police Ass'n v. District of Columbia*, 108 F.3d 346 (D.C. Cir. 1997).

**Cited in National Black Police Ass'n v. District of Columbia Bd. of Elections & Ethics**, 924 F. Supp. 270 (D.D.C. 1996).

## § 1-1441.2. Partnership contributions.

(a) A contribution by a partnership shall be attributed to each partner:

(1) In direct proportion to his or her share of the partnership profits, according to instructions which shall be provided by the partnership to the political committee or candidate; or

(2) By agreement of the partners, as long as:

(A) Only the profits of the partners to whom the contribution is attributed are reduced (or losses increased); and

(B) These partners' profits are reduced (or losses increased) in proportion to the contribution attributed to each of them.

(b) A contribution by a partnership shall not exceed the limitations on contributions pursuant to this act. No portion of such contribution may be made from the profits of a corporation that is a partner. (Mar. 17, 1993, D.C. Law 9-204, § 4, 40 DCR 1.)

**Legislative history of Law 9-204.** — See note to § 1-1441.1.

**Addition by Initiative 41.** — D.C. Law 9-204 was enacted by the electors of the District of Columbia in Initiative Measure 41.

**References in text.** — "This act," referred to in (b), is Initiative 41, D.C. Law 9-204.

## § 1-1441.3. Reporting requirements.

(a) Every person who receives a contribution of \$50 or more for or on behalf of a political committee shall, on demand of the treasurer, and in any event within 5 days after receipt of such contribution, submit to the treasurer of such committee a detailed account thereof, including the amount, the name and address (including the occupation and the principal place of business, if any) of the person making such contribution, and the date on which such contribution was received. All funds of a political committee shall be segregated from, and may not be commingled with, any personal funds of officers, members, or associates of such committee.

(b) Except for accounts of expenditures made out of a petty cash fund, the treasurer of a political committee, and each candidate, shall keep a detailed and exact account of the full name and mailing address (including the

occupation and the principal place of business, if any) of every person making a contribution of \$50 or more, and the date and amount thereof.

(c) Each report shall disclose the full name and mailing address (including the occupation and principal place of business, if any) of each person who has made 1 or more contributions to or for such committee or candidate (including the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events) within the calendar year in the aggregate amount of value in excess of \$50 or more, together with the amount and date of such contributions.

(d) Each contribution, rebate, refund, or any other receipt of \$15 or more not otherwise listed shall be reported.

(e) Candidates for advisory neighborhood commission shall not be bound by this section. (Mar. 17, 1993, D.C. Law 9-204, § 5, 40 DCR 1; June 13, 1996, D.C. Law 11-144, § 3(b), 43 DCR 2174.)

**Legislative history of Law 9-204.** — See note to § 1-1441.1.

**Addition by Initiative 41.** — D.C. Law 9-204 was enacted by the electors of the District of Columbia in Initiative Measure 41.

**Legislative history of Law 11-144.** — See note to § 1-1441.

**Applicability of chapter to Law 11-144.**

— Section 4 of D.C. Law 11-144, the Contribution Limitation Initiative Amendment Act of 1996, provided that D.C. Code § 1-1401 et seq. shall apply to the act. D.C. Law 11-144 repeals § 1-1441 and amends §§ 1-1441.1, 1-1441.3, and 1-1442.

## § 1-1442. "Person" defined.

For the purpose of § 1-1441(a), the term "person" shall include "individual" for all contributions to support or oppose initiative, referendum, or recall measures after October 1, 1978. (1973 Ed., § 1-1161.1; June 7, 1979, D.C. Law 3-1, § 4, 25 DCR 9454; Mar. 16, 1982, D.C. Law 4-88, §§ 3(s), 7, 29 DCR 458.)

**Legislative history of Law 3-1.** — See note to § 1-1401.

**Legislative history of Law 4-88.** — See note to § 1-1401.

**References in text.** — Section 1-1441, referred to in this section, was repealed by D.C. Law 11-144, § 2, 43 DCR 2174, effective June 13, 1996.

**Applicability of chapter to Law 11-144.**

— Section 4 of D.C. Law 11-144, the Contribution Limitation Initiative Amendment Act of 1996, provided that D.C. Code § 1-1401 et seq. shall apply to the act. D.C. Law 11-144 repeals § 1-1441 and amends §§ 1-1441.1, 1-1441.3, and 1-1442.

## § 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 in § 1-1441.

(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.)

**Section references.** — This section is referred to in §§ 1-1456, 1-1472, 2-2523, and 47-2808.

**Legislative history of Law 1-27.** — Law 1-27 was introduced in Council and assigned Bill No. 1-90, which was referred to the Committee on Advisory Neighborhood Councils. The Bill was adopted on first and second readings on June 17, 1975 and July 1, 1975, respectively. Signed by the Mayor on August 4, 1975, it was assigned Act No. 1-39 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 1-79.** — See note to § 1-1401.

**Legislative history of Law 1-126.** — See note to § 1-1401.

**Legislative history of Law 4-88.** — See note to § 1-1401.

**Legislative history of Law 7-66.** — Law 7-66 was introduced in Council and assigned Bill No. 7-153, which was referred to the Committee on Human Services and reassigned to the Committee on Government Operations. The Bill was adopted on first and second readings on October 13, 1987 and October 27, 1987, respectively. Signed by the Mayor on November 5, 1987, it was assigned Act No. 7-99 and transmitted to both Houses of Congress for its review.

**References in text.** — "Section 501(c) of the Internal Revenue Code of 1954," referred to in the third sentence of (d), is codified at 26 U.S.C. § 501(c).

Section 1-1441, referred to in (c), was repealed by D.C. Law 11-144, § 2, 43 DCR 2174, effective June 13, 1996.

## *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, forbearance, 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), (10), and (11) 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.)

**Cross references.** — As to effective date of D.C. Law 2-139, see § 1-637.1.

**Section references.** — This section is referred to in § 1-637.1.

**Legislative history of Law 1-79.** — See note to § 1-1401.

**Legislative history of Law 1-126.** — See note to § 1-1401.

**Legislative history of Law 2-101.** — See note to § 1-1401.

**Legislative history of Law 2-139.** — See note to § 1-1431.

**Legislative history of Law 3-58.** — Law 3-58 was introduced in Council and assigned

Bill No. 3-158, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on January 22, 1980 and February 5, 1980, respectively. Signed by the Mayor on February 26, 1980, it was assigned Act No. 3-154 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 4-88.** — See note to § 1-1401.

**References in text.** — Section 1-610.8 (11), referred to in paragraph (9), was repealed by § 12(c) of D.C. Law 5-24, effective August 2, 1983, 30 D.C.R. 3341.

## § 1-1452. Persons required to register.

Except as provided in § 1-1453, a person shall register with the Director pursuant to § 1-1454 if such person receives compensation or expends funds in an amount of \$250 or more in any 3-consecutive-calendar-month period for lobbying. A person who receives compensation from more than 1 source shall register under this section if such person receives an aggregate amount of \$250 or more in any 3-consecutive-calendar-month period for lobbying. (1973 Ed., § 1-1172; Aug. 14, 1974, 88 Stat. 462, Pub. L. 93-376, title V, § 502; Sept. 2, 1976, D.C. Law 1-79, title III, § 302, 23 DCR 2050; Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257; Mar. 16, 1982, D.C. Law 4-88, § 3(r), 29 DCR 458.)

**Section references.** — This section is referred to in § 1-1451.

**Legislative history of Law 1-79.** — See note to § 1-1401.

**Legislative history of Law 2-101.** — See note to § 1-1401.

**Legislative history of Law 4-88.** — See note to § 1-1401.

## § 1-1453. Exceptions.

(a) A person need not register with the Director pursuant to § 1-1454 if such person is:

(1) A public official, or an employee of the United States acting in his or her official capacity;

(2) A publisher or working member of the press, radio, or television who in the ordinary course of business disseminates news or editorial comment to the general public;

(3) Any candidate, member, or member-elect of an Advisory Neighborhood Commission; or

(4) Any entity specified in § 47-1802.1(4), no activities of which include lobbying, the result of which shall inure to the financial gain or benefit of the entity.

(b) Any person who is exempt from registration under any provision of this section, except a person exempt from registration under the provisions of paragraph (1) of subsection (a) of this section, may be a registrant for other purposes under this chapter: Provided, however, that no such activity engaged in by such person shall constitute a conflict of interest under the provisions of subchapter VI of this chapter (D.C. Code § 1-1461 et seq.). Registrants have no obligation to report activities in furtherance of exempt activities under this section in activity reports required under § 1-1455. (1973 Ed., § 1-1173; Aug. 14, 1974, 88 Stat. 462, Pub. L. 93-376, title V, § 503; 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(j), 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(j), 29 DCR 458.)

**Section references.** — This section is referred to in §§ 1-1452 and 1-1456.

**Legislative history of Law 1-79.** — See note to § 1-1401.

**Legislative history of Law 1-126.** — See note to § 1-1401.

**Legislative history of Law 2-101.** — See note to § 1-1401.

**Legislative history of Law 4-88.** — See note to § 1-1401.

## § 1-1454. Registration form.

(a) Each registrant shall file a registration form with the Director, signed under oath, on or before January 15th of each year, or not later than 15 days after becoming a lobbyist (and on or before January 15th of each year thereafter). If the registrant is not an individual, an authorized officer or agent of the registrant shall sign the form. A registrant must file a separate registration form for each person from whom he or she receives compensation.

(b) Such registration shall be on a form prescribed by the Director and shall include: (1) The registrant's name, permanent address, and temporary address while lobbying; (2) the name and address of each person who will lobby on the registrant's behalf; (3) the name, address, and nature of the business of any person who compensates the registrant and the terms of the compensation; and (4) the identification, by formal designation if known, of matters on which the registrant expects to lobby. The Director shall publish on or before February 15th and on or before August 15th of each year a summary of all information required to be submitted under this subsection in the District of Columbia Register. (1973 Ed., § 1-1174; Aug. 14, 1974, 88 Stat. 463, Pub. L. 93-376, title V, § 504; 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(k), title IV, § 402, 24 DCR 2372; Mar. 16, 1982, D.C. Law 4-88, § 3(r), (s), 29 DCR 458.)

**Section references.** — This section is referred to in §§ 1-1452, 1-1453, and 1-1455.

**Legislative history of Law 1-79.** — See note to § 1-1401.

Legislative history of Law 1-126. — See note to § 1-1401.

Legislative history of Law 4-88. — See note to § 1-1401.

## § 1-1455. Activity reports.

(a) Each registrant shall file with the Director between the 1st and 10th day of July and January of each year a report signed under oath concerning his or her lobbying activities during the previous 6-month period. If the registrant is not an individual, an authorized officer or agent of the registrant shall sign the form. A registrant must file a separate activity report for each person from whom he or she receives compensation. Such reports shall be public documents and shall be on a form prescribed by the Director and shall include the following:

(1) A complete and current statement of the information required to be supplied pursuant to § 1-1454;

(2)(A) Total expenditures on lobbying broken down into the following categories:

- (i) Office expenses;
- (ii) Advertising and publications;
- (iii) Compensation to others;
- (iv) Personal sustenance, lodging, and travel, if compensated;
- (v) Other expenses;

(B) Each expenditure of \$50 or more shall also be itemized by the date, name, and address of the recipient, and the amount and purpose of such expenditure;

(3) Each political expenditure, loan, gift, honorarium, or contribution of \$50 or more made by the registrant or anyone acting on behalf of the registrant to benefit an official in the legislative or executive branch, a member of his or her staff or household or a campaign or testimonial committee established for the benefit of the official, and shall be itemized by date, beneficiary, amount, and circumstances of the transaction; including the aggregate of all such expenditures that are less than \$50;

(4) Each official in the executive or legislative branch and any member of such official's personal staff who receives compensation in any manner by the registrant shall be identified by name and nature of his or her employment with the registrant;

(5) Each official in the executive or legislative branch with whom the registrant has had written or oral communications (during the reporting period) related to lobbying activities conducted by the registrant shall also be included in such report, identifying the official with whom the communication was made; and

(6) Each person whom the registrant has given compensation to lobby on his or her behalf shall also be listed in such report.

(b) Each registrant shall obtain and preserve all accounts, bills, receipts, books, papers, and documents necessary to substantiate the activity reports required to be made pursuant to this section for 5 years from the date of filing of the report containing such items. These materials shall be made available for inspection upon requests by the Director after reasonable notice.

(c) Each registrant who does not file a report required by this section for a given period is presumed not to be receiving or expending funds which are required to be reported under this subchapter. (1973 Ed., § 1-1175; Aug. 14, 1974, 88 Stat. 463, Pub. L. 93-376, title V, § 505; 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 (l)-(p), 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(k), (q), (r), 29 DCR 458.)

**Section references.** — This section is referred to in § 1-1453.

**Legislative history of Law 1-79.** — See note to § 1-1401.

**Legislative history of Law 1-126.** — See note to § 1-1401.

**Legislative history of Law 2-101.** — See note to § 1-1401.

**Legislative history of Law 4-88.** — See note to § 1-1401.

## § 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 in §§ 1-1441 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.)

**Legislative history of Law 1-79.** — See note to § 1-1401.

**Legislative history of Law 1-126.** — See note to § 1-1401.

**Legislative history of Law 2-101.** — See note to § 1-1401.

**References in text.** — Section 1-1441, referred to in (a), was repealed by D.C. Law 11-144, § 2, 43 DCR 2174, effective June 13, 1996.

## § 1-1457. Penalties; prohibition from serving as lobbyist; citizen suits.

(a) Any person who willfully and knowingly violates any of the provisions of this subchapter, except as provided in subsection (c) of this section, shall be fined not more than \$5,000, or imprisoned for not more than 12 months, or both.

(b) In addition to the penalties provided for in subsection (a) of this section, any person convicted of the misdemeanor specified therein may be prohibited, for a period of 3 years from the date of such conviction, from serving as a lobbyist.

(c) Any person who files a report or registration form required under this subchapter, in other than a timely manner, shall be assessed a civil penalty of \$10 per day up to 30 days (excluding Saturdays, Sundays, and holidays) the report or registration form is late. The Board may waive the penalty imposed under this subsection for good cause shown.

(d) Should any provision of this subchapter not be enforced by the Board, a citizen of the District of Columbia may bring suit in the nature of mandamus in the Superior Court of the District of Columbia, directing the Board, to enforce the provisions of this subchapter. Reasonable attorneys fees may be awarded to the citizen against the District should he or she prevail in this action, or if it is settled in substantial conformity with the relief sought in the petition, prior to order by the Court. (1973 Ed., § 1-1177; Aug. 14, 1974, 88 Stat. 464, Pub. L. 93-376, title V, § 507; 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(r), (s), title IV, § 402, 24 DCR 2372; Mar. 16, 1982, D.C. Law 4-88, § 3(r), 29 DCR 458.)

**Section references.** — This section is referred to in § 1-1302.

**Legislative history of Law 1-79.** — See note to § 1-1401.

**Legislative history of Law 1-126.** — See note to § 1-1401.

**Legislative history of Law 4-88.** — See note to § 1-1401.

## *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.

(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.)

**Cross references.** — As to effective date of D.C. Law 2-139, see § 1-637.1.

**Section references.** — This section is referred to in §§ 1-637.1, 1-1451, 1-1453, 1-1462, 1-1481, 1-2295.11, and 47-391.8.

**Legislative history of Law 1-79.** — See note to § 1-1401.

**Legislative history of Law 1-126.** — See note to § 1-1401.

**Legislative history of Law 2-101.** — See note to § 1-1401.

**Legislative history of Law 2-139.** — See note to § 1-1431.

**Legislative history of Law 3-58.** — See note to § 1-1451.

**Legislative history of Law 4-88.** — See note to § 1-1401.

**Thrust of Conflict of Interest and Disclosure Act** is directed at the individual government official, and the onus is on him to decide whether the action he is to take would affect directly or indirectly his financial interests or those of a member of his household. *Dupont Circle Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 364 A.2d 610 (1976).

## § 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 the 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 Minority 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) services as an officer, director, partner, employee, or in any other fiduciary capacity; (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 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 §§ 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 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, forbearance, 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.)

**Cross references.** — As to effective date of D.C. Law 2-139, see § 1-637.1.

As to Board of Funeral Directors, see § 2-2803.

**Section references.** — This section is referred to in §§ 1-113, 1-619.3, 1-637.1, 1-1451, 1-1461, and 1-2295.11.

**Legislative history of Law 1-21.** — Law 1-21 was introduced in Council and assigned Bill No. 1-87, which was referred to the Com-

mittee on Advisory Neighborhood Councils. The Bill was adopted on first and second readings on June 10, 1975 and June 24, 1975, respectively. Signed by the Mayor on July 22, 1975, it was assigned Act No. 1-33 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 1-27.** — See note to § 1-1443.

**Legislative history of Law 1-79.** — See note to § 1-1401.

**Legislative history of Law 1-126.** — See note to § 1-1401.

**Legislative history of Law 2-101.** — See note to § 1-1401.

**Legislative history of Law 2-139.** — See note to § 1-1431.

**Legislative history of Law 3-58.** — See note to § 1-1451.

**Legislative history of Law 4-23.** — Law 4-23 was introduced in Council and assigned Bill No. 4-147, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 5, 1981 and May 19, 1981, respectively. Signed by the Mayor on June 5, 1981, it was assigned Act No. 4-44 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 4-88.** — See note to § 1-1401.

**Legislative history of Law 5-111.** — Law 5-111 was introduced in Council and assigned Bill No. 5-333, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 26, 1984 and July 10, 1984, respectively. Signed by the Mayor on July 13, 1984, it was assigned Act No. 5-161 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 6-97.** — Law 6-97 was introduced in Council and assigned Bill No. 6-159, which was referred to the Committee on Public Services and Cable Television. The Bill was adopted on first and second readings on December 17, 1985 and January 14, 1986, respectively. Signed by the Mayor on January 28, 1986, it was assigned Act No. 6-125 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 6-192.** — Law 6-192 was introduced in Council and assigned Bill No. 6-544, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 5, 1986 and November 18, 1986, respectively. Signed by the Mayor on December 10, 1986, it was assigned Act No. 6-246 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 7-231.** — Law 7-231 was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 8-41.** — See note to § 1-1481.

**Legislative history of Law 8-135.** — Law 8-135 was introduced in Council and assigned Bill No. 8-488, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on

February 27, 1990 and March 27, 1990, respectively. Signed by the Mayor on April 13, 1990, it was assigned Act No. 8-191 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 9-241.** — Law 9-241, the "Real Property Tax Assessment Appeal Process Revision Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-199, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on January 5, 1993, it was assigned Act No. 9-375 and transmitted to both Houses of Congress for its review. D.C. Law 9-241 became effective on March 17, 1993.

**Legislative history of Law 10-153.** — Law 10-153, the "Public Parking Authority Establishment Act of 1994," was introduced in Council and assigned Bill No. 10-532, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 3, 1994, and June 7, 1994, respectively. Signed by the Mayor on June 30, 1994, it was assigned Act No. 10-266 and transmitted to both Houses of Congress for its review. D.C. Law 10-153 became effective on August 23, 1994.

**Legislative history of Law 10-255.** — Law 10-255, the "Technical Amendments Act of 1994," was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective on May 16, 1995.

**References in text.** — The District of Columbia Self-Government and Governmental Reorganization Act, referred to in subsection (a), is the Act of December 24, 1973, 87 Stat. 774, Pub. L. 93-198.

Section 2-1201, the Board of Dental Examiners, referred to in subsection (a), was repealed by D.C. Law 6-99, § 1104(a), 33 DCR 729.

Section 2-1303, the Commission on Licensure to Practice the Healing Art in the District of Columbia, referred to in subsection (a), was repealed by D.C. Law 6-99, § 1104(e), 33 DCR 729.

Section 2-1705.5, the Board of Occupational Therapy Practice, referred to in subsection (a), was repealed by D.C. Law 6-99, § 1104(i), 33 DCR 729.

Section 2-1803, the Board of Optometry, referred to in subsection (a), was repealed by D.C. Law 6-99, § 1104(d), 33 DCR 729.

Section 2-1702.6, the Practical Nurses' Examining Board, referred to in subsection (a), was repealed by D.C. Law 6-99, § 1104(f), 33 DCR 729.



Section 2-1703.5, the Physical Therapists' Examining Board, referred to in subsection (a), was repealed by D.C. Law 6-99, § 1104(g), 33 DCR 729.

Section 2-1704.5, the Board of Psychologist Examiners, referred to in subsection (a), was repealed by D.C. Law 6-99, § 1104(h), 33 DCR 729.

Section 2-2201, the Board of Podiatry Examiners, referred to in subsection (a), was repealed by D.C. Law 6-99, § 1104(c), 33 DCR 729.

Section 45-1903, the Real Estate Commission of the District of Columbia, referred to in subsection (a), was repealed by D.C. Law 4-209, § 34, 30 DCR 390.

Section 2-1701.2, the Nurses Examining Board, referred to in subsection (a), was repealed by D.C. Law 6-99, § 1104(b), 33 DCR 729.

Section 2-2701, the Board of Examiners in Veterinary Medicine, referred to in subsection (a), was repealed by D.C. Law 4-171, § 20, 29 DCR 5297.

Subchapter II of Chapter 15 of Title 45, which established the District of Columbia Rental Accommodations Commission, and is referred to in subsection (a), expired on April 30, 1985, pursuant to § 907 of D.C. Law 3-131.

Section 2-403, the Board of Barber Examiners for the District of Columbia, referred to in subsection (a), was abolished by Reorganization Plan No. 5 of 1952, and its property, funds, etc., were transferred to the Barber and Cosmetology Board established by D.C. Law 9-245 and codified at § 2-422. D.C. Law 12- (D.C. Act 12-612), § 1236, 46 DCR 1318, repealed D.C. Law 9-245, and transferred the Barber and Cosmetology Board's authority to the Board of Barber and Cosmetology established by D.C. Code § 47-2853.6.

Section 2-902, the District of Columbia Board of Cosmetology, referred to in subsection (a), was repealed by D.C. Law 9-245, § 38(b), 40 DCR 660. D.C. Law 12- (D.C. Act 12-615), § 1236, 46 DCR 1318, repealed D.C. Law 9-245, and transferred the authority of the Barber and Cosmetology Board to the Board of Barber and Cosmetology established by D.C. Code § 47-2853.6.

Section 2-2101, the Plumbing Board, referred to in subsection (a), was abolished by Reorganization Plan No. 5 of 1952. Its functions are currently performed by the Department of Consumer and Regulatory Affairs. See notes to § 2-2101.

Section 2-2305, the District of Columbia Board of Regulation for Professional Engineers, referred to in subsection (a), was abolished by Reorganization Plan No. 5 of 1952. Its functions are currently performed by the Department of Consumer and Regulatory Affairs. See notes to § 2-2305.

Section 2-2402, the Board of Examiners of Steam and Other Operating Engineers, referred to in subsection (a), was abolished by Reorganization Plan No. 5 of 1952. Its functions are currently performed by the Department of Consumer and Regulatory Affairs. See notes to § 2-2402.

Section 2-201, the Board of Examiners and Registrars of Architects, referred to in subsection (a), was repealed by D.C. Law 9-184, § 604, 39 DCR 8208.

Section 32-211, the D.C. General Hospital Commission, referred to in subsection (a), was repealed by D.C. Law 11-212, § 402, 43 DCR 4962.

Section 61 of the Internal Revenue Code of 1954, referred to in (h)(1), is codified at 26 U.S.C. § 61.

The District of Columbia Public Works Act of 1954, referred to in subsection (h)(6), is the Act of May 18, 1954, 68 Stat. 101, ch. 218.

**Termination of Federal Disclosure Requirements.** — See Pub. L. 99-573, § 6.

**Amendment of Organization Order No. 112, establishing Board of Appeals and Review.** — See Mayor's Order 84-31, February 9, 1984.

**Editor's notes.** — Sections 2-201, 2-403, 2-2101, 2-2305 and 2-2402, referred to in subsection (a), have been omitted at the direction of the District of Columbia Codification Council.

**Cited in** *Foley v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 358 A.2d 305 (1976).

## *Subchapter VII. Miscellaneous Provisions.*

### **§ 1-1471. Penalties; prosecutions.**

(a) Except as provided in subsection (b) of this section, any person or political committee who violates any of the provisions of this chapter shall be fined not more than \$5,000, or shall be imprisoned for not longer than 6 months, or both.

(b) Any person who knowingly files any false or misleading statement, report, voucher, or other paper, or makes any false or misleading statement to the Board, shall be fined not more than \$10,000, or shall be imprisoned for not longer than 5 years, or both.

(c) The penalties provided in this section shall not apply to any person or political committee who, before August 14, 1974, during calendar year 1974, makes political contributions or receives political contributions or makes any political campaign expenditures, in excess of any limitation placed on such contributions or expenditures by this chapter, except such person or political committee shall not make any further such contributions or expenditures during the remainder of calendar year 1974.

(d) Prosecutions of violations of this chapter, except as provided in § 1-1318(b)(4), shall be brought by the United States Attorney for the District of Columbia in the name of the United States.

(e) The provisions of this section shall not apply to violations of subchapter V of this chapter.

(f) All actions of the Board or of the United States Attorney for the District of Columbia to enforce the provisions of this chapter must be initiated within 3 years of the actual occurrence of the alleged violation of the chapter. (1973 Ed., § 1-1191; Aug. 14, 1974, 88 Stat. 470, Pub. L. 93-376, title VII, § 701; Apr. 23, 1977, D.C. Law 1-126, title III, § 302(t), 24 DCR 2372; Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257; Mar. 16, 1982, D.C. Law 4-88, § 3(m), (r), 29 DCR 458.)

**Section references.** — This section is referred to in §§ 1-1302 and 1-1471.1.

**Legislative history of Law 1-126.** — See note to § 1-1401.

**Legislative history of Law 2-101.** — See note to § 1-1401.

**Legislative history of Law 4-88.** — See note to § 1-1401.

## § 1-1471.1. Document under oath.

(a) Notwithstanding any other provisions of this chapter, neither the Board, or any of its officers or employees, nor the Director, or any of his or her officers or employees, may require that a document be sworn under oath unless the Board and Director maintain at the place of receipt of such documents and during regular business days and hours, a notary public to administer such oaths.

(b) If no such notary public is available, persons wishing to file documents for which an oath is requested, may, in lieu thereof, affirm by their signature that their statements are true under penalty of § 1-1471. (Aug. 14, 1974, 88 Stat. 470, Pub. L. 93-376, title VII, § 701a, as added Mar. 16, 1982, D.C. Law 4-88, § 3(n), 29 DCR 458.)

**Legislative history of Law 4-88.** — See note to § 1-1401.

## § 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. (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.)

**Legislative history of Law 1-79.** — See note to § 1-1401.

**Legislative history of Law 1-126.** — See note to § 1-1401.

**Legislative history of Law 3-1.** — See note to § 1-1401.

**Legislative history of Law 4-88.** — See note to § 1-1401.

## § 1-1473. Authority of Council.

Notwithstanding any other provision of law, or any rule of law, nothing in this chapter shall be construed as limiting the authority of the Council of the District of Columbia to enact any act or resolution after January 2, 1975, pursuant to the District of Columbia Self-Government and Governmental Reorganization Act with respect to any matter covered by this chapter. (1973 Ed., § 1-1193; Aug. 14, 1974, 88 Stat. 472, Pub. L. 93-376, title VII, § 707.)

**References in text.** — "The District of Columbia Self-Government and Governmental Reorganization Act," referred to near the end of

the section, is the Act of December 24, 1973, 87 Stat. 774, Pub. L. 93-198.

## *Subchapter VIII. Limitations on Honoraria and Royalties.*

### § 1-1481. Limitations on honoraria and royalties.

(a) Except as provided in subsection (c) of this section, neither the Mayor, the Chairman of the Council, nor any member of the Council or of the Board of Education, nor any member of his or her immediate family as that term is

defined in § 1-1461(i)(5), shall receive honoraria exceeding \$10,000 in the aggregate during any calendar year. For the purpose of this subsection, the term "honorarium" means payment of money or anything of value for an appearance, speech, or article by the public official, except that there shall not be taken into account for the purposes of this subsection any reimbursement for or payment of actual and necessary travel expenses incurred by the Mayor, the Chairman, a Councilmember, or a member of the Board of Education and his or her spouse. For the purpose of computing the \$10,000 limit on honoraria established under this subsection, an honorarium shall be considered received in the year in which the right to receive the honorarium accrues.

(b) Except as provided in subsection (c) of this section, neither the Mayor, the Chairman of the Council, nor any member of the Mayor's or of the Chairman of the Council's immediate family, as that term is defined in § 1-1461(i)(5), shall accept royalties for the works of the Mayor or of the Chairman of the Council that exceed \$10,000 in the aggregate during any calendar year. For the purpose of computing the limit on royalties established under this subsection, a royalty shall be considered received during the calendar year in which the right to receive the royalty accrues.

(c) For the purpose of this section, any royalty or part of a royalty, or any honorarium or part of an honorarium paid to a charitable organization by or on behalf of any of the foregoing public officials shall not be calculated as part of an aggregate total. (Aug. 14, 1974, Pub. L. 93-376, title VIII, § 801, as added Oct. 18, 1989, D.C. Law 8-41, § 2(b), 36 DCR 5748.)

**Section references.** — This section is referred to in § 1-1462.

**Legislative history of Law 8-41.** — Law 8-41 was introduced in Council and assigned Bill No. 8-306, which was referred to the Committee of the Whole. The Bill was adopted on

first and second readings on June 27, 1989 and July 11, 1989, respectively. Signed by the Mayor on July 27, 1989, it was assigned Act No. 8-70 and transmitted to both Houses of Congress for its review.

## CHAPTER 15. ADMINISTRATIVE PROCEDURE.

*Subchapter I. Administrative Procedure.*

## Sec.

- 1-1501. Effect of subchapter.
- 1-1502. Definitions.
- 1-1503. Establishment of procedures.
- 1-1504. Open meetings; transcripts.
- 1-1505. Official publications.
- 1-1506. Public notice and participation in rulemaking; emergency rules.
- 1-1507. Compilation of rules and regulations.
- 1-1508. Declaratory orders.
- 1-1509. Contested cases.
- 1-1510. Judicial review.
- 1-1511. [Repealed].

*Subchapter II. Freedom of Information.*

- 1-1521. Public policy.
- 1-1522. Right of access to public records; allowable costs; time limits.
- 1-1523. Letters of denial.
- 1-1524. Exemptions from disclosure.
- 1-1525. Recording of final votes.
- 1-1526. Information required to be made public.
- 1-1527. Administrative appeals.

## Sec.

- 1-1528. Oversight of disclosure activities.
- 1-1529. Definitions.

*Subchapter III. Legal Publication.*

- 1-1531. Definitions.
- 1-1532. District of Columbia Municipal Regulations.
- 1-1533. District of Columbia Register.
- 1-1534. Documents to be filed in the District of Columbia Office of Documents.
- 1-1535. Permanent supplements to the District of Columbia Municipal Regulations.
- 1-1536. Documents to be filed with Administrator.
- 1-1537. Publication, specifications, and distribution of the District of Columbia Municipal Regulations.
- 1-1538. Legal effectiveness of documents.
- 1-1539. Correction of errors in documents.
- 1-1540. Certification.
- 1-1541. Presumption created by publication.
- 1-1542. Penalties.

Cited in *Rhema Christian Center v. District of Columbia Bd. of Zoning Adjustment*, App.

D.C., 515 A.2d 189 (1986); *Speyer v. Barry*, App. D.C., 588 A.2d 1147 (1991).

*Subchapter I. Administrative Procedure.***§ 1-1501. Effect of subchapter.**

This subchapter shall supplement all other provisions of law establishing procedures to be observed by the Mayor and agencies of the District government in the application of laws administered by them, except that this subchapter shall supersede any such law and procedure to the extent of any conflict therewith. (Oct. 21, 1968, 82 Stat. 1204, Pub. L. 90-614, § 2; 1973 Ed., § 1-1501; Oct. 8, 1975, D.C. Law 1-19, title I, § 102(a), 22 DCR 2048; Mar. 29, 1977, D.C. Law 1-96, § 3(a), (c), 23 DCR 9532b.)

**Section references.** — This section is referred to in §§ 1-624.24, 1-1306, 1-1431, 1-1432, 1-1435, 1-1451, 1-1533, 1-1904, 1-2295.14, 1-2295.18, 1-2502, 1-2524, 1-2541, 1-2552, 2-2309, 4-916, 5-415, 6-1506, 6-3458, 11-722, 11-1525, 29-817, 32-632, 32-1354, 36-322, 36-412, 40-404, 47-351.16, 47-850, 47-1462, 47-2853.18, and 47-2853.22.

**Legislative history of Law 1-19.** — Law 1-19 was introduced in Council and assigned Bill No. 1-1, which was referred to the Committee of the Whole, the Committee on the Judi-

ciary and the Committee on Criminal Law. The Bill was adopted on first and second readings on June 3, 1975 and June 20, 1975, respectively. Signed by the Mayor on July 10, 1975, it was assigned Act No. 1-30 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 1-96.** — See note to § 1-1521.

**D.C. Board of Appeals and Review established.** — See Mayor's Order 84-79, April 26, 1984, as amended by Mayor's Order 86-50, March 31, 1986.

**Purpose of subchapter.** — Congress adopted this subchapter to assure a fair and more uniform administrative process for local government agencies. *Citizens Ass'n v. District of Columbia Zoning Comm'n*, App. D.C., 402 A.2d 36 (1979).

**Subchapter supersedes other laws.** — This subchapter supersedes any law or procedure of the Mayor, the Council, and the agencies of the District government, where they conflict with the provisions of the subchapter. *Woodridge Nursery Sch. v. Jessup*, App. D.C., 269 A.2d 199 (1970).

**Subchapter applicable to unemployment compensation proceedings.** — This subchapter applies to proceedings under the Unemployment Compensation Act (Title 46), and should be applied in posthearing procedures by the Unemployment Compensation Board in an unemployment compensation proceeding. *Woodridge Nursery Sch. v. Jessup*, App. D.C., 269 A.2d 199 (1970); *Wallace v. District Unemployment Comp. Bd.*, App. D.C., 289 A.2d 885 (1972).

**And Zoning Commission hearings.** — This subchapter is applicable to proceedings before the Zoning Commission. *Capitol Hill Restoration Soc'y v. Zoning Comm'n*, App. D.C., 287 A.2d 101 (1972).

**Where controversy is a "contested case".** — A controversy which arose out of the Zoning Commission's actions in granting a change in zoning so as to permit a townhouse development, which action followed an adjudicatory hearing, is a "contested case" so that Court of Appeals has jurisdiction to review the action. *Palisades Citizens Ass'n v. District of Columbia Zoning Comm'n*, App. D.C., 368 A.2d 1143 (1977).

**But not to quasi-legislative proceedings before Zoning Commission.** — Proceedings before the District of Columbia Zoning Commission are quasi-legislative in character, not adjudicative in nature, and the strictures of this subchapter and the full range of due process protections necessary to an adversary adjudication are not applicable. *Ruppert v. Washington*, 366 F. Supp. 686 (D.D.C. 1973), *aff'd*, 543 F.2d 416 (D.C. Cir. 1976).

**Subchapter applicable to Public Service Commission except for standard and scope of review.** — The provision of § 11-722 which gives the Court of Appeals jurisdiction to review orders and decisions of any agency of the District in accordance with the Administrative Procedure Act, and to review orders or decision of the Public Service Commission in accordance with Commission's organic act (Title 43), carves out only a limited area in which Administrative Procedure Act is inapplicable to the Commission, that being in the area of standard and scope of review, rather than a wholesale exemption from Administrative Procedure Act cover-

age. *C & P Tel. Co. v. Public Serv. Comm'n*, App. D.C., 339 A.2d 710 (1975).

**Subchapter inapplicable to National Capital Housing Authority.** — The National Capital Housing Authority is not an "agency of the District of Columbia" within the meaning of this subchapter. *Coleman v. United States*, App. D.C., 311 A.2d 496 (1973).

**And to Joint Committee on Landmarks.** — Joint Committee on Landmarks of the National Capital, as an intergovernmental agency, is not an agency of the District of Columbia, and the Court of Appeals lacks jurisdiction to entertain petition for review of its action under this subchapter. *Latimer v. Joint Comm. on Landmarks of Nat'l Capital*, App. D.C., 345 A.2d 484 (1975).

**This subchapter is applicable to proceedings before Police and Firemen's Retirement and Relief Board.** *Kea v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 429 A.2d 174 (1981).

**No conflict between this subchapter and Traffic Adjudication Act.** — There is no conflict between the Administrative Procedure Act and the Traffic Adjudication Act (Chapter 6 of Title 40), as it is clear that the legislative intent in the latter was to create an exception to the former's definition of "contested case" in § 1-1502(8). *District of Columbia v. Sullivan*, App. D.C., 436 A.2d 364 (1981).

**Claim must be decided first by local courts of the District of Columbia.** — Claim that failure of District of Columbia Department of Corrections to comply with the public notice and comment requirements of the District of Columbia Administrative Procedure Act, D.C. Code § 1-1501 et seq., and the publication requirement of D.C. Code § 1-1538(b) rendered prison visitation regulations invalid must be decided in the first instance by the local courts of the District of Columbia. *Robinson v. Palmer*, 841 F.2d 1151 (D.C. Cir. 1988).

**Subchapter inapplicable where agency did not have authority or power to adjudicate dispute.** — Where a regulatory agency (the Educational Institution Licensure Commission) had neither authority to adjudicate the dispute between student and regulated institution nor the power to award the money damages the student sought, neither the doctrine of exhaustion of administrative remedies nor primary jurisdiction operates to bar the student's civil action. *Goode v. Antioch Univ.*, App. D.C., 544 A.2d 704 (1988).

**Judicial review of final orders.** — Ruling on request for substantial hardship rent increase was not entitled to judicial review until the Rent Administrator had issued his final decision; the Administrative Procedure Act provides a right to judicial review only for final agency orders. *Tenants of 1255 N.H. Ave., N.W.*

v. District of Columbia Rental Hous. Comm'n, App. D.C., 647 A.2d 70 (1994).

**Award of attorney's fees.** — Where tenants caused the commission to rule, for the first time, that landlord's capital improvement petition requesting increase in rent was a contested case within the meaning of the District of Columbia Administrative Procedure Act, and that the landlord had the burden of proof, which it could only meet by affirmatively presenting evidence, and where part of the relief that the prevailing tenants obtained was a refund of the increased rent charged by the landlord as a result of the approval of the capital improvement petition by the rent administrator, relief was same type often awarded to prevailing tenants in tenant-initiated proceedings, and tenants were entitled to presumptive award of attorney's fees. *Hampton Courts Tenants' Ass'n v. District of Columbia Rental Hous. Comm'n*, App. D.C., 573 A.2d 10 (1990), *aff'd*, 599 A.2d 1113 (1991).

**Cited in** *Jacobs v. District Unemployment Comp. Bd.*, App. D.C., 382 A.2d 282 (1978); *Debruhl v. District of Columbia Hackers' License Appeal Bd.*, App. D.C., 384 A.2d 421 (1978); *Lewis v. District of Columbia Comm'n on Licensure to Practice Healing Art*, App. D.C., 385 A.2d 1148 (1978); *Kenmore Joint Venture v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 391 A.2d 269 (1978); *Washington Pub. Interest Org. v. Public Serv. Comm'n*, App. D.C., 393 A.2d 71 (1978), *cert. denied*, 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182 (1979); *Jones v. District of Columbia Unemployment Comp. Bd.*, App. D.C., 395 A.2d 392 (1978); *Neer v. District of Columbia Police & Firemen's Retirement & Relief Bd.*, App. D.C., 415 A.2d 523 (1980); *Citizens Comm. to Save Historic Rhodes Tavern v. District of Columbia Dep't of Hous. & Community Dev.*, App. D.C., 432 A.2d 710, *cert. denied*, 454 U.S. 1054, 102 S. Ct. 599, 70 L. Ed. 2d 590 (1981); *Le Jimmy, Inc. v. District of Columbia ABC Bd.*, App. D.C., 433 A.2d 1090 (1981); *Barry v. Wilson*, App. D.C., 448 A.2d 244 (1982); *Brice v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 472 A.2d 406 (1984); *Weinberg v. Barry*, 604 F. Supp. 390

(D.D.C. 1985); *Robinson v. Palmer*, 619 F. Supp. 344 (D.D.C. 1985); *George Hyman Constr. Co. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 497 A.2d 103 (1985); *District of Columbia Hosp. Ass'n v. Barry*, App. D.C., 498 A.2d 216 (1985); *Dell v. Department of Emp. Servs.*, App. D.C., 499 A.2d 102 (1985); *Robinson v. Palmer*, 631 F. Supp. 52 (D.D.C. 1986), *modified*, 841 F.2d 1151 (D.C. Cir. 1988); *George Washington Univ. Medical Ctr. v. District of Columbia Bd. of Appeals & Review*, App. D.C., 530 A.2d 227 (1987); *Washington Times v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 530 A.2d 1186 (1987); in *White v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 537 A.2d 1133 (1988); *Brookens v. Committee on Unauthorized Practice of Law*, App. D.C., 538 A.2d 1120 (1988); *Allen v. Ford*, 116 WLR 1869 (Super. Ct. 1988); *Alder v. Columbia Historical Soc'y*, 690 F. Supp. 9 (D.D.C. 1988), *but see*, *Rafferty v. NYNEX Corp.*, 60 F.3d 844 (D.C. Cir. 1995); *Committee of Blind Vendors v. District of Columbia*, 695 F. Supp. 1234 (D.D.C. 1988); *Council of Sch. Officers v. Vaughn*, App. D.C., 553 A.2d 1222 (1989); *Schlank v. Williams*, App. D.C., 572 A.2d 101, *cert. denied*, 498 U.S. 938, 111 S. Ct. 341, 112 L. Ed. 2d 305 (1990); *Abney v. District of Columbia*, App. D.C., 580 A.2d 1036 (1990); *Eilers v. District of Columbia Bureau of Motor Vehicles Servs.*, App. D.C., 583 A.2d 677 (1990); *Miller v. District of Columbia*, App. D.C., 587 A.2d 213 (1991); *Simpson v. District of Columbia Office of Human Rights*, App. D.C., 597 A.2d 392 (1991); *Davis v. University of D.C.*, App. D.C., 603 A.2d 849 (1992); *Lawrence v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 611 A.2d 529 (1992); *Webb v. District of Columbia Dep't of Human Servs.*, App. D.C., 618 A.2d 148 (1992); *DiVincenzo v. District of Columbia Police & Firefighters Retirement & Relief Bd.*, App. D.C., 620 A.2d 868 (1993); *Cruz v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 633 A.2d 66 (1993); *Britton v. District of Columbia & Firefighters' Retirement & Relief Bd.*, App. D.C., 681 A.2d 1152 (1996); *Stevenson v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 683 A.2d 1371 (1996).

## § 1-1502. Definitions.

As used in this subchapter:

(1)(A) The term "Mayor" means the Mayor of the District of Columbia, or his or her designated agent.

(B) The term "Council" means the Council of the District of Columbia established by § 1-221(a) unless the term "District of Columbia Council" is used in which event it shall mean the District of Columbia Council established by subsection (a) of § 201 of Reorganization Plan No. 3 of 1967 (81 Stat. 948).

(2) The term "District" means the District of Columbia.

(3) The term “agency” includes both subordinate agency and independent agency.

(4) The term “subordinate agency” means any officer, employee, office, department, division, board, commission, or other agency of the government of the District, other than an independent agency or the Mayor or the Council, required by law or by the Mayor or the Council to administer any law or any rule adopted under the authority of a law.

(5) The term “independent agency” means any agency of the government of the District with respect to which the Mayor and the Council are not authorized by law, other than this subchapter, to establish administrative procedures, but does not include the several courts of the District and the Tax Division of the Superior Court.

(6) The term “rule” means the whole or any part of any Mayor’s or agency’s statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of the Mayor or of any agency.

(7) The term “rulemaking” means Mayor’s or agency’s process for the formulation, amendment, or repeal of a rule.

(8) The term “contested case” means a proceeding before the Mayor or any agency in which the legal rights, duties, or privileges of specific parties are required by any law (other than this subchapter), or by constitutional right, to be determined after a hearing before the Mayor or before an agency, but shall not include:

(A) Any matter subject to a subsequent trial of the law and the facts de novo in any court;

(B) The selection or tenure of an officer or employee of the District;

(C) Proceedings in which decisions rest solely on inspections, tests, or elections; and

(D) Cases in which the Mayor or an agency act as an agent for a court of the District.

(9) The term “person” includes individuals, partnerships, corporations, associations, and public or private organizations of any character other than the Mayor, the Council, or an agency.

(10) The term “party” includes the Mayor and any person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any proceeding before the Mayor or an agency, but nothing herein shall be construed to prevent the Mayor or an agency from admitting the Mayor or any person or agency as a party for limited purposes.

(11) The term “order” means the whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) of the Mayor or of any agency in any matter other than rulemaking, but including licensing.

(12) The term “license” includes the whole or part of any permit, certificate, approval, registration, charter, membership, statutory exemption, or other form of permission granted by the Mayor or any agency.

(13) The term “licensing” includes process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license by the Mayor or an agency.



(14) The term "relief" includes the whole or part of any Mayor's or agency's:

(A) Grant of money, assistance, license, authority, exemption, exception, privilege, or remedy;

(B) Recognition of any claim, right, immunity, privilege, exemption, or exception; and

(C) Taking of any other action upon the application or petition of, and beneficial to, any person.

(15) The term "proceeding" means any process of the Mayor or an agency as defined in paragraphs (6), (11), and (12) of this section.

(16) The term "sanction" includes the whole or part of any Mayor's or agency's:

(A) Prohibition, requirement, limitation, or other condition affecting the freedom of any person;

(B) Withholding of relief;

(C) Imposition of any form of penalty or fine;

(D) Destruction, taking, seizure, or withholding of property;

(E) Assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees;

(F) Requirement, revocation, or suspension of a license; and

(G) Taking of other compulsory or restrictive action.

(17) The term "regulation" means the whole or any part of any District of Columbia Council statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of the Mayor, District of Columbia Council, or any agency.

(18) The term "public record" includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by the Mayor and agencies.

(19) The term "adjudication" means the agency process, other than rulemaking, for the formulation, issuance, and enforcement of an order. (Oct. 21, 1968, 82 Stat. 1204, Pub. L. 90-614, § 3; 1973 Ed., § 1-1502; Oct. 8, 1975, D.C. Law 1-19, title I, § 102(b)-(q), 22 DCR 2048; Mar. 29, 1977, D.C. Law 1-96, § 3(a), (c), (d), 23 DCR 9532b.)

**Section references.** — This section is referred to in §§ 1-1529, 1-1531, 1-1902, 6-3458, 11-722, and 11-1525.

**Legislative history of Law 1-19.** — See note to § 1-1501.

**Legislative history of Law 1-96.** — See note to § 1-1521.

**District of Columbia Tax Court abolished.** — The District of Columbia Tax Court, formerly referred to in paragraph (5), was abolished by § 161(a) of Pub. L. 91-358, 84 Stat. 579, and the functions thereof are now vested in the Tax Division of the Superior Court of the District of Columbia.

**Editor's notes.** — "District of Columbia Council statement," referred to in (17), should probably appear as "statement of the Council of the District of Columbia" or "Council statement," in view of (1)(B) and the fact that this section refers to current and ongoing Council activity.

**Board held not to be "agency".** — The Contract Appeals Board for the District of Columbia is not an "agency" within the meaning of this section. *Gunnell Constr. Co. v. Contract Appeals Bd.*, App. D.C., 282 A.2d 556 (1971).

The National Capital Housing Authority is not an "agency" of the District of Columbia

within the meaning of this subchapter. *Coleman v. United States*, App. D.C., 311 A.2d 496 (1973).

The Joint Committee on Landmarks of the National Capital, as an intergovernmental agency, is not an agency of the District of Columbia. *Latimer v. Joint Comm. on Landmarks of Nat'l Capital*, App. D.C., 345 A.2d 484 (1975).

**Judicial constructions of analogous provisions in federal act are persuasive**, as this subchapter is modeled on the federal act to a great extent, particularly with respect to the definition of adjudicatory proceedings. *Pendleton v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 449 A.2d 301 (1982).

**Implementation of policy within meaning of paragraph (6) constitutes "rule"**. — Where the closure of a clinic is an implementation of policy, within the meaning of paragraph (6) of this section, it constituted a "rule" within the meaning of paragraph (6). *Spivey v. Barry*, 501 F. Supp. 1093 (D.D.C. 1980), rev'd on other grounds, 665 F.2d 1222 (D.C. Cir. 1981).

**No conflict between this subchapter and Traffic Adjudication Act.** — There is no conflict between the Administrative Procedure Act and the Traffic Adjudication Act (Chapter 6 of Title 40), as it is clear that the legislative intent in the latter was to create an exception to the former's definition of "contested case" in paragraph (8) of this section. *District of Columbia v. Sullivan*, App. D.C., 436 A.2d 364 (1981).

**Food Stamp Operating Manual is not a "rule"**. — The Department of Human Resources Social Services Administration's Food Stamp Operating Manual is neither a regulation nor a "rule" within the purview of this section. *Wolston v. District of Columbia Dep't of Human Resources Social Servs. Administration*, App. D.C., 291 A.2d 85 (1972).

**Rulemaking envisioned as quasi-legislative process.** — The Administrative Procedure Act envisions rulemaking as a quasi-legislative process, and where government agency performs no legislative function but only describes or refers to regulation as it is written, procedural formalities of Administrative Procedure Act are unnecessary. *District of Columbia v. North Washington Neighbors, Inc.*, App. D.C., 367 A.2d 143 (1976), cert. denied, 434 U.S. 823, 98 S. Ct. 68, 54 L. Ed. 2d 80 (1976).

**"Rulemaking"**. — The change of the debasement factor for taxation of single-family residences by the District's taxing authorities is "rulemaking" within the meaning of this section. *District of Columbia v. Green*, App. D.C., 310 A.2d 848 (1973), aff'd, App. D.C., 348 A.2d 305 (1975).

**District action held not "rulemaking"**. — The District's letter to a Senator, in which the District outlined its reading of regulations relevant to the repair of water pipes, is not

"rulemaking" within the meaning of Administrative Procedure Act. *District of Columbia v. North Washington Neighbors, Inc.*, App. D.C., 367 A.2d 143, cert. denied, 434 U.S. 823, 98 S. Ct. 68, 54 L. Ed. 2d 80 (1976).

The implementation of a mandatory federal directive that permits no choice by the District, other than to initiate an administrative or judicial challenge, is not "rulemaking" under paragraph (7) of this section. *Hamer v. Department of Human Servs.*, App. D.C., 492 A.2d 1253 (1985).

The Department of Human Services did not engage in "rulemaking" within the context of the Administrative Procedure Act by reducing petitioner's monthly payment under a grant for Aid to Families with Dependent Children until a prior erroneous overpayment was recouped. *Boyd v. District of Columbia Dep't of Human Servs.*, App. D.C., 524 A.2d 744 (1987).

**Internal manual of board not subject to rulemaking requirements.** — The internal manual of the Board of Elections and Ethics, Standard Procedures for Verification of Initiative Petitions, did not contain rules within the meaning of paragraph (6) of this section and did not require publication under § 1-1503 and was, thus not subject to the rule making requirements of the Administrative Procedure Act. *Stevenson v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 683 A.2d 1371 (1996).

**Zoning proceeding constituted "rulemaking" rather than a "contested case"** where the Zoning Commission rezoned at least 50 lots in 6 squares and solicited and received testimony regarding the impact of imminent development on the entire vicinity. The fact that the impetus for the hearings came from citizens who were concerned with the impact of a high-rise structure on a particular piece of property was of no consequence in determining whether the proceeding was a contested case. *Schneider v. District of Columbia Zoning Comm'n*, App. D.C., 383 A.2d 324 (1978).

The Zoning Commission properly proceeded by rulemaking rather than by contested cases in preparing new zoning proposals for waterfront area. *Citizens Ass'n v. Zoning Comm'n*, App. D.C., 392 A.2d 1027 (1978).

**"Contested case" construed.** — The principal manifestation of a "contested case," within meaning of review provisions of Administrative Procedure Act of District of Columbia, is its character as a quasi-judicial process based on particular facts and information, and immediately affecting the interests of specific parties in the proceeding. *Citizens Ass'n of Georgetown, Inc. v. Washington*, App. D.C., 291 A.2d 699 (1972); *District of Columbia v. Douglass*, App. D.C., 452 A.2d 329 (1982).

Where a proceeding by a quasi-legislative body is concerned primarily with the immedi-

ate rights, duties, or privileges of specific parties instead of with general policy of future applicability, such proceeding falls within the "contested case" provisions of the Administrative Procedure Act. *Chevy Chase Citizens Ass'n v. District of Columbia Council*, App. D.C., 327 A.2d 310 (1974).

An administrative proceeding is primarily adjudicatory and is therefore governed by "contested case" procedural requirements if it is concerned basically with weighing particular information and arriving at a decision directed at the rights of specific parties; on the other hand, an administrative proceeding is not subject to "contested case" procedural requirements if the administrative body is acting in a legislative capacity, making policy decisions directed toward general public. *Chevy Chase Citizens Ass'n v. District of Columbia Council*, App. D.C., 327 A.2d 310 (1974); *Schneider v. District of Columbia Zoning Comm'n*, App. D.C., 383 A.2d 324 (1978).

In order for a matter to be a contested case, it must involve a trial-type hearing which is required either by statute or by constitutional right. *Capitol Hill Restoration Soc'y, Inc. v. Moore*, App. D.C., 410 A.2d 184 (1979); *Dupont Circle Citizens Ass'n v. Barry*, App. D.C., 455 A.2d 417 (1983); *Rones v. District of Columbia Dep't of Hous. & Community Dev.*, App. D.C., 500 A.2d 998 (1985).

For a proceeding to constitute a "contested case," a specific statute or the Constitution must entitle a person to a hearing concerning the legal rights of the parties. *District of Columbia v. Douglass*, App. D.C., 452 A.2d 329 (1982).

Approval by the Commission of a preliminary application for a planned unit development is a "contested case" under the Administrative Procedure Act and is properly before an appellate court as a final order entitled to review. *DuPont Circle Citizens Ass'n v. District of Columbia Zoning Comm'n*, App. D.C., 426 A.2d 327 (1981).

The issuance or denial of a license under the *Healing Arts Practice Act*, § 2-1301 et seq., now repealed, is a "contested case" within the meaning of paragraph (8) of this section. *District of Columbia v. Douglass*, App. D.C., 452 A.2d 329 (1982).

The Court of Appeals has jurisdiction to hear a petition for review of the District of Columbia Hacker's License Appeal Board ruling, affirming the denial of a license to a parolee, because it arises from a "contested case" as defined under paragraph (8). *Allen v. District of Columbia Hacker's License Appeal Bd.*, App. D.C., 471 A.2d 271 (1984).

The D.C. Court of Appeals has jurisdiction to review orders or decisions of District of Columbia government agencies only in "contested cases." The types of proceedings to which this

definition refers are "trial-type" hearings, which are "statutorily or constitutionally compelled." *Singleton v. District of Columbia Dep't of Cors.*, App. D.C., 596 A.2d 56 (1991).

**Independent agency is not beyond the Mayor's budgetary reach.** — Fact that the Board of Library Trustees of the District of Columbia Public Library is listed as a statutory "independent agency" does not confer a status on the library which puts it beyond the Mayor's budgetary reach. *Hazel v. Barry*, App. D.C., 580 A.2d 110 (1990).

**Proceeding a "contested case."** — A proceeding involving an application for approval of planned unit development is a "contested case" within the meaning of this chapter. *Capitol Hill Restoration Soc'y v. Zoning Comm'n*, App. D.C., 287 A.2d 101 (1972).

The Zoning Commission's grant of a change in zoning is a "contested case." *Palisades Citizens Ass'n v. District of Columbia Zoning Comm'n*, App. D.C., 368 A.2d 1143 (1977); *Capitol Hill Restoration Soc'y v. Zoning Comm'n*, App. D.C., 380 A.2d 174 (1977), overruled on other grounds, *Citizens Ass'n of Georgetown v. Zoning Comm'n*, App. D.C., 392 A.2d 1027 (1978).

A proceeding before the Board of Appeals and Review to review an order of the Police and Firemen's Retirement Board is a "contested case." *Brewington v. District of Columbia Bd. of Appeals & Review*, App. D.C., 287 A.2d 532 (1972).

An application for a special exception to allow the construction of a private school in a residential zone is a "contested case" within the meaning of this subchapter. *Rose Lees Hardy Home & School Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 324 A.2d 701 (1974), aff'd, App. D.C., 343 A.2d 564 (1975).

The extension of a Planned Unit Development (PUD) order is part of the original PUD application which under a regulation is definitively a contested case. *Hotel Tabard Inn v. District of Columbia Zoning Comm'n*, App. D.C., 661 A.2d 150 (1995).

**Proceeding not a "contested case."** — A disciplinary proceeding before the Metropolitan Police Special Trial Board involved a police officer's tenure as an employee, and thus was not a "contested case" under paragraph (8)(B) of this section. *Matala v. Washington*, App. D.C., 276 A.2d 126 (1971).

A proceeding before the Zoning Commission which lacks the specificity of subject matter and result indicative of an adjudicatory proceeding, and is a quasi-legislative hearing conducted for the purpose of obtaining facts and information, and the views of the public pertinent to the resolution of a policy decision, is not a "contested case" within the judicial review provisions of the Administrative Procedure Act.

Citizens Ass'n of Georgetown, Inc. v. Washington, App. D.C., 291 A.2d 699 (1972); W.C. & A.N. Miller Dev. Co. v. District of Columbia Zoning Comm'n, App. D.C., 340 A.2d 420 (1975).

A proceeding held under the District of Columbia Zoning Commission's rules of practice, which results in the downzoning of an area, is not a "contested case" within the meaning of the Administrative Procedure Act. *Ruppert v. Washington*, 366 F. Supp. 683 (D.D.C. 1973).

The refusal of the Mayor to grant a request to take immediate steps to correct an alleged air pollution emergency in the District of Columbia is not a "contested case" within purview of this subchapter. *Environmental Defense Fund, Inc. v. Mayor-Commissioner of D.C.*, App. D.C., 317 A.2d 515 (1974).

A public hearing prior to the revision of Minimum Wage and Industrial Safety Board's order with regard to persons employed in hotel, restaurant, and allied occupations was not a "contested case" within purview of notice provisions of this subchapter. *Hotel Ass'n v. District of Columbia Minimum Wage & Indus. Safety Bd.*, App. D.C., 318 A.2d 294 (1974).

The decision of the Council to close a portion of a street and, once closed, to authorize the surveyor to convey title to the abutting landowners for development does not constitute a "contested case" within meaning of the Administrative Procedure Act. *Chevy Chase Citizens Ass'n v. District of Columbia Council*, App. D.C., 327 A.2d 310 (1974).

A discriminatory employment practices proceeding brought by a District of Columbia employee is not a "contested case" within the meaning of this subchapter. *O'Neill v. District of Columbia Office of Human Rights*, App. D.C., 355 A.2d 805 (1976).

The decision of the ABC Board to grant or deny a previously unsuccessful applicant's motion to file a second application within less than one year from the prior denial is not an order in a "contested case". *Citizens Ass'n of Georgetown, Inc. v. District of Columbia ABC Bd.*, App. D.C., 410 A.2d 197 (1979).

Every decision to transfer a government employee from one position to another is not subject to the "contested case" procedural requirements, and direct review by the court. *District of Columbia v. Jones*, App. D.C., 442 A.2d 512 (1982).

A proceeding before the Metropolitan Police Trial Board which resulted in a recommendation of dismissal of an officer for malingering involves the tenure of an employee of the District of Columbia, and thus was not a "contested case" under paragraph (8)(B) of this section. *Barry v. Wilson*, App. D.C., 448 A.2d 244 (1982).

The term "contested case" does not include a proceeding regarding the selection or tenure of an officer or employee of the District. Review of

a tenure decision is properly in the Superior Court. *Kennedy v. Barry*, App. D.C., 516 A.2d 176 (1986), rev'd on other grounds sub nom. *Kennedy v. District of Columbia*, App. D.C., 654 A.2d 847 (1994).

An emergency order of the Taxicab Commission increasing rates is not a contested case so as to be subject to direct review. *Communication Workers, Local 2336 v. District of Columbia Taxicab Comm'n*, App. D.C., 542 A.2d 1221 (1988).

Petitioners request for an immediate official opinion from the Board of Elections and Ethics was not a contested case as defined in this section, therefore, the Court of Appeals lacked jurisdiction to hear a direct appeal from the Board's denial of petitioner's challenge of a prospective candidate's qualifications. *Lawrence v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 611 A.2d 529 (1992).

The Appellate Court lacked jurisdiction to hear allegations of violations of the Alcohol Beverage Control Act where the Alcohol Beverage Control Board's action at issue did not arise out of a contested case proceeding. *Jones v. District of Columbia ABC Bd.*, App. D.C., 621 A.2d 385 (1993).

Paragraph (8) has the unmistakable effect that some agency action — including dismissal under § 1-2556(a) — is not capable of direct review by the Court of Appeals even though it may erroneously deprive the complainant of a trial-type administrative hearing. *Timus v. District of Columbia Dep't of Human Rights*, App. D.C., 633 A.2d 751 (1993).

A bid protest is not a contested case because it does not require a trial-type hearing. The mere possibility of holding a discretionary hearing on a bid protest, particularly in a case where the Contract Appeals Board has decided not to hold one, does not meet the required by law element of the "trial-type hearing" criterion for a contested case. *Francis v. Recycling Solutions, Inc.*, App. D.C., 695 A.2d 63 (1997).

**Order suspending or revoking Class "F" liquor license appealable.** — An order of the Alcoholic Beverage Control Board denying a motion to suspend or revoke Class "F" licenses is a final, appealable order within the meaning of paragraph (11) of this section. *Haight v. District of Columbia ABC Bd.*, App. D.C., 439 A.2d 487 (1981).

**The phrase "after a hearing"** as used in statute defining a "contested case" as meaning a proceeding in which the legal rights and privileges of specific parties are required to be determined, means after a trial-type hearing where such is implicitly required by either the organic act or constitutional right. *Chevy Chase Citizens Ass'n v. District of Columbia Council*, App. D.C., 327 A.2d 310 (1974); *Bryant v. Barry*, App. D.C., 456 A.2d 1252 (1983).

**Scope of paragraph (8)(B) exclusion.** — Paragraph (8)(B) was intended to encompass virtually all personnel decisions. *Wells v. District of Columbia Bd. of Educ.*, App. D.C., 386 A.2d 703 (1978).

**Includes intra-agency transfers.** — The exclusion under paragraph (8)(B) encompasses personnel decisions transferring employees within an agency. *Wells v. District of Columbia Bd. of Educ.*, App. D.C., 386 A.2d 703 (1978).

**And administrative leave.** — Administrative leave requests are facets of personnel management encompassed within the term "selection or tenure" under paragraph (8)(B). *Money v. Cullinane*, App. D.C., 392 A.2d 998 (1978).

**Prison discipline cases.** — There is no constitutional right to a full trial-type hearing in prison discipline cases. Prisoners are entitled to some due process protections, such as the right to receive notice of the charges against them and a written statement of reasons for any disciplinary action, but other constitutional rights must generally be balanced against the correctional goals of the prison authorities. *Singleton v. District of Columbia Dep't of Cors.*, App. D.C., 596 A.2d 56 (1991).

**Remand order not a "final order."** — In a workers' compensation case, an order by the Director to remand a case to the Hearing Examiner for further findings, was not a final order because the remand order only decided 1 of 2 claims. *Warner v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 587 A.2d 1091 (1991).

**Court of Appeals jurisdiction for review must arise from "contested case."** — District of Columbia Court of Appeals' jurisdiction to review administrative actions under the Administrative Procedure Act must arise in the form of a "contested case." *District of Columbia v. Greater Wash. Cent. Labor Council*, App. D.C., 442 A.2d 110 (1982), cert. denied, 460 U.S. 1016, 103 S. Ct. 1261, 75 L. Ed. 2d 487 (1983).

Review of a Metropolitan Police Department Police Trial Board decision is properly in the Superior Court, rather than the Court of Appeals, because such a matter involving the tenure of an officer or employee of the District of Columbia is specifically excluded from the definition of "contested case." *Kegley v. District of Columbia*, App. D.C., 440 A.2d 1013 (1982).

In view of the exclusion of paragraph (8)(B) of this section, tenure of an officer of the District is not directly reviewable by the Court of Appeals. Review is properly in the Superior Court. *Barry v. Holderbaum*, App. D.C., 454 A.2d 1328 (1982).

**"Relief."** — The All Writs Act applies equally to the Superior Court. Therefore, the Superior Court must have the power to issue emergency relief pending the completion of administrative proceedings in cases where, in the first instance, review would lie in the Superior Court.

*District of Columbia v. Group Ins. Admin.*, App. D.C., 633 A.2d 2 (1993).

There is not necessarily any inconsistency between § 1-1189.3 and the Superior Court's authority to issue emergency relief pending the outcome of Contract Appeals Board proceedings. *District of Columbia v. Group Ins. Admin.*, App. D.C., 633 A.2d 2 (1993).

**Property owner may seek review of DHCD final action by Court of Appeals.** — Because § 5-513 authorizes the Department of Housing and Community Development (DHCD), an administrative agency of the District, to deprive the owner of his property, and because the Board of Appeals and Review does not have appellate jurisdiction over an enforcement order, due process entitles the owner to a "contested case" hearing at DHCD if he elects to show cause why he should not be required to correct such condition; whether DHCD grants or refuses such a hearing, the owner can seek review of DHCD's final action directly by the Court of Appeals. *Auger v. District of Columbia Bd. of Appeals & Review*, App. D.C., 477 A.2d 196 (1984).

**Court of Appeals may not review agency revocation of sign permit not appealed to Board of Appeals and Review.** — Where petitioner did not appeal his sign permit revocation by District agency to the Board of Appeals and Review, the Court of Appeals does not have jurisdiction to review the agency's revocation of the permit because petitioner failed to create a "contested case." *Auger v. District of Columbia Bd. of Appeals & Review*, App. D.C., 477 A.2d 196 (1984).

**Cited in** *Woodridge Nursery Sch. v. Jessup*, App. D.C., 269 A.2d 199 (1970); *Palace Restaurant, Inc. v. ABC Bd.*, App. D.C., 271 A.2d 561 (1970); *Johnson v. Board of Appeals & Review*, App. D.C., 282 A.2d 566 (1971), cert. denied, 405 U.S. 955, 92 S. Ct. 1175, 31 L. Ed. 2d 232 (1972); *Wallace v. District Unemployment Comp. Bd.*, App. D.C., 289 A.2d 885 (1972); *Thomas v. District of Columbia Bd. of Appeals & Review*, App. D.C., 355 A.2d 789 (1976); *L'Enfant Plaza Properties, Inc. v. District of Columbia Redevelopment Land Agency*, 564 F.2d 515 (D.C. Cir. 1977); *Ammerman v. District of Columbia Rental Accommodations Comm'n*, App. D.C., 375 A.2d 1060 (1977); *Lechter-Siegel v. District Unemployment Comp. Bd.*, App. D.C., 395 A.2d 57 (1978); *Rorie v. District of Columbia Dep't of Human Resources*, App. D.C., 403 A.2d 1148 (1979); *Network Technical Servs., Inc. v. District of Columbia Data Co.*, App. D.C., 464 A.2d 133 (1983); *People's Counsel v. Public Serv. Comm'n*, App. D.C., 474 A.2d 835 (1984); *Robinson v. Palmer*, 619 F. Supp. 344 (D.D.C. 1985); *Donnelly Assocs. v. District of Columbia Historic Preservation Review Bd.*, App. D.C., 520 A.2d 270 (1987); *Acheson v. Sheaffer*, App. D.C., 520 A.2d

318 (1987); *Siler v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 525 A.2d 620 (1987); *White v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 537 A.2d 1133 (1988); *Flores v. District of Columbia Rental Hous. Comm'n*, App. D.C., 547 A.2d 1000 (1988), cert. denied, 490 U.S. 1081, 109 S. Ct. 2103, 104 L. Ed. 2d 664 (1989); *Committee of Blind Vendors v. District of Columbia*, 695 F. Supp. 1234 (D.D.C. 1988); *Jones & Artis Constr. Co. v. District of Columbia Contract Appeals Bd.*, App. D.C., 549 A.2d 315 (1988); *Levy v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 570 A.2d 739 (1990); *Committee of 100 v. District of Columbia Dep't of Consumer & Regulatory Affairs*, App. D.C., 571 A.2d 195 (1990); *In re Herndon*, App. D.C., 596 A.2d 592 (1991);

*Kennedy v. Dixon*, 119 WLR 2637 (Super. Ct. 1991); *Davis v. University of D.C.*, App. D.C., 603 A.2d 849 (1992); *Webb v. District of Columbia Dep't of Human Servs.*, App. D.C., 618 A.2d 148 (1992); *Brandywine Ltd. Partnership v. District of Columbia Rental Hous. Comm'n*, App. D.C., 631 A.2d 415 (1993); *United States v. Board of Zoning Adjustment*, App. D.C., 644 A.2d 995 (1994); *Tenants of 1255 N.H. Ave., N.W. v. District of Columbia Rental Hous. Comm'n*, App. D.C., 647 A.2d 70 (1994); *Gill v. Tolbert Constr., Inc.*, App. D.C., 676 A.2d 469 (1996); *Shook v. District of Columbia Fin. Responsibility & Mgt. Assistance Auth.*, 132 F.3d 775 (D.C. Cir. 1998); *Minnis v. District of Columbia Dep't of Human Servs.*, App. D.C., 712 A.2d 1030 (1998).

## § 1-1503. Establishment of procedures.

(a) The Mayor and the Council shall, for the Mayor and for each subordinate agency, establish or require each subordinate agency to establish procedures in accordance with this subchapter.

(b) Each independent agency shall establish procedures in accordance with this subchapter.

(c) The procedures required to be established by subsections (a) and (b) of this section shall include requirements of practice before the Mayor and each agency. (Oct. 21, 1968, 82 Stat. 1205, Pub. L. 90-614, § 4; 1973 Ed., § 1-1503; Oct. 8, 1975, D.C. Law 1-19, title I, § 102(r), (s), 22 DCR 2051; Mar. 29, 1977, D.C. Law 1-96, § 3(a), (c), 23 DCR 9532b.)

**Section references.** — This section is referred to in §§ 6-3458, 11-722, 11-1525, and 33-731.

**Legislative history of Law 1-19.** — See note to § 1-1501.

**Legislative history of Law 1-96.** — See note to § 1-1521.

**Lay representation before agencies implicates public policy.** — While Court of Appeals is empowered to define the practice of law so that it either excludes or includes lay representation before agencies, it is also true that such an undertaking implicates important public policy questions. *Brookens v. Committee on Unauthorized Practice of Law*, App. D.C., 538 A.2d 1120 (1988).

**In absence of specific procedures, hearing governed by general rules of procedure.** — When the conduct of a zoning hearing is attacked and no ordinance or rule has been adopted to govern the board's conduct, courts will rely on the principle that the hearing must be governed by well-established rules of procedure generally applicable to agency adjudications. *Brown v. District of Columbia Bd. of Zoning*, App. D.C., 413 A.2d 1276 (1980), aff'd, App. D.C., 486 A.2d 37 (1984).

**Regulations applicable to related proceedings.** — In the absence of regulations directed specifically to hackers' license revocation proceedings, the regulations applicable to appeals from license denials govern revocation proceedings as well. *Babazadeh v. District of Columbia Hackers' License Appeal Bd.*, App. D.C., 390 A.2d 1004 (1978).

**Internal manual of board not subject to rulemaking requirements.** — The internal manual of the Board of Elections and Ethics, Standard Procedures for Verification of Initiative Petitions, did not contain rules within the meaning of § 1-1502(6) and did not require publication under this section and was, thus not subject to the rule making requirements of the Administrative Procedure Act. *Stevenson v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 683 A.2d 1371 (1996).

**Cited in District of Columbia Human Relations Comm'n v. National Geographic Soc'y**, 475 F.2d 366 (D.C. Cir. 1973); *Weinberg v. Barry*, 634 F. Supp. 86 (D.D.C. 1986); *Porter v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 518 A.2d 1020 (1986).

### § 1-1504. Open meetings; transcripts.

(a) All meetings (including hearings) of any department, agency, board, or commission of the District government, including meetings of the Council of the District of Columbia, at which official action of any kind is taken shall be open to the public. No resolution, rule, act, regulation, or other official action shall be effective unless taken, made, or enacted at such meeting.

(b) A written transcript or a transcription shall be kept for all such meetings and shall be made available to the public during normal business hours of the District government. Copies of such written transcripts or copies of such transcriptions shall be available, upon request, to the public at reasonable cost. (1973 Ed., § 1-1503a; Dec. 24, 1973, 87 Stat. 831, Pub. L. 93-198, title VII, § 742.)

**Section references.** — This section is referred to in §§ 1-236, 1-262, 1-264.1, 1-606.10, 2-3102, 2-4004, 6-3458, 9-602, 11-722, 11-1525, 43-1674, and 47-391.8.

**Definitions applicable.** — The definitions contained in § 1-202 apply to this section.

**Section does not cover decision on application to carry concealed pistol.** — The deliberative process incident to the Board of Appeals and Review's final orders in regard to an application for a license to carry a concealed pistol is not covered by this section. *Jordan v. District of Columbia*, App. D.C., 362 A.2d 114 (1976).

**Or quasi-judicial executive sessions of Board of Zoning Adjustment.** — Where a decision of Board of Zoning Adjustment was made in an executive session which was a quasi-judicial action in which historically only

voting members play a role, this section is not applicable. *Dupont Circle Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 364 A.2d 610 (1976).

**Or certain meetings of Board of Education.** — Given the express intent of Congress to allow certain meetings of the Board of Education to be closed and the embodiment of that intent in a specific statute (§ 31-101), that prior statute remains in effect as a qualification of this section requiring meetings of the District government to be open to the public. *Goodwin v. District of Columbia Bd. of Educ.*, App. D.C., 343 A.2d 63 (1975).

**Cited in** *American Fed'n of Gov't Employees v. District of Columbia*, 120 WLR 2533 (Super. Ct. 1992); *United States Parole Comm'n v. Noble*, App. D.C., 693 A.2d 1084 (1997).

### § 1-1505. Official publications.

(a) The Mayor shall cause to be published the official publications known as the District of Columbia Register and the District of Columbia Municipal Regulations pursuant to subchapter III of this chapter.

(b) All courts within the District shall take judicial notice of rules, regulations, and Council acts and resolutions published or of which notice is given in the District of Columbia Register or the District of Columbia Municipal Regulations pursuant to subchapter III of this chapter.

(c) Publication in the District of Columbia Register of Council acts and resolutions, regulations adopted, amended, or repealed by the District of Columbia Council and rules adopted, amended, or repealed by the Mayor or by any agency shall not be considered as a substitute for publication in 1 or more newspapers of general circulation when such publication is required by statute. (Oct. 21, 1968, 82 Stat. 1206, Pub. L. 90-614, § 5; 1973 Ed., § 1-1504; Oct. 8, 1975, D.C. Law 1-19, title I, § 102(t)-(x), 22 DCR 2051; Mar. 29, 1977, D.C. Law 1-96, § 3(a), 23 DCR 9532b; Apr. 19, 1977, D.C. Law 1-120, § 2, 23 DCR 9924; Mar. 6, 1979, D.C. Law 2-153, § 6(a), 25 DCR 6960.)

**Cross references.** — As to availability of D.C. Register to Advisory Neighborhood Commissions, see § 1-261.

As to availability to public of official information, see § 1-1521 et seq.

**Section references.** — This section is referred to in §§ 1-1601, 6-3458, 11-722, 11-1525, and 33-731.

**Legislative history of Law 1-19.** — See note to § 1-1501.

**Legislative history of Law 1-96.** — See note to § 1-1521.

**Legislative history of Law 1-120.** — Law 1-120 was introduced in Council and assigned Bill No. 1-340, which was referred to the Committee on the Judiciary and the Committee on Criminal Law. The Bill was adopted on first and second readings on November 23, 1976 and December 7, 1976, respectively. Enacted without signature by the Mayor on January 1, 1977, it was assigned Act No. 1-206 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 2-153.** — Law 2-153 was introduced in Council and assigned Bill No. 2-96, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 28, 1978 and December 12, 1978, respectively.

Signed by the Mayor on December 29, 1978, it was assigned Act No. 2-319 and transmitted to both Houses of Congress for its review.

**Regulation incorporated into District of Columbia Register is properly published.**

— A police regulation of the District of Columbia pertaining to equal employment opportunities, even if not published in a compilation, was properly published where a special edition of the District of Columbia Register incorporated District of Columbia police regulations and such regulations were available for purchase at District of Columbia publications office. District of Columbia Human Relations Comm'n v. National Geographic Soc'y, 475 F.2d 366 (D.C. Cir. 1973).

**Agency violates section by taking final action before 30 days.** — Where an agency failed to wait 30 days from publication of notice before taking final action, and also failed to indicate in the notice that it intended to take action in less than 30 days, the agency violated this section. Spivey v. Barry, 501 F. Supp. 1093 (D.D.C. 1980), rev'd on other grounds, 665 F.2d 1222 (D.C. Cir. 1981).

**Cited in** Legislative Study Club, Inc. v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 359 A.2d 153 (1976).

## § 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 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.)

**Cross references.** — As to publication of rules and regulations relating to adoption subsidy payments, see § 3-115.

**Section references.** — This section is referred to in §§ 1-261, 1-604.5, 3-115, 6-705, 6-1005, 6-3458, 11-722, 11-1525, 31-132, 31-602, 31-603, 31-1516, 33-731, 35-2111, 36-1209, 40-1708, 47-383, 47-384, and 47-2501.

**Legislative history of Law 1-19.** — See note to § 1-1501.

**Legislative history of Law 1-96.** — See note to § 1-1521.

**Subsection (a) analogous to federal statute.** — The requirements in subsection (a) of this section as to notice and comment are closely analogous to the requirements of the Federal Administrative Procedure Act (5 U.S.C. § 551 et seq.) for an informal rulemaking proceeding. *Citizens Ass'n v. Zoning Comm'n*, App. D.C., 392 A.2d 1027 (1978).

**"Rulemaking" construed.** — The change of the debasement factor for the taxation of single-family residences is, within the meaning of this subchapter, "rulemaking" such as to require the publication of notice. *District of Columbia v. Green*, App. D.C., 310 A.2d 848 (1973), *aff'd*, App. D.C., 348 A.2d 305 (1975).

Surveyor's interpretation of the word "subdivision" in the Historic Landmark and Historic District Protection Act was not a "rule" for purposes of this chapter, and was not required to have been adopted according to the notice and comment procedures. *Acheson v. Sheaffer*, App. D.C., 520 A.2d 318 (1987).

**Rulemaking affords limited procedural protections.** — In a rulemaking proceeding, which is quasi-legislative in character, all the restraints of this subchapter and the full range of due process protections necessary to an adversary adjudication are not applicable. *Citizens Ass'n v. Zoning Comm'n*, App. D.C., 392 A.2d 1027 (1978).

There is no requirement that opponents of a rule be given the opportunity to cross-examine witnesses testifying favorably or to rebut the evidence presented by proponents; rulemaking differs in this regard from contested cases. *Citizens Ass'n v. Zoning Comm'n*, App. D.C., 392 A.2d 1027 (1978).

**Department of Human Services (DHS) policies governing homemaker services were subject to the rulemaking requirements of this Act** since DHS was not following

federally mandated rules in implementing the policies. *Webb v. District of Columbia Dep't of Human Servs.*, App. D.C., 618 A.2d 148 (1992).

**Statement of basis and purpose for regulations not required.** — The absence of any provision requiring District of Columbia agencies to provide a statement of basis and purpose for regulations being promulgated under the rulemaking provisions of subsection (a) of this section is a clear indication that neither Congress nor the Council of the District of Columbia intended such statements to be required of District agencies. *District of Columbia Hosp. Ass'n v. Barry*, App. D.C., 498 A.2d 216 (1985).

**Notice requirements imposed upon Zoning Commission prior to hearing on proposed regulatory action.** — The 3 notice requirements with which the Zoning Commission must comply prior to a hearing on proposed regulatory action are: (1) Subsection (a) of this section; (2) § 5-415; and (3) Zoning Commission Rule 3.411. *Monaco v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 461 A.2d 1049 (1983).

**Opportunity to comment afforded by Zoning Commission.** — The requirement under this section and § 5-417 that interested members of the public be afforded a reasonable opportunity to comment and submit data was met by the Zoning Commission's holding 4 days of hearings and permitting a substantial period for submission of written comments. *Citizens Ass'n v. Zoning Comm'n*, App. D.C., 392 A.2d 1027 (1978).

**Failure to exhaust administrative remedies before the Zoning Commission.** — The Zoning Commission is the exclusive agency vested with responsibility for assuring that zoning regulations are not inconsistent with the District's comprehensive plan, and failure to pursue any action before the Zoning Commission amounts to failure to exhaust administrative remedies. *Tenley & Cleveland Park Emergency Comm. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 550 A.2d 331 (1988), *cert. denied*, 489 U.S. 1082, 109 S. Ct. 1539, 103 L. Ed. 2d 843 (1989).

**Notice and opportunity to comment deemed sufficient to satisfy due process.** — Notice of a planned closing of several shelters for homeless men and a reasonable opportunity to present written comments constitute all the process that is due the homeless men, in part,

because of the legislative nature of the proposed termination of services. *Williams v. Barry*, 708 F.2d 789 (D.C. Cir. 1983).

The demands of due process were satisfied where the challenged regulation was duly published and adopted in compliance with the notice and comment procedures of this section, and subsequently published in final form in compliance with § 1-1532. *Flores v. District of Columbia Rental Hous. Comm'n*, App. D.C., 547 A.2d 1000 (1988), cert. denied, 490 U.S. 1081, 109 S. Ct. 2103, 104 L. Ed. 2d 664 (1989).

**Compliance with notice provision not required.** — The Department of Human Services did not engage in "rulemaking" within the context of the Administrative Procedure Act and, therefore, its uniformly applied recoupment rate under § 3-218.1(b) of the Public Assistance Act of 1982 was effective without compliance with the notice requirement of subsection (a) of this section. *Boyd v. District of Columbia Dep't of Human Servs.*, App. D.C., 524 A.2d 744 (1987).

**Ex parte communications proper.** — Ex parte communications between the Zoning Commission staff and developers which occurred after the closing of the record but before issuance of the Commission's final orders did not violate the requirements of this subchapter or of due process. *Citizens Ass'n v. Zoning Comm'n*, App. D.C., 392 A.2d 1027 (1978).

**Rules of State Health Planning and Development Agency held valid.** — Rules adopted by the District of Columbia State Health Planning and Development Agency, as part of implementing the administration of the District's certificate of need program, were not invalid on the grounds that the agency adopting the rules failed to provide a statement of basis and purpose for the regulations under the rulemaking provisions of subsection (a) of this section. *District of Columbia Hosp. Ass'n v. Barry*, App. D.C., 498 A.2d 216 (1985).

**The "post hoc" promulgation of rules** in the manner required by this Act does not validate prior agency action under an invalid reg-

ulation. *Webb v. District of Columbia Dep't of Human Servs.*, App. D.C., 618 A.2d 148 (1992).

**Post hoc publication of regulations in the District of Columbia Register** cannot cause them to acquire validity. *Rorie v. District of Columbia Dep't of Human Resources*, App. D.C., 403 A.2d 1148 (1979).

**Emergency regulation may become effective prior to publication in Register.** —

The Council's emergency regulation procedures do not require that an emergency regulation be published in the District of Columbia Register before becoming effective. *Hobson v. District of Columbia*, App. D.C., 304 A.2d 637 (1973).

**Emergency regulation justified.** — The results which were likely to flow from a judicial decision sustained the Council's determination that an emergency existed and justified the invocation of the Council's procedures for the purpose of enacting emergency regulations. *Hobson v. District of Columbia*, App. D.C., 304 A.2d 637 (1973).

**Cited in** *Hotel Ass'n v. District of Columbia Minimum Wage & Indus. Safety Bd.*, App. D.C., 318 A.2d 294 (1974); *Milhouse v. Levi*, 548 F.2d 357 (D.C. Cir. 1976); *Schneider v. District of Columbia Zoning Comm'n*, App. D.C., 383 A.2d 324 (1978); *Keefe Co. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 409 A.2d 624 (1979); *Spivey v. Barry*, 665 F.2d 1222 (D.C. Cir. 1981); *Hamer v. Department of Human Servs.*, App. D.C., 492 A.2d 1253 (1985); *Hutchison Bros. Excavating Co. v. District of Columbia*, App. D.C., 511 A.2d 3 (1986); *Reichley v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 531 A.2d 244 (1987); *Committee of Blind Vendors v. District of Columbia*, 695 F. Supp. 1234 (D.D.C. 1988); *Professional Answering Serv., Inc. v. C & P Tel. Co.*, App. D.C., 565 A.2d 55 (1989); *Speyer v. Barry*, App. D.C., 588 A.2d 1147 (1991); *American Univ. v. District of Columbia Comm'n on Human Rights*, App. D.C., 598 A.2d 416 (1991); *Office of People's Counsel v. Public Serv. Comm'n*, App. D.C., 630 A.2d 692 (1993).

## § 1-1507. Compilation of rules and regulations.

(a) As soon as practicable after the effective date of this subchapter, the Mayor shall have compiled, indexed, and published in the District of Columbia Register all regulations adopted by the District of Columbia Council and rules adopted by the Mayor and District of Columbia Council and each agency and in effect at the time of such compilation. Such compilations shall be promptly supplemented or revised as may be necessary to reflect new regulations and rules and changes in regulations and rules.

(b) Compilations shall be made available to the public at a price fixed by the Mayor.

(c) The Mayor must publish the 1st compilation required by subsection (a) of this section within 1 year after the effective date of this subchapter and no regulations adopted by the District of Columbia Council nor rule adopted by the Mayor or by an agency before the date of such 1st publication which has not been filed and published in accordance with this subchapter and which is not set forth in such compilation shall be in effect after 1 year after the effective date of this subchapter. (Oct. 21, 1968, 82 Stat. 1207, Pub. L. 90-614, § 8; 1973 Ed., § 1-1507; Aug. 21, 1974, 88 Stat. 483, Pub. L. 93-379, § 5(a); Oct. 8, 1975, D.C. Law 1-19, title I, § 102(cc)-(ee), title II, § 203, 22 DCR 2053, 2058; Mar. 29, 1977, D.C. Law 1-96, § 3(a), (c), 23 DCR 9532b.)

**Section references.** — This section is referred to in §§ 6-3458, 11-722, and 11-1525.

**Legislative history of Law 1-19.** — See note to § 1-1501.

**Legislative history of Law 1-96.** — See note to § 1-1521.

**Editor's notes.** — "District of Columbia Council", appearing twice in (a) and once in (c), should probably be "Council of the District of Columbia" or "Council", in view of § 1-1502(1)(B) and the fact that this section refers to current and ongoing Council activity.

**Violation of section is insufficient proof of denial of right.** — If the Council violated this section in failing to compile rules and regulations for the closing of street and alleys, such violation is of no help to plaintiff property owners who sought to recover money paid for closing of certain alleys in the absence of allegations and proof that such a violation denied the plaintiffs a right to which they were entitled under the law. *Washington Medical Ctr., Inc. v. United States*, 545 F.2d 116 (D.C. Cir. 1976), cert. denied, 434 U.S. 902, 98 S. Ct. 296, 54 L. Ed. 2d 188 (1977).

**Regulation incorporated into District of Columbia Register is properly published.**

— A police regulation of the District of Columbia pertaining to equal employment opportunities, even if not published in a compilation, was properly published where a special edition of the District of Columbia Register incorporated District of Columbia police regulations and such regulations were available for purchase at District of Columbia publications office. *District of Columbia Human Relations Comm'n v. National Geographic Soc'y*, 475 F.2d 366 (D.C. Cir. 1973).

While the District of Columbia Administrative Procedure Act requires that an existing regulation must be published in the District of Columbia Register within 1 year after the effective date of the Act (i.e., by October 21, 1969), that requirement was satisfied when the police regulations were incorporated by reference into the special edition of the District of Columbia Register on July 27, 1970. *Green v. District of Columbia*, 710 F.2d 876 (D.C. Cir. 1983).

## § 1-1508. Declaratory orders.

On petition of any interested person, the Mayor or an agency, within their discretion, may issue a declaratory order with respect to the applicability of any rule, regulation, Council act or resolution, or statute enforceable by them or by it, to terminate a controversy (other than a contested case) or to remove uncertainty. A declaratory order, as provided in this section, shall be binding between the Mayor or the agency, as the case may be, and the petitioner on the state of facts alleged and established, unless such order is altered or set aside by a court. A declaratory order is subject to review in the manner provided in this subchapter for the review of orders and decisions in contested cases, except that the refusal of the Mayor or of an agency to issue a declaratory order shall not be subject to review. The Mayor and each agency shall prescribe by rule the form for such petitions and the procedure for their submission, consideration, and disposition. (Oct. 21, 1968, 82 Stat. 1207, Pub. L. 90-614, § 9; 1973 Ed., § 1-1508; Oct. 8, 1975, D.C. Law 1-19, title I, § 102(ff), 22 DCR 2054; Mar. 29, 1977, D.C. Law 1-96, § 3(a), (c), 23 DCR 9532b.)

**Section references.** — This section is referred to in §§ 6-3458, 11-722, and 11-1525.

**Legislative history of Law 1-19.** — See note to § 1-1501.

**Legislative history of Law 1-96.** — See note to § 1-1521.

**Refusal to issue order not reviewable.** — The refusal of the Minimum Wage and Industrial Safety Board to issue a declaratory order requested by an employer was not subject to

review. *Sonderling Broadcasting Corp. v. District of Columbia Minimum Wage & Indus. Safety Bd.*, App. D.C., 315 A.2d 828 (1974).

**Cited in** *Washington Theater Club, Inc. v. District of Columbia Dep't of Fin. & Revenue, Property Assmt. Div.*, App. D.C., 302 A.2d 231, cert. denied, 414 U.S. 831, 94 S. Ct. 63, 38 L. Ed. 2d 66 (1973); *People's Counsel v. Public Serv. Comm'n*, App. D.C., 474 A.2d 1274 (1984).

## § 1-1509. Contested cases.

(a) In any contested case, all parties thereto shall be given reasonable notice of the afforded hearing by the Mayor or the agency, as the case may be. The notice shall state the time, place, and issues involved, but if, by reason of the nature of the proceeding, the Mayor or the agency determines that the issues cannot be fully stated in advance of the hearing, or if subsequent amendment of the issues is necessary, they shall be fully stated as soon as practicable, and opportunity shall be afforded all parties to present evidence and argument with respect thereto. The notice shall also state that if a party or witness is deaf, or because of a hearing impediment cannot readily understand or communicate the spoken English language, the party or witness may apply to the agency for the appointment of a qualified interpreter. Unless otherwise required by law, other than this subchapter, any contested case may be disposed of by stipulation, agreed settlement, consent order, or default.

(b) In contested cases, except as may otherwise be provided by law, other than this subchapter, the proponent of a rule or order shall have the burden of proof. Any oral and any documentary evidence may be received, but the Mayor and every agency shall exclude irrelevant, immaterial, and unduly repetitious evidence. Every party shall have the right to present in person or by counsel his case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Where any decision of the Mayor or any agency in a contested case rests on official notice of a material fact not appearing in the evidence in the record, any party to such case shall on timely request be afforded an opportunity to show the contrary.

(c) The Mayor or the agency shall maintain an official record in each contested case, to include testimony and exhibits, but it shall not be necessary to make any transcription unless a copy of such record is timely requested by any party to such case, or transcription is required by law, other than this subchapter. The testimony and exhibits, together with all papers and requests filed in the proceeding, and all material facts not appearing in the evidence but with respect to which official notice is taken, shall constitute the exclusive record for order or decision. No sanction shall be imposed or rule or order or decision be issued except upon consideration of such exclusive record, or such lesser portions thereof as may be agreed upon by all the parties to such case. The cost incidental to the preparation of a copy or copies of a record or portion thereof shall be borne equally by all parties requesting the copy or copies.

(d) Whenever in a contested case a majority of those who are to render the final order or decision did not personally hear the evidence, no order or decision

adverse to a party to the case (other than the Mayor or an agency) shall be made until a proposed order or decision, including findings of fact and conclusions of law, has been served upon the parties and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to a majority of those who are to render the order or decision, who, in such case, shall personally consider such portions of the exclusive record, as provided in subsection (c) of this section, as may be designated by any party.

(e) Every decision and order adverse to a party to the case, rendered by the Mayor or an agency in a contested case, shall be in writing and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Findings of fact and conclusions of law shall be supported by and in accordance with the reliable, probative, and substantial evidence. A copy of the decision and order and accompanying findings and conclusions shall be given by the Mayor or the agency, as the case may be, to each party or to his attorney of record. (Oct. 21, 1968, 82 Stat. 1208, Pub. L. 90-614, § 10; 1973 Ed., § 1-1509; Oct. 8, 1975, D.C. Law 1-19, title I, § 102(gg)-(kk), 22 DCR 2054; Mar. 29, 1977, D.C. Law 1-96, § 3(a), (c), 23 DCR 9532b; Feb. 11, 1982, D.C. Law 4-67, § 2(a), 28 DCR 5043; Jan. 28, 1988, D.C. Law 7-62, § 14(a), 34 DCR 7426.)

**Cross references.** — As to hearing procedures for violations under Funeral Directors Act, see § 2-2809.

**Section references.** — This section is referred to in §§ 2-117, 2-606, 2-2730, 2-2809, 6-3626, 6-708, 6-960, 6-995.9, 6-1508, 6-3458, 6-3459, 11-722, 11-1525, 25-106, 26-706, 26-804, 26-806.1, 26-904, 26-905, 28-3905, 32-363, 32-1604, 35-2111, 35-2309, 35-3502, 36-1002, 36-1012, 40-302, 40-404, 42-225, 43-1655, 45-1658, 45-3218, 47-2820, 47-2844, and 47-3115.

**Legislative history of Law 1-19.** — See note to § 1-1501.

**Legislative history of Law 1-96.** — See note to § 1-1521.

**Legislative history of Law 4-67.** — Law 4-67 was introduced in Council and assigned Bill No. 4-55, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 13, 1981 and October 27, 1981, respectively. Signed by the Mayor on November 9, 1981, it was assigned Act No. 4-113 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 7-62.** — Law 7-62 was introduced in Council and assigned Bill No. 7-108, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 13, 1987 and October 27, 1987, respectively. Signed by the Mayor on November 5, 1987, it was assigned Act No. 7-95 and transmitted to both Houses of Congress for its review.

**Scope of procedural guarantees.** — The procedural guarantees of the social security

regulations, District of Columbia regulations, and this subchapter merely prescribe the procedure that must attend the removal of a benefit, and have no relevance in determining whether a property right exists. *Caton v. Barry*, 500 F. Supp. 45 (D.D.C. 1980).

A respondent is entitled to be fully aware of the scope of the charges in order to have an effective opportunity to be heard and to explain his conduct. *Hedgman v. District of Columbia Hackers' License Appeal Bd.*, App. D.C., 549 A.2d 720 (1988).

**"Contested case" construed.** — The principal manifestation of a "contested case" is its character as a quasi-judicial process based on particular facts and information, and immediately affecting the interests of specific parties in the proceeding. *Citizens Ass'n of Georgetown, Inc. v. Washington*, App. D.C., 291 A.2d 699 (1972).

**Reduction in force.** — A reduction in force is not a "contested case." *Hoage v. Board of Trustees*, App. D.C., 714 A.2d 776 (1998).

**Notice held sufficient.** — See *Clark's Liquors, Inc. v. ABC Bd.*, App. D.C., 274 A.2d 414 (1971).

Notice that erroneously described scheduled action as a lot width variance instead of a lot area variance nonetheless gave reasonable notice as required by this section. *Russell v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 402 A.2d 1231 (1979).

Where the taxidriver's counsel, through questioning, drew to the attention of the licensing agency facts from which the agency found

violations other than those of which the taxidriver had been given notice, the rulings of the agency as they related to the new violations would not be reversed on the grounds of insufficient notice. *Hedgman v. District of Columbia Hackers' License Appeal Bd.*, App. D.C., 549 A.2d 720 (1988).

Notice was sufficient to satisfy due process and the requirements of this section. *Revithes v. District of Columbia Rental Hous. Comm'n*, App. D.C., 536 A.2d 1007 (1987).

**Notice held insufficient.** — See *Palace Restaurant, Inc. v. ABC Bd.*, App. D.C., 271 A.2d 561 (1970); *Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 365 A.2d 372 (1976); *Ammerman v. District of Columbia Rental Accommodations Comm'n*, App. D.C., 375 A.2d 1060 (1977); *M.B.E., Inc. v. Minority Bus. Opportunity Comm'n*, App. D.C., 485 A.2d 152 (1984).

**Summary dismissal, though justified, violative of due process rights.** — Although the conduct of plaintiff deans of a university may have justified their removal from their administrative positions, the summary nature of their removal without giving them notice and an opportunity to respond was violative of their rights to procedural due process guaranteed by the Fifth Amendment. *Allen v. Ford*, 116 WLR 1869 (Super. Ct. 1988).

**Scope of duty imposed on agency by subsection (e).** — The requirement of subsection (e) of this section that agency decisions be accompanied by findings of fact and supported by substantial evidence imposes upon the agency the duty to make findings of basic facts upon which the agency decision rests; the agency must show on what it relied in reaching its decision. *Washington Gas Light Co. v. Public Serv. Comm'n*, App. D.C., 452 A.2d 375 (1982), cert. denied, 462 U.S. 1107, 103 S. Ct. 2454, 77 L. Ed. 2d 1334 (1983), aff'd, 483 A.2d 1164 (1984).

**Opportunity to rebut evidence.** — In driver's license revocation proceedings, the motorist is entitled to opportunity to rebut any inaccuracy in his traffic record or to show that traffic record is not relevant or material or is otherwise inadmissible. *Quick v. Department of Motor Vehicles*, App. D.C., 331 A.2d 319 (1975).

This chapter gives every party the right to submit rebuttal evidence. *Hilton Hotels Corp. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 531 A.2d 999 (1987).

It was harmless error for the Parole Board not to provide defendant with a proposed order and opportunity to note objections. *Bennett v. Ridley*, App. D.C., 633 A.2d 824 (1993).

**Scope of cross-examination.** — When a proceeding before a board is a contested case, one in which a trial-type hearing is implicitly required, either by the organic act or constitutional right, and rebuttal witnesses are testifying

about contested facts, each party has the right to conduct such cross-examination as may be required for a full and true disclosure of the facts. *Glenbrook Rd. Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 605 A.2d 22 (1992).

The Zoning Adjustment Board's procedural error, refusing cross-examination of rebuttal witnesses, was a serious one, but did not result in substantial prejudice. *Glenbrook Rd. Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 605 A.2d 22 (1992).

**Nondisclosure of complainant's identity to taxi driver violated section.** — Failure of the Hackers' License Appeal Board to disclose a complainant's identity to a driver threatened with license suspension denied him both reasonable notice of the issues to be heard, in violation of subsection (a), and the opportunity to effectively cross-examine, in violation of subsection (b). *Babazadeh v. District of Columbia Hackers' License Appeal Bd.*, App. D.C., 390 A.2d 1004 (1978).

**Refusal to consider hearsay is not improper.** *Kopff v. District of Columbia ABC Bd.*, App. D.C., 381 A.2d 1372 (1977), aff'd, App. D.C., 413 A.2d 152 (1980).

**Hearsay information gathered in separate criminal investigation held admissible in Police and Firefighters' Board hearing.** — In hearing before Police and Firefighters' Retirement and Relief Board to determine if annuitant had been restored to earning capacity, hearsay information gathered in criminal investigation of annuitant concerning illegal sale of firearms, consisting of corroborating affidavits of disinterested witnesses who purchased firearms, was probative and could be relied on by Board to support finding that annuitant was self-employed in the sale of firearms. *Simmons v. Police & Firefighters' Retirement & Relief Bd.*, App. D.C., 478 A.2d 1093 (1984).

**Hearsay evidence in administrative hearings.** — Hearsay evidence may be admissible in administrative hearings. *Gropp v. District of Columbia Bd. of Dentistry*, App. D.C., 606 A.2d 1010 (1992).

**Hearing not in conformity with subsection (b) requirements** where the agency fails to swear witnesses or permit cross-examination. *Dietrich v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 293 A.2d 470 (1972).

It is error for the hearing officer to refuse to allow either testimony which is essential to proper assessment of the question at issue or cross-examination of witnesses. *Kirven v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 379 A.2d 1186 (1977).

Where the unemployment compensation appeals examiner gave full consideration to employer's unsworn comment given by telephone,

he deprived the plaintiff of right to cross-examine on issues of company rules and misconduct. *Hawkins v. District Unemployment Comp. Bd.*, App. D.C., 381 A.2d 619 (1977).

**Notice required that material fact is being officially noticed.** — An agency must notify the parties to an administrative proceeding that a material fact is being officially noticed so that the parties will have an opportunity to rebut that fact. *Carey v. District Unemployment Comp. Bd.*, App. D.C., 304 A.2d 18 (1973).

**Submission of post-hearing evidence.** — The record may be held open for the post-hearing submission of memoranda; new evidence submitted post-hearing may not be admitted into the record and, therefore, may not provide a basis upon which an agency may issue a decision. *Harris v. District of Columbia Rental Hous. Comm'n.*, App. D.C., 505 A.2d 66 (1986).

**Submission by intervenor of proposed findings after the record is closed** in a Board of Zoning Adjustment proceeding does not violate the District of Columbia Administrative Procedure Act. *Monaco v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 407 A.2d 1091 (1979).

**Review in absence of statutory authorization.** — Direct review of administrative agency orders is limited, in the absence of a statutory provision permitting review, to contested cases. *Communication Workers, Local 2336 v. District of Columbia Taxicab Comm'n.*, App. D.C., 542 A.2d 1221 (1988).

**Scope of appellate review.** — Appellate court's role is only to examine contested issues and to determine whether the Zoning Commission's conclusions meet the test of substantial evidence. *DuPont Circle Citizens Ass'n v. District of Columbia Zoning Comm'n.*, App. D.C., 426 A.2d 327 (1981).

Under subsection (e), when Court of Appeals reviews a decision by the Board of Zoning Adjustment, its task is limited to assuring that the Board's conclusions flow rationally from findings of fact, and that those findings of fact are supported by substantial evidence. *Williams v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 535 A.2d 910 (1988).

The Court of Appeals is not required to defer to an agency's interpretation of its authority if that view is plainly wrong or inconsistent with the regulation. *Levy v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 570 A.2d 739 (1990).

When the court of appeals reviews the director's decision, the court considers, among other things, whether the decision is supported by substantial evidence, making sure that the director has accorded proper deference to the examiner's fact-finding role. In contrast, the court ordinarily defers to the director's inter-

pretation of the governing statute and the agency's own regulations. *KOH Sys. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 683 A.2d 446 (1996).

**Director's final decision, not examiner's, subject to review.** — It is the director's final decision, not the examiner's, which may be reviewed in the court of appeals. Under the D.C. Administrative Procedure Act, the court of appeals reviews the director's decision under the now familiar "substantial evidence" standard. *Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 683 A.2d 470 (1996).

**Limited administrative discretion in reviewing special exception applications.** — The discretion of the Board of Zoning Adjustment in reviewing special exception applications is limited to determining whether a proposed exception satisfies the requirements of the regulation under which it is sought, and the burden of so demonstrating rests with the applicant. *Dupont Circle Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 390 A.2d 1009 (1978).

**Transcription of record.** — On appeal to the Director of the Department of Motor Vehicles from a decision of the examiner revoking the motorist's operator's permit, the motorist is entitled to a transcript of the hearing before the examiner where the motorist had made a timely request to be provided with the transcript and had offered to bear the whole cost thereof. *Quick v. Department of Motor Vehicles*, App. D.C., 331 A.2d 319 (1975).

**Expense of furnishing transcripts.** — The decision of Public Service Commission in telephone rate proceeding to furnish transcripts to intervenors at telephone company's expense is a mere nullity because it contravenes the express language of this section. *C & P Tel. Co. v. Public Serv. Comm'n.*, App. D.C., 339 A.2d 710 (1975).

**Review limited to record evidence.** — Reviewing agency must base its decision solely on the record that was made before the appeals examiner and is not empowered to receive additional evidence. *Hilton Hotels Corp. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 531 A.2d 999 (1987).

**Material change to order based on ex parte contacts.** — Letter by Department of Insurance and Securities Regulation, based on ex parte contacts and purporting to make material changes in its original order, violated the official record requirement of subsection (c) of this section, and therefore had to be vacated. *Fair Care Found. v. District of Columbia Dep't of Ins. & Sec. Regulation*, App. D.C., 716 A.2d 987 (1998).

**Absence from session where no evidence is heard does not trigger subsection (d).** — The absence of 1 member of the Zoning

Commission from session, at which rezoning order was signed, did not trigger application of subsection (d) of this section, where no evidence was introduced at such meeting and the purpose of such meeting was merely to review the findings of fact and conclusions of law and to sign the order which had previously been approved by voice vote. *Capitol Hill Restoration Soc'y v. Zoning Comm'n*, App. D.C., 380 A.2d 174 (1977), overruled on other grounds, *Citizens Ass'n of Georgetown, Inc. v. Zoning Comm'n*, App. D.C., 392 A.2d 1027 (1978).

**Failure to issue subsection (d) proposed order.** — The failure of the District Unemployment Compensation Board, which did not hear the evidence, to issue a proposed order or decision prior to issuance of final order, as was required by subsection (d) of this section, requires the vacation of the Board's order. *Wallace v. District Unemployment Comp. Bd.*, App. D.C., 289 A.2d 885 (1972).

Where a decision rendered by the acting rent administrator as to permissible rent is based on evidence presented before hearing examiner, and no proposed order was issued to the parties, the decision is a "final order" entered without compliance with the procedural requirements of the Administrative Procedure Act. *Meier v. District of Columbia Rental Accommodations Comm'n*, App. D.C., 372 A.2d 566 (1977).

**Adoption of prior order as proposed order.** — The District Unemployment Compensation Board may adopt, by regulation or by notice to the parties, the order or decision of the appeals examiner, provided that the findings of fact and conclusions of law are included therein as its proposed order, or it may serve a new proposed order or decision with new findings of fact and conclusions of law on the parties. *Wallace v. District Unemployment Comp. Bd.*, App. D.C., 289 A.2d 885 (1972).

The District Unemployment Compensation Board is authorized to provide by a procedural rule that appeals from an examiner's decision constitutes the proposed findings and decision of the Board, and provide a time limit in which to file with the Board objections to the appeals examiner's decision. *Carey v. District Unemployment Comp. Bd.*, App. D.C., 304 A.2d 18 (1973).

**Findings of fact.** — If the agency fails to make a finding on a material, contested issue of fact, the appellate court cannot fill the gap by making its own determination from the record, but must remand the case for findings on that issue. *Nursing Servs., Inc. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 512 A.2d 301 (1986).

Taxicab Commission is under an obligation in every instance to issue written findings of fact and conclusions of law. *Lim v. District of Co-*

*lumbia Taxicab Comm'n*, App. D.C., 564 A.2d 720 (1989).

The Court of Appeals will normally refuse to infer a finding where no specific finding was made, but will make inferences from general findings, when they are sufficiently detailed so as to provide the basic underlying reasons for the conclusions entered. *Daro Realty, Inc. v. District of Columbia Zoning Comm'n*, App. D.C., 581 A.2d 295 (1990).

The essence of the Board of Zoning Adjustment's regulatory mandate in approving a campus plan is to evaluate whether proposed use as a college or university, as a whole, is likely to become objectionable to neighboring property because of noise, traffic, number of students and other conditions. *Levy v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 570 A.2d 739 (1990).

A reiteration of the evidence is not a finding of fact. *Rosexpress, Inc. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 602 A.2d 659 (1992).

**The major purpose of requiring findings of fact and conclusions of law by an agency** is to enable the reviewing court to decide whether decision follows as a matter of law from facts stated as its basis, and also whether facts so stated have any substantial support in evidence. *Woodridge Nursery Sch. v. Jessup*, App. D.C., 269 A.2d 199 (1970).

Findings of fact, conclusions of law, and the reasoned application of an agency's policy, if any, must be clearly reflected in an administrative agency's decision when further administrative or judicial review is provided by statute. *Hill v. District of Columbia Unemployment Comp. Bd.*, App. D.C., 279 A.2d 501 (1971).

**Opportunity to consider matters raised by claimant.** — Where taxicab driver twice raised the issue of authority of the District of Columbia Taxicab Commission (DCTC) to impose the sanctions of revoking driver's privilege to drive for five years, it had a full opportunity to consider the matter in making its ruling and to state its reasons for its decision, it was incumbent upon the agency to do so. *Edward v. District of Columbia Taxicab Comm'n*, App. D.C., 645 A.2d 600 (1994).

**Limitations on review of findings.** — The review of a District of Columbia Board of Zoning Adjustment decision is limited to assuring that its conclusions flow rationally from the findings of fact, which are in turn supported by substantial evidence. *Roumel v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 417 A.2d 405 (1980).

**Deference to be given to agency's findings.** — Where the interpretation of an act which the appellate court has been asked to review is that of an examiner, and the Director of the agency having upheld it by failing to act, this circumstance reduces in some measure the



deference which the court should accord to the agency's construction. *Harris v. District of Columbia Office of Worker's Comp.*, App. D.C., 660 A.2d 404 (1995).

**Review by Office of Appeals and Review limited to record evidence.** — The Office of Appeals and Review must base its decision solely on the record that was made before the appeals examiner; it is not empowered to receive additional evidence. *Buckman v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 505 A.2d 771 (1986).

**Findings must support end result in a discernible manner, and the result reached must be supported by subsidiary findings of basic facts on all material issues.** *Dietrich v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 293 A.2d 470 (1972).

An administrative factfinder, while not subject to the same rules of evidence as a court, still must assess the evidence and determine whether it establishes the facts for which it was proffered. *Chapin St. Joint Venture v. District of Columbia Rental Hous. Comm'n*, App. D.C., 466 A.2d 414 (1983).

**Legal requirements for factual findings in administrative cases are:** (1) The agency must make findings on all contested issues material to the underlying substantive statute or rule; (2) its findings must be supported by substantial evidence apparent from the record as a whole; and (3) the agency's conclusions of law must be derived rationally from findings that are in accord with the underlying statute. *Spevak v. District of Columbia ABC Bd.*, App. D.C., 407 A.2d 549 (1979).

A reviewing court must determine: (1) Whether the agency has made a finding of fact on each material contested issue of fact; (2) whether substantial evidence of record supports each finding; and (3) whether the conclusions of law follow rationally from the findings. *George Washington Univ. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 429 A.2d 1342 (1981).

The D.C. Court of Appeals has refashioned the requirements of subsection (e) into a 3-part test for administrative decisions in contested cases: (1) The decision must state findings of fact on each material, contested factual issue; (2) those findings must be based on substantial evidence; and (3) the conclusions of law must follow rationally from the findings. *Perkins v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 482 A.2d 401 (1984); *Colton v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 484 A.2d 550 (1984); *Allen v. District of Columbia Police & Firefighters' Retirement & Relief Bd.*, App. D.C., 528 A.2d 1225 (1987); *Hedgman v. District of Columbia Hackers' License Appeal Bd.*, App. D.C., 549 A.2d 720 (1988); *Glenbrook Rd. Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 605 A.2d 22 (1992).

The agency's findings must be supported by reliable, probative and substantial evidence, and its conclusions of law must flow rationally from these findings. *Eilers v. District of Columbia Bureau of Motor Vehicles Servs.*, App. D.C., 583 A.2d 677 (1990).

**Credibility findings of agency.** — Reviewing courts are not absolutely bound by the credibility findings of administrative officers or agencies. *Eilers v. District of Columbia Bureau of Motor Vehicles Servs.*, App. D.C., 583 A.2d 677 (1990).

Reviewing court could not find that Hearing Examiner gave "full and reasoned consideration to all material facts and issues" where examiner should have, but did not, offer specific, cogent reasons for crediting inconsistent and contradictory testimony of police officer and rejecting contrary evidence offered by accused driver and his witness. *Eilers v. District of Columbia Bureau of Motor Vehicles Servs.*, App. D.C., 583 A.2d 677 (1990).

An agency must give full and reasoned consideration to all material facts and issues, and must disclose the reasons in its decisions; neither the repetition of the statutory language (or of language from a decided case) nor a summary of the evidence of the witness credited by the agency satisfies the requirements of the Administrative Procedure Act, especially where there are critical questions as to how the events in question occurred and as to whether the officer's testimony was reliable and probative. *Eilers v. District of Columbia Bureau of Motor Vehicles Servs.*, App. D.C., 583 A.2d 677 (1990).

**Summaries of testimony are insufficient and cannot serve as definite findings.** — Findings which are merely summaries of the testimony presented are insufficient and cannot serve as a substitute for making definite findings of all the relevant basic facts. *First Baptist Church v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 432 A.2d 695 (1981); *Hedgman v. District of Columbia Hackers' License Appeal Bd.*, App. D.C., 549 A.2d 720 (1988).

Findings required of administrative agencies in contested cases are insufficient if they merely summarize testimony and other evidence rather than make definite determinations on disputed issues of fact. *Bakers Local 118 v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 437 A.2d 176 (1981).

Mere restatements of the testimony of witnesses or recitations of evidence are insufficient substitutes for specific findings. *Committee for Washington's Riverfront Parks v. Thompson*, App. D.C., 451 A.2d 1177 (1982).

A mere summary of the evidence will not satisfy the requirements of this section. *Braddock v. Smith*, App. D.C., 711 A.2d 835 (1998).

**And decision based on a summary may be remanded to agency.** — Where, instead of stating what facts it found to be established by the evidence, an agency merely summarized or restated the testimony and evidence without indicating which witness it credited or what facts it found to be established, such summary does not constitute findings of fact and the case will be remanded to the agency to restate its findings. *Perry v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 451 A.2d 88 (1982).

Where petitioner's testimony was the critical evidence opposing agency's assertion and the hearing officer did not indicate whether he credited or discredited such testimony, remand is mandated. *Braddock v. Smith*, App. D.C., 711 A.2d 835 (1998).

**Paraphrase of regulation does not satisfy requirement of factual finding.** — When an administrative agency cloaks a paraphrase of the relevant regulation as a factual finding, a reviewing court has no basis for determining whether the conclusions of law followed rationally from the findings of fact, thus, the challenged decision cannot be affirmed in the absence of findings and legal conclusions required by the Administrative Procedure Act. *Hedgman v. District of Columbia Hackers' License Appeal Bd.*, App. D.C., 549 A.2d 720 (1988).

**Form of factual findings defined.** — The Administrative Procedure Act defines the form findings of fact of the Board of Zoning Adjustment must take. *Wolf v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 397 A.2d 936 (1979).

**Neither repetition of statutory language nor simple summary of evidence satisfies requirement in subsection (e) that the board's findings "consist of a concise statement of the conclusions upon each contested issue of fact."** *Wheeler v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 395 A.2d 85 (1978).

**"Each contested issue of fact" defined.** — The provision of this section requiring findings on "each contested issue of fact" refers to issues contested before the agency itself. *Citizens Ass'n v. District of Columbia Zoning Comm'n*, App. D.C., 402 A.2d 36 (1979).

**Prejudgment of contested issues.** — Prejudgment by Hearing Examiner of contested issues was found and action of agency could not stand where examiner announced that he was convinced accused driver had committed traffic violation before hearing any of the driver's evidence, and where, after receiving all evidence but before driver's counsel began closing argument, asked counsel if he had anything "in mitigation." *Eilers v. District of Columbia Bureau of Motor Vehicles Servs.*, App. D.C., 583 A.2d 677 (1990).

**Findings not necessary on collateral matters.** — An administrative agency does not have to make findings of fact upon contentions that are collateral or immaterial. *Lee v. District of Columbia Zoning Comm'n*, App. D.C., 411 A.2d 635 (1980).

**Any finding must be based only on evidence in the public record** of the proceeding, and participants in the proceeding must have an opportunity to address themselves to that evidence, otherwise fundamentals of due process are denied. *Citizens Ass'n v. District of Columbia ABC Bd.*, App. D.C., 288 A.2d 666 (1972).

**Basic findings of fact will not be inferred from the action taken.** *Brewington v. District of Columbia Bd. of Appeals & Review*, App. D.C., 287 A.2d 532 (1972), *aff'd*, App. D.C., 309 A.2d 112 (1973).

**Or from findings not made.** — Findings of the Board of Zoning Adjustment would not be inferred from other findings that the Board did make. *Dietrich v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 293 A.2d 470 (1972).

**Or from the record.** — In a contested case, whenever an administrative agency fails to make a finding on a material contested issue, the reviewing court cannot properly fill the gap itself by inferring findings on a party's objections through inspection of the record, the agency's other findings, and the ultimate decision. *Lee v. District of Columbia Zoning Comm'n*, App. D.C., 411 A.2d 635 (1980).

**Judicial notice of facts.** — Facts officially noticed must be of the type which are susceptible to such notice. The contents of a court's records are readily ascertainable facts, particularly appropriate for judicial notice. Thus, generally, a court may take judicial notice of its own records. *Renard v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 673 A.2d 1274 (1996).

**Evidence required in rulemaking hearings.** — Hearings that are not adjudicatory in nature, but which are equivalent to rulemakings, where the administrative body is acting in a legislative capacity, making policy decisions directed toward the general public, are not subject to the substantial evidence rule, but need only be justified by some "rational basis" that may be found in the administrative record. *Dwyer v. District of Columbia*, 120 WLR 2609 (Super. Ct. 1992).

**Decisions by administrative agencies of District of Columbia must satisfy substantial evidence test** which is derived from the contested cases provision of subsection (e) of this section. *Bakers Local 118 v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 437 A.2d 176 (1981).

**Substantial evidence as required in subsection (e) means** such relevant evidence as a

reasonable mind might accept as adequate to support a conclusion. *Wheeler v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 395 A.2d 85 (1978); *Heyert v. District of Columbia, ABC Bd.*, App. D.C., 399 A.2d 1309 (1979); *Saunders v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 444 A.2d 16 (1982); *Pendleton v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 449 A.2d 301 (1982); *Woodley Park Community Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 490 A.2d 628 (1985).

The Board of Zoning Adjustment is required to support its findings with more than a mere scintilla of rationally connected evidentiary support. *Wheeler v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 395 A.2d 85 (1978).

Substantial evidence is more than a mere scintilla. *Heyert v. District of Columbia, ABC Bd.*, App. D.C., 399 A.2d 1309 (1979); *Saunders v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 444 A.2d 16 (1982); *Pendleton v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 449 A.2d 301 (1982).

An agency is required to support its findings with more than a mere scintilla of rationally connected evidentiary support. *Scott v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 447 A.2d 447 (1982).

**Inherent in the substantial evidence test are 3 requirements:** (1) There must be findings on each contested issue of fact; (2) the decision must rationally follow from the facts; and (3) there must be sufficient evidence supporting each finding. *Citizens Ass'n v. District of Columbia Zoning Comm'n*, App. D.C., 402 A.2d 36 (1979); *Thomas v. District of Columbia Dep't of Labor*, App. D.C., 409 A.2d 164 (1979); *Lee v. District of Columbia Zoning Comm'n*, App. D.C., 411 A.2d 635 (1980); *First Baptist Church v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 432 A.2d 695 (1981); *Bakers Local 118 v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 437 A.2d 176 (1981); *C & P Bldg. Ltd. Partnership v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 442 A.2d 129 (1982); *Woodley Park Community Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 490 A.2d 628 (1985); *Levy v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 570 A.2d 739 (1990); *Citizens Coalition v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 619 A.2d 940 (1993); *District of Columbia v. Department of Emp. Servs.*, App. D.C., 713 A.2d 933 (1998).

The Administrative Procedure Act substantial evidence test requires: (1) That the agency make findings of basic facts on all material contested issues; (2) that these findings, taken together, must rationally lead to conclusions of law which are legally sufficient to support the

decision; and (3) that each basic finding is supported by substantial evidence. *DuPont Circle Citizens Ass'n v. District of Columbia Zoning Comm'n*, App. D.C., 426 A.2d 327 (1981); *Donnelly v. District of Columbia ABC Bd.*, App. D.C., 452 A.2d 364 (1982); *Foxhall Community Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 524 A.2d 759 (1987).

**"Substantial evidence" in contested case involving Board of Police and Fire Surgeons.** — A reasonably up-to-date medical examination would provide the "reliable, probative, and substantial evidence" required by subsection (e) of this section to support a Board of Police and Fire Surgeons' determination in a contested case. *Saunders v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 444 A.2d 16 (1982).

**Consideration of hearsay evidence generally.** — The Commission on Human Rights is not required to disregard evidence merely because such evidence is hearsay; in fact, hearsay evidence can serve under some circumstances as "substantial evidence" on which to base a finding of fact. The weight to be accorded hearsay evidence is determined by the item's truthfulness, reasonableness and credibility. *Wisconsin Ave. Nursing Home v. District of Columbia Comm'n on Human Rights*, App. D.C., 527 A.2d 282 (1987).

There is no general bar to the use of hearsay testimony at a nonresidency hearing. *Braddock v. Smith*, App. D.C., 711 A.2d 835 (1998).

**No explanation required.** — An agency is not legally required to explain why it favored 1 witness or 1 statistic over another. *Citizens Ass'n v. District of Columbia Zoning Comm'n*, App. D.C., 402 A.2d 36 (1979).

An agency generally is free to credit, without explanation, nonexpert testimony of a witness, even in the face of directly conflicting evidence by an opposing witness, so long as there is sufficient supporting evidence in the record for that position. *Bakers Local 118 v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 437 A.2d 176 (1981).

An agency must make findings on "each contested issue of fact" under subsection (e), the agency need not provide its reasons for adopting one or another position on the "basic" or "underlying" facts which were themselves disputed by the parties; nevertheless, the agency must reach sufficiently detailed findings on basic factual issues to demonstrate that it has considered and ruled upon each of the party's contentions. *Draude v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 527 A.2d 1242 (1987).

**Settlement by fewer than all parties.** — Although the language of subsection (a) of this section specifically authorizes only agreed settlements by all the parties, the rationale of that

provision necessarily obliges an agency at least to consider on the merits a reasonable settlement proposed in good faith by fewer than all the parties, unless the statute governing the agency's responsibility clearly indicates otherwise. *Proctor v. District of Columbia Rental Hous. Comm'n*, App. D.C., 484 A.2d 542 (1984).

**But agency must give explanation for rejecting expert testimony.** — An agency which has made otherwise proper findings and reached rational conclusions is not required to explain why it favored 1 witness or 1 statistic over another; however, some indication of the reasons for rejecting expert, as opposed to lay, testimony is required. *Committee for Washington's Riverfront Parks v. Thompson*, App. D.C., 451 A.2d 1177 (1982).

**Testimony in contested cases must be sworn.** — Sworn testimony is implicit in the Administrative Procedure Act and goes to the essence of litigation. The termination of public assistance payments upon the unsworn testimony of witnesses in a contested case was a procedural denial as to require a new evidentiary hearing. *Harrison v. District of Columbia Dep't of Human Servs.*, App. D.C., 472 A.2d 405 (1984).

**Workers' compensation case.** — Once triggered, the presumption of compensability in a workers' compensation case requires the employer to produce substantial evidence showing that the death or disability is not work-related, and in any contested case the Hearing Examiner must include finding of fact and conclusions of law in his decision. *Spartin v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 584 A.2d 564 (1990).

**Burden of proof.** — Party seeking review of Public Service Commission rate-making order carries the heavy burden of demonstrating clearly and convincingly a fatal flaw in the action taken; the PSC has the burden of showing fully and clearly why it has taken the particular rate-making action. *Washington Gas Light Co. v. Public Serv. Comm'n*, App. D.C., 483 A.2d 1164 (1984).

Party asserting a particular fact has the burden of affirmatively proving that fact and this burden cannot be sustained simply by showing a lack of substantial evidence to support a contrary finding. *Allen v. District of Columbia Rental Hous. Comm'n*, App. D.C., 538 A.2d 752 (1988).

A petitioner seeking review of an administrative agency order, must show (1) that the agency proceeding determined the legal rights, duties, or privileges of specific parties; and (2) that the proceeding below was a trial-type hearing required by law. *Communication Workers, Local 2336 v. District of Columbia Taxicab Comm'n*, App. D.C., 542 A.2d 1221 (1988).

Tenants had the burden of proving that contractor's fee was a kickback and were obligated

to support their challenge with something more than unsubstantiated allegations, because contractors' fees in cases seeking rent increases for capital improvements are customary, or at least not unusual, and because there is nothing in any pertinent statute that requires a landlord to provide additional detail regarding such an expense. *Columbia Realty Venture v. District of Columbia Rental Hous. Comm'n*, App. D.C., 590 A.2d 1043 (1991).

**"Burden of proof" in this section means burden of persuasion.** — See *People's Counsel v. Public Serv. Comm'n*, App. D.C., 474 A.2d 835 (1984).

**Legal advice received from the Corporation Counsel is not evidence,** thus, petitioners do not have a right to contest that advice in a hearing under subsection (b). *Daro Realty, Inc. v. District of Columbia Zoning Comm'n*, App. D.C., 581 A.2d 295 (1990).

**Failure to permit cross-examination relative to witness's credibility deemed error.** — Although relevancy provides a basis for excluding evidence where a witness's conflicting statements affect her credibility, the Nurses' Examining Board's failure to permit cross-examination relating to the witness's credibility constitutes error. *Arthur v. District of Columbia Nurses' Examining Bd.*, App. D.C., 459 A.2d 141 (1983).

**Public Service Commission is not bound to hold a hearing on every question** and does have the authority to impose a settlement which is substantially acceptable to most, if not all, of the parties. *United States v. Public Serv. Comm'n*, App. D.C., 465 A.2d 829 (1983).

**Findings of Board of Zoning Adjustment comported with subsection (e)** where the record revealed adequate Board consideration of an application for a special exception and included facts from which the Board could make a reasonable judgment that the application met the regulatory prerequisites, even though the applicant itself did almost nothing to demonstrate that the proposed exception satisfied the relevant regulations, and the hearing was little more than a formality. *Dupont Circle Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 390 A.2d 1009 (1978).

**Intervention.** — The Board of Zoning Adjustment improperly refused to allow intervention where it announced a standard by which intervention would be permitted, and then, when confronted with persons meeting that standard, abruptly decided not to permit intervention by anyone. *Concerned Citizens v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 634 A.2d 1234 (1993).

Although the Board of Zoning Adjustment's failure to establish and adhere to a procedure by which persons seeking to intervene could reasonably have attempted to do so was arbitrary,

trary and capricious, the error was harmless, since the purpose of the hearing was not to decide whether to grant a variance to the applicant but, rather, to determine whether a variance was necessary at all. *Concerned Citizens v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 634 A.2d 1234 (1993).

**Findings of fact held sufficient.** — See *Citizens Ass'n v. District of Columbia ABC Bd.*, App. D.C., 323 A.2d 715 (1974); *Miller v. District of Columbia Comm'n on Human Rights*, App. D.C., 352 A.2d 387 (1976); *Dupont Circle Citizens Ass'n v. District of Columbia Zoning Comm'n*, App. D.C., 355 A.2d 550, *aff'd*, App. D.C., 364 A.2d 610, *cert. denied*, 429 U.S. 966, 97 S. Ct. 396, 50 L. Ed. 2d 334 (1976); *Monaco v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 409 A.2d 1067 (1979); *DuPont Circle Citizens Ass'n v. District of Columbia Zoning Comm'n*, App. D.C., 426 A.2d 327 (1981); *George Washington Univ. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 429 A.2d 1342 (1981).

**A 2-sentence decision is inadequate as a finding of fact and a conclusion of law.** *Woodridge Nursery Sch. v. Jessup*, App. D.C., 269 A.2d 199 (1970).

**Findings of fact held insufficient.** — See *Allentuck v. District of Columbia Minimum Wage & Indus. Safety Bd.*, App. D.C., 261 A.2d 826 (1969); *Hill v. District of Columbia Unemployment Comp. Bd.*, App. D.C., 279 A.2d 501 (1971); *Hill v. District of Columbia Unemployment Comp. Bd.*, App. D.C., 281 A.2d 433 (1971); *Brewington v. District of Columbia Bd. of Appeals & Review*, App. D.C., 287 A.2d 532 (1972); *Dietrich v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 293 A.2d 470 (1972); *Citizens Ass'n of Georgetown, Inc. v. District of Columbia ABC Bd.*, App. D.C., 316 A.2d 865 (1974); *Shay v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 334 A.2d 175 (1975); *A.L.W., Inc. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 338 A.2d 428 (1975); *Miller V. District of Columbia Comm'n on Human Rights*, App. D.C., 339 A.2d 715 (1975); *General Ry. Signal Co. v. District Unemployment Comp. Bd.*, App. D.C., 354 A.2d 529 (1976); *Communications Workers of America v. District of Columbia Comm'n on Human Rights*, App. D.C., 367 A.2d 149 (1976); *Newsweek Magazine v. District of Columbia Comm'n on Human Rights*, App. D.C., 376 A.2d 777 (1977), *cert. denied*, 434 U.S. 1014, 98 S. Ct. 729, 54 L. Ed. 2d 758 (1978); *Washington Post Co. v. District Unemployment Comp. Bd.*, App. D.C., 377 A.2d 436 (1977); *Washington Post Co. v. District Unemployment Comp. Bd.*, App. D.C., 379 A.2d 694 (1977); *Group Hospitalization, Inc. v. District of Columbia Comm'n on Human Rights*, App. D.C., 380 A.2d 170 (1977); *Dupont Circle Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App.

D.C., 390 A.2d 1009 (1978); *Washington Ethical Soc'y v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 421 A.2d 14 (1980); *2101 Wis. Assocs. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 586 A.2d 1221 (1991).

Both statute and case law require the findings of an administrative agency to be supported by substantial evidence on the record considered as a whole, and evidence did not meet that standard. *Allen v. District of Columbia Rental Hous. Comm'n*, App. D.C., 538 A.2d 752 (1988).

The Board of Zoning Adjustment's failure to consider the effects of proposed street closings, pedestrian bridges and relief from height restrictions, in reviewing university's expansion and development plan, rendered its findings inadequate, and legally insufficient to support ultimate conclusions underlying approval of the plan. *Levy v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 570 A.2d 739 (1990).

Where the Board of Zoning Adjustment's findings of fact were conclusory, incomplete, and lacking a logical nexus to its conclusion, the Board's determination that there had been a material change of circumstances permitting grant of a previously denied special exception, was an abuse of discretion. *Towles v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 578 A.2d 1128 (1990).

**Due process requirements in hacker suspension proceedings.** — In hacker suspension proceedings, due process requires that a taxi driver be afforded the opportunity to inspect his file and to secure information vital to his own investigation and defense. *Babazadeh v. District of Columbia Hackers' License Appeal Bd.*, App. D.C., 390 A.2d 1004 (1978).

Due process requires the Hackers' License Appeal Board to notify a charged party of his right to inspect his file after formal charges are filed and before the date of the suspension hearing. *Babazadeh v. District of Columbia Hackers' License Appeal Bd.*, App. D.C., 390 A.2d 1004 (1978).

**Applicant for reinstatement of nursing license entitled to safeguards guaranteed by this chapter.** — An applicant for reinstatement of her license as a registered nurse is entitled to the specific procedural safeguards guaranteed by the Administrative Procedure Act for contested cases. *Woods v. District of Columbia Nurses' Examining Bd.*, App. D.C., 436 A.2d 369 (1981).

**Property owner may seek review of DHCD final action by Court of Appeals.** — Because § 5-513 authorizes the Department of Housing and Community Development (DHCD), an administrative agency of the District, to deprive the owner of his property, and because the Board of Appeals and Review does

not have appellate jurisdiction over an enforcement order, due process entitles the owner to a "contested case" hearing at DHCD if he elects to show cause why he should not be required to correct such condition; whether DHCD grants or refuses such a hearing, the owner can seek review of DHCD's final action directly by the Court of Appeals. *Auger v. District of Columbia Bd. of Appeals & Review*, App. D.C., 477 A.2d 196 (1984).

**Court of Appeals may not review agency revocation of sign permit not appealed to Board of Appeals and Review.** — Where petitioner did not appeal his sign permit revocation by District agency with the Board of Appeals and Review, the Court of Appeals does not have jurisdiction to review the agency's revocation of the permit because petitioner failed to create a "contested case." *Auger v. District of Columbia Bd. of Appeals & Review*, App. D.C., 477 A.2d 196 (1984).

**Authorization of lay representation not ultra vires.** — Regulations of the Rental Accommodations Office authorizing lay representation of a party at agency proceedings are not ultra vires of this section. *Brookens v. Committee on Unauthorized Practice of Law*, App. D.C., 538 A.2d 1120 (1988).

**Review of Taxicab Commission orders.** — An emergency order of the Taxicab Commission increasing rates is not a contested case so as to be subject to direct review. *Communication Workers, Local 2336 v. District of Columbia Taxicab Comm'n*, App. D.C., 542 A.2d 1221 (1988).

**Cited in** *Proctor v. Hackers' Bd.*, App. D.C., 268 A.2d 267 (1970); *Capitol Hill Restoration Soc'y v. Zoning Comm'n*, App. D.C., 287 A.2d 101 (1972); *Village Brooks, Inc. v. District of Columbia Bd. of Appeals & Review*, App. D.C., 296 A.2d 613 (1972); *Brewington v. District of Columbia Bd. of Appeals & Review*, App. D.C., 299 A.2d 145 (1973); *Dietrich v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 320 A.2d 282 (1974); *Palisades Citizens Ass'n v. District of Columbia ABC Bd.*, App. D.C., 324 A.2d 692 (1974); *Perry v. District of Columbia Dep't of Human Resources*, App. D.C., 326 A.2d 249 (1974); *Thomas v. District of Columbia Bd. of Appeals & Review*, App. D.C., 355 A.2d 789 (1976); *Jordan v. District of Columbia*, App. D.C., 362 A.2d 114 (1976); *L'Enfant Plaza Properties, Inc. v. District of Columbia Redevelopment Land Agency*, 564 F.2d 515 (D.C. Cir. 1977); *Archer v. District of Columbia Dep't of Human Resources*, App. D.C., 375 A.2d 523 (1977); *Schneider v. District of Columbia Zoning Comm'n*, App. D.C., 383 A.2d 324 (1978); *Jameson's Liquors, Inc. v. District of Columbia ABC Bd.*, App. D.C., 384 A.2d 412 (1978); *Kober v. District Unemployment Comp. Bd.*, App. D.C., 384 A.2d 633 (1978); *Wells v. District of Columbia Bd. of Educ.*, App. D.C., 386 A.2d 703

(1978); *Washington Pub. Interest Org. v. Public Serv. Comm'n*, App. D.C., 393 A.2d 71 (1978), cert. denied, 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182 (1979); *Jones v. District of Columbia Unemployment Comp. Bd.*, App. D.C., 395 A.2d 392 (1978); *McIntosh v. Washington*, App. D.C., 395 A.2d 744 (1978); *Sherman v. Commission of Licensure to Practice Healing Art*, App. D.C., 407 A.2d 595 (1979); *Lange v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 407 A.2d 1058 (1979); *Citizens Ass'n of Georgetown, Inc. v. District of Columbia ABC Bd.*, App. D.C., 410 A.2d 195 (1979); *Sheridan-Kalorama Neighborhood Council v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 411 A.2d 959 (1979); *Delevary v. District of Columbia Rental Accommodations Comm'n*, App. D.C., 411 A.2d 354 (1980); *Adams v. District Unemployment Comp. Bd.*, App. D.C., 414 A.2d 830 (1980); *Kea v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 429 A.2d 174 (1981); *900 G St. Assocs. v. Department of Hous. & Community Dev.*, App. D.C., 430 A.2d 1387 (1981); *Citizens Comm. to Save Historic Rhodes Tavern v. District of Columbia Dep't of Hous. & Community Dev.*, App. D.C., 432 A.2d 710, cert. denied, 454 U.S. 1054, 102 S. Ct. 599, 70 L. Ed. 2d 590 (1981); *Haight v. District of Columbia ABC Bd.*, App. D.C., 439 A.2d 487 (1981); *Interstate Gen. Corp. v. District of Columbia Rental Accommodations Comm'n*, App. D.C., 441 A.2d 252 (1982); *American Combustion, Inc. v. Minority Bus. Opportunity Comm'n*, App. D.C., 441 A.2d 660 (1982); *Jones v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 451 A.2d 295 (1982); *District of Columbia v. Douglass*, App. D.C., 452 A.2d 329 (1982); *Rodriguez v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 452 A.2d 1170 (1982), appeal dismissed and cert. denied, 460 U.S. 1018, 103 S. Ct. 1266, 75 L. Ed. 2d 490 (1983); *Network Technical Servs., Inc. v. District of Columbia Data Co.*, App. D.C., 464 A.2d 133 (1983); *General Servs. Admin. v. Public Serv. Comm'n*, App. D.C., 469 A.2d 1238 (1983); *People's Counsel v. Public Serv. Comm'n*, App. D.C., 472 A.2d 860 (1984); *Wire Properties, Inc. v. District of Columbia Rental Hous. Comm'n*, App. D.C., 476 A.2d 679 (1984); *Nova Univ. v. Educational Inst. Licensure Comm'n*, App. D.C., 483 A.2d 1172 (1984), cert. denied, 470 U.S. 1054, 105 S. Ct. 1759, 84 L. Ed. 2d 822 (1985); *Clay v. District of Columbia*, 112 WLR 2261 (Super. Ct. 1984); *Humbles v. District of Columbia Hackers' License Appeal Bd.*, App. D.C., 484 A.2d 586 (1984); *Parker v. National Corp. for Hous. Partnerships*, 619 F. Supp. 1061 (D.D.C. 1985); *Selk v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 497 A.2d 1056 (1985); *Stevens Chevrolet, Inc. v. Commission on Human Rights*, App. D.C., 498 A.2d 546 (1985); *George Hyman Constr. Co. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 498 A.2d 563 (1985); *LCP, Inc. v. District*

of Columbia ABC Bd., App. D.C., 499 A.2d 897 (1985); Ahmed v. District of Columbia Hackers License Appeal Bd., App. D.C., 501 A.2d 415 (1985); Liukila v. District of Columbia Rental Hous. Comm'n, App. D.C., 503 A.2d 666 (1986); Henry J. Kaufman & Assocs. v. District of Columbia Dep't of Emp. Servs., App. D.C., 503 A.2d 684 (1986); Sterling v. District of Columbia Dep't of Emp. Servs., App. D.C., 513 A.2d 253 (1986); Smithsonian Inst. v. District of Columbia Dep't of Emp. Servs., App. D.C., 514 A.2d 1191 (1986); Weinberg v. Johnson, App. D.C., 518 A.2d 985 (1986); Szego v. Police & Firefighters' Retirement & Relief Bd., App. D.C., 528 A.2d 1233 (1987); Morris v. District of Columbia Dep't of Emp. Servs., App. D.C., 530 A.2d 683 (1987); Washington Times v. District of Columbia Dep't of Emp. Servs., App. D.C., 530 A.2d 1186 (1987); Martin v. District of Columbia Police & Firefighters' Retirement & Relief Bd., App. D.C., 532 A.2d 102 (1987); Davis v. District of Columbia Dep't of Emp. Servs., App. D.C., 542 A.2d 815 (1988); Jones & Artis Constr. Co. v. District of Columbia Contract Appeals Bd., App. D.C., 549 A.2d 315 (1988); Randall v. District of Columbia Dep't of Emp. Servs., App. D.C., 551 A.2d 90 (1988); Mannan v. District of Columbia Bd. of Medicine, App. D.C., 558 A.2d 329 (1989); Simon v. United States, App. D.C., 570 A.2d 305 (1990); Committee of 100 v. District of Columbia Dep't of Consumer & Regulatory Affairs, App. D.C., 571 A.2d 195 (1990); Myrick v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 577 A.2d 757 (1990); Allen v. District of Columbia Dep't of Emp. Servs., App. D.C., 578 A.2d 687 (1990); Garzon v. District of Columbia Comm'n on Human Rights, App. D.C., 578 A.2d 1134 (1990); Holderbaum v. District of Columbia Police & Firefighters Retirement & Relief Bd., App. D.C., 579 A.2d 213 (1990); Gilmartin v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 579 A.2d 1164 (1990); Draude v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 582 A.2d 949 (1990); Rafferty v. District of Columbia Zoning Comm'n, App. D.C., 583 A.2d 169 (1990); Kitchings v. District of Columbia Rental Hous. Comm'n, App. D.C., 588 A.2d 263 (1991); Cooper v. District of Co-

lumbia Dep't of Emp. Servs., App. D.C., 588 A.2d 1172 (1991); American Univ. v. District of Columbia Comm'n on Human Rights, App. D.C., 598 A.2d 416 (1991); Capitol Hill Hosp. v. District of Columbia State Health Planning & Dev. Agency, App. D.C., 600 A.2d 793 (1991); Stewart v. District of Columbia Dep't of Emp. Servs., App. D.C., 606 A.2d 1350 (1992); Greenlee v. Board of Medicine, 813 F. Supp. 48 (D.D.C. 1993); DiVincenzo v. District of Columbia Police & Firefighters Retirement & Relief Bd., App. D.C., 620 A.2d 868 (1993); Doe v. District of Columbia Comm'n on Human Rights, App. D.C., 624 A.2d 440 (1993); Johnson v. District of Columbia Rental Hous. Comm'n, App. D.C., 642 A.2d 135 (1994); Abia-Onkon v. District of Columbia Contract Appeals Bd., App. D.C., 647 A.2d 79 (1994); Williamson v. District of Columbia Bd. of Dentistry, App. D.C., 647 A.2d 389 (1994); Fort Chaplin Park Assocs. v. District of Columbia Rental Hous. Comm'n, App. D.C., 649 A.2d 1076 (1994); Breen v. District of Columbia Police & Firefighters Retirement & Relief Bd., App. D.C., 659 A.2d 1257 (1995); Potomac Elec. Power Co. v. Public Serv. Comm'n, App. D.C., 661 A.2d 131 (1995); Branch v. District of Columbia Dep't of Pub. & Assisted Hous., App. D.C., 661 A.2d 1102 (1995); Ferreira v. District of Columbia Dep't of Emp. Servs., App. D.C., 667 A.2d 310 (1995); Abdullah v. Roach, App. D.C., 668 A.2d 801 (1995); Walton v. District of Columbia, App. D.C., 670 A.2d 1346 (1996); Jerome Mgt., Inc. v. District of Columbia Rental Hous. Comm'n, App. D.C., 682 A.2d 178 (1996); Radwan v. District of Columbia Rental Hous. Comm'n, App. D.C., 683 A.2d 478 (1996); Robinson v. Smith, App. D.C., 683 A.2d 481 (1996); McKinley v. District of Columbia Dep't of Emp. Servs., App. D.C., 696 A.2d 1377 (1997); Kolson v. District of Columbia Dep't of Emp. Servs., App. D.C., 699 A.2d 357 (1997); Jimenez v. District of Columbia Dep't of Emp. Servs., App. D.C., 701 A.2d 837 (1997); Metropolitan Poultry v. District of Columbia Dep't of Emp. Servs., App. D.C., 706 A.2d 33 (1998); Minnis v. District of Columbia Dep't of Human Servs., App. D.C., 712 A.2d 1030 (1998).

## § 1-1510. Judicial review.

(a) Any person suffering a legal wrong, or adversely affected or aggrieved, by an order or decision of the Mayor or an agency in a contested case, is entitled to a judicial review thereof in accordance with this subchapter upon filing in the District of Columbia Court of Appeals a written petition for review. If the jurisdiction of the Mayor or an agency is challenged at any time in any proceeding and the Mayor or the agency, as the case may be, takes jurisdiction, the person challenging jurisdiction shall be entitled to an immediate judicial review of that action, unless the Court shall otherwise hold. The reviewing

Court may by rule prescribe the forms and contents of the petition and, subject to this subchapter, regulate generally all matters relating to proceedings on such appeals. A petition for review shall be filed in such Court within such time as such Court may by rule prescribe and a copy of such petition shall forthwith be served by mail by the clerk of the Court upon the Mayor or upon the agency, as the case may be. Within such time as may be fixed by rule of the Court, the Mayor or such agency shall certify and file in the Court the exclusive record for decision and any supplementary proceedings, and the clerk of the Court shall immediately notify the petitioner of the filing thereof. Upon the filing of a petition for review, the Court shall have jurisdiction of the proceeding, and shall have power to affirm, modify, or set aside the order or decision complained of, in whole or in part, and, if need be, to remand the case for further proceedings, as justice may require. Filing of a petition for review shall not in itself stay enforcement of the order or decision of the Mayor or the agency, as the case may be. The Mayor or the agency may grant, or the reviewing Court may order, a stay upon appropriate terms. The Court shall hear and determine all appeals upon the exclusive record for decision before the Mayor or the agency. The review of all administrative orders and decisions by the Court shall be limited to such issues of law or fact as are subject to review on appeal under applicable statutory law, other than this subchapter. In all other cases the review by the Court of administrative orders and decisions shall be in accordance with the rules of law which define the scope and limitations of review of administrative proceedings. Such rules shall include, but not be limited to, the power of the Court:

(1) So far as necessary to decision and where presented, to decide all relevant questions of law, to interpret constitutional and statutory provisions, and to determine the meaning or applicability of the terms of any action;

(2) To compel agency action unlawfully withheld or unreasonably delayed; and

(3) To hold unlawful and set aside any action or findings and conclusions found to be:

(A) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) Contrary to constitutional right, power, privilege, or immunity;

(C) In excess of statutory jurisdiction, authority, or limitations or short of statutory jurisdiction, authority, or limitations or short of statutory rights;

(D) Without observance of procedure required by law, including any applicable procedure provided by this subchapter; or

(E) Unsupported by substantial evidence in the record of the proceedings before the Court.

(b) In reviewing administrative orders and decisions, the Court shall review such portions of the exclusive record as may be designated by any party. The Court may invoke the rule of prejudicial error. (Oct. 21, 1968, 82 Stat. 1209, Pub. L. 90-614, § 11; July 29, 1970, 84 Stat. 582, Pub. L. 91-358, title I, § 162; 1973 Ed., § 1-1510; Oct. 8, 1975, D.C. Law 1-19, title I, § 102(II), 22 DCR 2055; Mar. 29, 1977, D.C. Law 1-96, § 3(a), (c), 23 DCR 9532b.)



**Cross references.** — As to provisions for appeals under Funeral Directors Act, see § 2-2810.

As to other provisions for appeals from certain administrative orders and decisions, see § 11-722.

**Section references.** — This section is referred to in §§ 1-2554, 2-279, 2-451, 2-606, 2-2309, 2-2731, 2-2810, 2-3305.20, 3-412, 3-606, 3-703, 3-1032, 6-995.10, 6-3421, 6-3458, 6-3635, 11-722, 11-1525, 17-303, 17-305, 26-804, 26-806.1, 26-904, 26-905, 28-3905, 29-817, 32-364, 32-557, 32-1443, 35-2103, 35-3503, 35-3907, 36-412, 36-1014, 36-1216, 36-1217, 36-1309, 40-404, 40-507, 40-635, 42-227, 43-1655, 45-1658, 45-1659, 45-3225, and 47-2853.23.

**Legislative history of Law 1-19.** — See note to § 1-1501.

**Legislative history of Law 1-96.** — See note to § 1-1521.

**Subchapter expands and centralizes review of administrative action.** — This subchapter was an effort not only to expand rights to review the administrative action in the District of Columbia but also to centralize such review in 1 place, to eliminate disorderliness and lack of uniformity of decision inherent in multiple tribunals. *Cheek v. Washington*, 333 F. Supp. 481 (D.D.C. 1971).

**Forms of relief available.** — Post-suspension remedies available to a permit holder include: (1) an expedited administrative hearing within 72 hours of suspension; (2) direct review of the suspension in the D.C. Court of Appeals pursuant to this section; and (3) injunctive relief in D.C. Superior Court or a writ of mandamus in the D.C. Court of Appeals. *Tri-County Indus. v. District of Columbia*, 932 F. Supp. 4 (D.D.C. 1996), *aff'd*, in part and vacated in part, *Tri-County Indus. v. District of Columbia* (D.C. Cir. 1997).

**Filing of petition not stay of agency order.** — Since subsection (a) states that the filing of a petition for review "shall not" operate to stay the effect of an agency's order, a court or an administrative agency cannot accept the contrary standard practice in the District of Columbia, which has been that a tolling occurs by filing of petition for review. *French v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 658 A.2d 1023 (1995).

Fact that city's top legal officer believed, erroneously, that filing of a petition for review tolls agency's order, which may have caused interested persons (and government agencies) to rely on them in good faith, meant the correct interpretation would be applied prospectively only. *French v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 658 A.2d 1023 (1995).

**Trial-type hearing before agency is prerequisite to review.** — In order for the Court of Appeals to have jurisdiction to review an

agency decision, the case must be one that requires a trial-type hearing before the agency either by statute or by constitutional right. *Rones v. District of Columbia Dep't of Hous. & Community Dev.*, App. D.C., 500 A.2d 998 (1985).

The D.C. Court of Appeals has jurisdiction to review orders or decisions of District of Columbia government agencies only in "contested cases." The proceedings to which this definition refers are "trial-type" hearings, which are "statutorily or constitutionally compelled." *Singleton v. District of Columbia Dep't of Cors.*, App. D.C., 596 A.2d 56 (1991).

**Final agency order required for judicial review.** — Ruling on request for substantial hardship rent increase was not entitled to judicial review until the Rent Administrator had issued his final decision; the Administrative Procedure Act provides a right to judicial review only for final agency orders. *Tenants of 1255 N.H. Ave., N.W. v. District of Columbia Rental Hous. Comm'n*, App. D.C., 647 A.2d 70 (1994).

**Standard for review same as for Federal Administrative Procedure Act.** — The legislative history of the Administrative Procedure Act shows a clear congressional intent that the District of Columbia Court of Appeals employ the same standards for judicial review as other federal courts employ for the Federal Administrative Procedure Act. *Wallace v. District Unemployment Comp. Bd.*, App. D.C., 294 A.2d 177 (1972); *Bender v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 562 A.2d 1205 (1989).

**Review of agency decision is in Court of Appeals.** — The fact that an administrative agency may be without authority to invalidate the statutory or regulatory scheme under which it operates does not mean that the review of such agency decision, including resolution of the constitutional questions raised by a party, is in a tribunal other than the District of Columbia Court of Appeals. *Debruhl v. District of Columbia Hackers' License Appeal Bd.*, App. D.C., 384 A.2d 421 (1978).

**Court has jurisdiction despite claim that administrative remedies not exhausted.** — The Court of Appeals has jurisdiction to review an order of the District of Columbia Zoning Commission where the Commission violated petitioners' rights under this subchapter by failing to hold a hearing in compliance therewith, despite a claim that the order was not the final step in the administrative process and there had been no exhaustion of administrative remedies. *Capitol Hill Restoration Soc'y v. Zoning Comm'n*, App. D.C., 287 A.2d 101 (1972).

**Review of decision by Mayor's Agent.** — A landowner/developer suffered no legal wrong nor was adversely affected by the Mayor's Agent's order denying it request for a permit for

new construction, where the findings of the Mayor's Agent were beyond his statutory jurisdiction and could have no preclusive effect on subsequent litigation. *District Intown Properties, Ltd. v. District of Columbia Dep't of Consumer & Regulatory Affairs*, App. D.C., 680 A.2d 1373 (1996).

**Court of Appeals not bound by constitutional mandates.** — The District of Columbia Court of Appeals is not bound by the mandates of article III of the U.S. Constitution, since it was created by Congress as an article I court. *Lee v. District of Columbia Bd. of Appeals & Review*, App. D.C., 423 A.2d 210 (1980).

**Function of Court of Appeals in reviewing administrative action** is to assure that the agency has given full and reasoned consideration to all material facts and issues. There must be a demonstration of a rational connection between the facts found and the choice made. The findings must support the end result in a discernible manner. *Tenants Council v. District of Columbia Rental Accommodations Comm'n*, App. D.C., 426 A.2d 868 (1981).

The scope of judicial review is limited by this section to a determination whether the findings of fact, upon which the authorities based their decision, are supported by substantial evidence in the record and whether the ultimate decision is in accordance with law. *Gomillion v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 447 A.2d 449 (1982).

The review function by the Court of Appeals is to determine whether the agency's findings of fact are supported by substantial evidence in the record considered as a whole and whether its conclusions of law flow rationally from those findings. *Greater Wash. Bus. Ctr. v. District of Columbia Comm'n on Human Rights*, App. D.C., 454 A.2d 1333 (1982).

When an agency does not exceed the authority vested in it by statute, the court's sole task is to examine the record and then determine whether the findings upon which its order is based are supported by substantial evidence. *Dowd v. District of Columbia Police & Firefighters' Retirement & Relief Bd.*, App. D.C., 485 A.2d 212 (1984).

The Court of Appeals' review of administrative proceedings is limited; and it will not disturb a decision if it rationally flows from the facts relied upon and those facts or findings are substantially supported by the evidence of record. *Selk v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 497 A.2d 1056 (1985).

**Claim barred by laches.** — Laches will bar the claim of petitioners if they delayed unreasonably in bringing their appeal to the administrative agency or board, to respondent's prejudice. *Goto v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 423 A.2d 917 (1980).

**Reviewing court must determine:** (1) Whether the agency has made a finding of fact on each material contested issue of fact; (2) whether substantial evidence of record supports each finding; and (3) whether the conclusions of law follow rationally from the findings. *George Washington Univ. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 429 A.2d 1342 (1981); *Allen v. District of Columbia Police & Firefighters' Retirement & Relief Bd.*, App. D.C., 528 A.2d 1225 (1987).

The court of appeals reviews the director's decision under the "substantial evidence" standard. *Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 683 A.2d 470 (1996).

The trial court's function in reviewing a Metropolitan Police Department Police Trial Board decision is to determine if the requirements of procedural due process are met, and whether the decision is supported by substantial evidence on the whole record. *Kegley v. District of Columbia*, App. D.C., 440 A.2d 1013 (1982); *Fair Care Found. v. District of Columbia Dep't of Ins. & Sec. Regulation*, App. D.C., 716 A.2d 987 (1998).

**Deference accorded directors' decisions.** — When the court of appeals reviews the director's decision, the court considers, among other things, whether the decision is supported by substantial evidence, making sure that the director has accorded proper deference to the examiner's fact-finding role. In contrast, the court ordinarily defers to the director's interpretation of the governing statute and the agency's own regulations. *KOH Sys. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 683 A.2d 446 (1996).

**Director's decision, not examiner's, subject to review.** — It is the director's final decision, not the examiner's, which may be reviewed in the court of appeals. *Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 683 A.2d 470 (1996).

**Section provides for exclusive appellate review of administrative action in contested cases**, and thereby precludes concurrent jurisdiction in the Superior Court. *District of Columbia v. Douglass*, App. D.C., 452 A.2d 329 (1982).

**"Contested case" construed.** — Where the court concluded that neither the District of Columbia Historic Landmark and Historic District Preservation Act nor the federal Constitution entitled petitioner to a trial-type hearing prior to the designation of plaintiffs properties as historic landmarks, the case was not a "contested case" and, therefore the District of Columbia Court of Appeals had no jurisdiction. *Donnelly Assocs. v. District of Columbia Historic Preservation Review Bd.*, App. D.C., 520 A.2d 270 (1987).

A bid protest is not a contested case because a bid protest does not require a trial-type hearing. The mere possibility of holding a discretionary hearing on a bid protest, particularly in a case where the Contract Appeals Board has decided not to hold one, does not meet the required by law element of the "trial-type hearing" criterion for a contested case. *Francis v. Recycling Solutions, Inc.*, App. D.C., 695 A.2d 63 (1997).

A "contested case" means a proceeding in which the legal rights, duties, or privileges of specific parties are required by law or by constitutional right, to be determined after a trial-type hearing. *Jones & Artis Constr. Co. v. District of Columbia Contract Appeals Bd.*, App. D.C., 549 A.2d 315 (1988).

**Action which is not contested case not reviewable.** — Where the Zoning Commission sits in a legislative capacity, making a policy decision directed toward the general public, its proceeding is without the "contested case" provision of the Administrative Procedure Act, as regards judicial review. *Citizens of Georgetown Ass'n, Inc. v. Washington*, App. D.C., 291 A.2d 699 (1972).

When the Zoning Commission acts legislatively, it is not subject to the "contested case" provisions of this chapter, with the result that any decision it makes is not subject to direct review by the Court of Appeals. *W.C. & A.N. Miller Dev. Co. v. District of Columbia Zoning Comm'n*, App. D.C., 340 A.2d 420 (1975).

Absent "contested case" status under Administrative Procedure Act, Court of Appeals does not have jurisdiction to directly review Zoning Commission's order, as this section does not denote a grant of jurisdiction but is a plain statement of scope of judicial review applicable only to contested cases. *Dupont Circle Citizen's Ass'n v. District of Columbia Zoning Comm'n*, App. D.C., 343 A.2d 296 (1975).

An order of the Minimum Wage and Industrial Safety Board which is enforceable only through criminal prosecution or civil litigation, in which issues of fact or law would be determined entirely upon the pleadings and trial record, and not upon the proceedings before the Board, is not an "appealable order" under the Administrative Procedure Act. *Sonderling Broadcasting Corp. v. District of Columbia Minimum Wage & Indus. Safety Bd.*, App. D.C., 315 A.2d 828 (1974).

A discriminatory employment practices proceeding brought by a District of Columbia employee is not a "contested case" within the meaning of this subchapter and, hence, is not subject to direct review by the Court of Appeals. *O'Neill v. District of Columbia Office of Human Rights*, App. D.C., 355 A.2d 805 (1976).

A proceeding before the Metropolitan Police Trial Board which resulted in a recommendation of dismissal of an officer for malingering

involves the tenure of an employee of the District of Columbia such that it is not a "contested case" under § 1-1502(8)(B) and is therefore not directly reviewable by the Court of Appeals. *Barry v. Wilson*, App. D.C., 448 A.2d 244 (1982).

The award of a contract for an on-line lottery system is not a contested case and a direct appeal from the District of Columbia Lottery and Charitable Control Board's decision to the Court of Appeals will not lie. *Network Technical Servs., Inc. v. District of Columbia Data Co.*, App. D.C., 464 A.2d 133 (1983).

Petitioners request for an immediate official opinion from the Board of Elections and Ethics was not a contested case as defined in § 1-1502, therefore, the Court of Appeals lacked jurisdiction to hear a direct appeal from the Board's denial of petitioner's challenge of a prospective candidate's qualifications. *Lawrence v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 611 A.2d 529 (1992).

The Appellate Court lacked jurisdiction to hear allegations of violations of the Alcohol Beverage Control Act where the Alcohol Beverage Control Board's action at issue did not arise out of a contested case proceeding. *Jones v. District of Columbia ABC Bd.*, App. D.C., 621 A.2d 385 (1993).

Bid protests are not contested cases and thus cannot be appealed directly to the D.C. Court of Appeals under either subsection (a) of this section or § 1-1189.5. *Francis v. Recycling Solutions, Inc.*, App. D.C., 695 A.2d 63 (1997).

**Approval by Zoning Commission of preliminary application for planned unit development is contested case** under the Administrative Procedure Act and is properly before an appellate court as a final order entitled to review. *DuPont Circle Citizens Ass'n v. District of Columbia Zoning Comm'n*, App. D.C., 426 A.2d 327 (1981).

**Contested case hearing erroneously denied.** — The Court of Appeals has authority to order a contested case hearing, or at least to preserve the right to such a hearing, when an agency erroneously withholds that right. *Timus v. District of Columbia Dep't of Human Rights*, App. D.C., 633 A.2d 751 (1993).

**Material change to order based on ex parte contacts.** — Letter by Department of Insurance and Securities Regulation, based on ex parte contacts and purporting to make material changes in its original order, violated the official record requirement of § 1-1509(c), and therefore had to be vacated. *Fair Care Found. v. District of Columbia Dep't of Ins. & Sec. Regulation*, App. D.C., 716 A.2d 987 (1998).

**Section inapplicable to Housing Rent Commission.** — Congress, by vesting review of Housing Rent Commission decisions in the Superior Court, intended that the review provisions of this section not apply to the Commission. *Columbia Realty Venture v. District of*

Columbia Hous. Rent Comm'n, App. D.C., 350 A.2d 120 (1975).

**Person suffering a legal wrong.** — An uninsured motorist who posted the administratively required security following involvement in automobile mishap and who did not seek review of order by the Mayor of the District of Columbia could nevertheless be considered a person suffering a legal wrong, or adversely affected or aggrieved by order or decision of the Mayor within the meaning of the District of Columbia Administrative Procedure Act. *Smith v. Murphy*, App. D.C., 294 A.2d 357 (1972).

**Standing to seek review.** — An advisory neighborhood commission has no capacity to seek court review of action of District of Columbia Alcoholic Beverage Control Board in issuing liquor license; area residents who were commission members, however, have standing to initiate such review and to assert rights of commission itself. *Kopff v. District of Columbia ABC Bd.*, App. D.C., 381 A.2d 1372 (1977), *aff'd*, App. D.C., 413 A.2d 152 (1980).

One who fails to assert legal rights but later decides to appeal a decision he could have challenged — and arguably prevented — cannot reasonably be called “aggrieved,” let alone a “party.” *DeLevey v. District of Columbia Rental Accommodations Comm'n*, App. D.C., 411 A.2d 354 (1980).

Because Congress has so restricted the class of persons who may appeal an administrative decision to the Court of Appeals, appellate jurisdiction over the subject matter on review is contingent upon petitioners' right to prosecute the appeal. Therefore, the appellate court is obligated to raise the issue of petitioners' standing *sua sponte*. *Lee v. District of Columbia Bd. of Appeals & Review*, App. D.C., 423 A.2d 210 (1980).

In order to seek review of an administrative agency's decision: (1) The petitioner must allege that the challenged action has caused him injury in fact; (2) the interest sought to be protected by the petitioner must be arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question; and (3) there must be no clear legislative intent to withhold judicial review either from the class of persons or in the type of case involved. *Lee v. District of Columbia Bd. of Appeals & Review*, App. D.C., 423 A.2d 210 (1980); *Dupont Circle Citizens Ass'n v. Barry*, App. D.C., 455 A.2d 417 (1983).

**Court of Appeals lacks jurisdiction to review a challenge to an agency's assertion of jurisdiction under subsection (a)** except in the extraordinary situation where the agency has plainly exceeded or clearly contravened its statutory authority. *Bender v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 562 A.2d 1205 (1989).

**Immediate judicial review.** — Where petitioner did not file his first petition for review for five months, petitioner cannot maintain that he sought the “immediate judicial review” provided for in subsection (a). *Kennedy v. Barry*, App. D.C., 516 A.2d 176 (1986), *rev'd* on other grounds *sub nom. Kennedy v. District of Columbia*, App. D.C., 654 A.2d 847 (1994).

**Superior Court lacks jurisdiction over contested case appeal.** — Because this section vests exclusive jurisdiction in the Court of Appeals over review of administrative proceedings involving contested cases, the Superior Court acted properly in declining to hear petitioner's claims, including common law claims which were inextricably intertwined with administrative claims. *Fair Care Found. v. District of Columbia Dep't of Ins. & Sec. Regulation*, App. D.C., 716 A.2d 987 (1998).

**Exhaustion of administrative remedies generally.** — The judicial review available in accordance with this section applies only to orders or decisions in “contested cases.” Petitioner's failure to exhaust administrative remedies by his failure to challenge the preliminary determination through administrative channels leaves the court with no contested case in which to review his claim. *Siler v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 525 A.2d 620 (1987).

**Adequacy of notice form.** — Form of notice of time to appeal ineligibility for unemployment benefits was defective for failure to specify whether 10-day appeal period consisted of calendar days or working days. *Cobo v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 501 A.2d 1278 (1985).

**Date of mailing.** — Where the only evidence of the date of mailing was the date of the cover letter, this did not constitute reliable, probative and substantial evidence of the date of mailing. *District of Columbia Pub. Employee Relations Bd. v. District of Columbia Metro. Police Dep't*, App. D.C., 593 A.2d 641 (1991).

**Federal court interpretations of federal standing requirements provide guidance.** — The legislative history of this subchapter indicates that, although there are slight differences in language between the federal Administrative Procedure Act standing provision (5 U.S.C. § 702) and its District of Columbia counterpart, the 2 provisions were intended to be interpreted virtually identically. Thus, it is appropriate to seek guidance from federal court interpretations of the APA's standing requirements. *Lee v. District of Columbia Bd. of Appeals & Review*, App. D.C., 423 A.2d 210 (1980).

**Issues not urged at administrative level may not form the basis for overturning a decision on appeal.** *John D. Neumann Properties, Inc. v. District of Columbia Bd. of Appeals & Review*, App. D.C., 268 A.2d 605 (1970).

Court's review of an agency decision must be

made upon the exclusive record for decision before the agency. *Scott v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 447 A.2d 447 (1982).

On review of a decision of the Board of Zoning Adjustment, the Court of Appeals could not consider new issues raised by petitioners, but would look to the exclusive record or portions of it designated by parties. *Dietrich v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 320 A.2d 282 (1974).

**Nature of injury necessary to support appellate court jurisdiction.** — Although an injury in fact need not be a particularly substantial one to support appellate court jurisdiction over a petition for review, the injury must be one which petitioners have suffered or are in immediate danger of sustaining. *Lee v. District of Columbia Bd. of Appeals & Review*, App. D.C., 423 A.2d 210 (1980).

**Contested decisions of Rental Accommodations and Conversion Division.** — A party contesting any decision of the Rental Accommodations and Conversion Division cannot seek direct review of that decision in either the superior court or appellate court but must first take an appeal to the Rental Housing Commission (RHC); the final decision of the RHC may then, and only then, be brought directly to the appellate court by the filing of a petition for review under subsection (a). *Mack v. Zalco Realty, Inc.*, App. D.C., 630 A.2d 1136 (1993).

**Consideration of delay by agency.** — Agency action will be set aside upon a showing that the fairness of proceedings or the correctness of action taken has been impaired by delay. *Vann v. District of Columbia Bd. of Funeral Dirs. & Embalmers*, App. D.C., 441 A.2d 246 (1982), *aff'd*, App. D.C., 480 A.2d 688 (1984).

Prejudice might occur to a petitioner who seeks to obtain a license from an administrative board and is prevented from practicing his profession by the board's failure to act promptly. *Vann v. District of Columbia Bd. of Funeral Dirs. & Embalmers*, App. D.C., 441 A.2d 246 (1982), *aff'd*, App. D.C., 480 A.2d 688 (1984).

**Review of action alleged to be constitutional violation.** — A practitioner of 14 years, who subsequent to the passage of the District of Columbia Practice of Psychology Act (§ 2-1704.1 *et seq.*, now repealed) applied for a license, and whose application was denied by the Board of Psychologist Examiners because of his lack of required academic degrees, can properly avail himself of the statutory review procedure outlined in this section in order to prosecute his constitutional challenge that the Board's refusal to test his professional competence by some standard other than his academic credentials constituted a violation of

fundamental due process. *Berger v. Board of Psychologist Exmrs.*, 521 F.2d 1056 (D.C. Cir. 1975).

**An administrative agency is bound to follow its own rules and regulations;** where this principle is not adhered to, the appellate court must vacate the agency's order and remand for further proceedings. *Macauley v. District of Columbia Taxicab Comm'n*, App. D.C., 623 A.2d 1207 (1993).

**Agency's decision presumed to be correct.** — In determining whether there is substantial evidence in the record to support an agency decision, or whether it is in any way arbitrary, capricious, or an abuse of discretion, the court starts from the premise that the agency's decision is presumed to be correct, so that the burden of demonstrating error is on the appellant or petitioner who challenges the decision. *Cohen v. Rental Hous. Comm'n*, App. D.C., 496 A.2d 603 (1985).

**Agency decision upheld unless it is arbitrary, capricious, etc.** — A court will uphold the agency's interpretation of an act unless the interpretation is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. *Smith v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 548 A.2d 95 (1988).

Agency's interpretation is binding on the court unless it conflicts with the plain meaning of the statute or its legislative history, or is arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with the law. *Kingsley v. District of Columbia Dep't of Consumer & Regulatory Affairs*, App. D.C., 657 A.2d 1141 (1995).

Where the Board of Elections has certified the result of an election, that certification is not lightly set aside. In election contests, it is the duty of the court to validate the election if possible. That is to say, the election must be held valid unless plainly illegal. *Allen v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 663 A.2d 489 (1995).

**Review of decisions interpreting statutes or regulations.** — When an agency's — and correlatively, the Mayor's agent's — decision is based on an interpretation of the statute and regulations it administers, that interpretation will be sustained unless shown to be unreasonable or in contravention of the language or legislative history of the statute. *Kalorama Heights Ltd. Partnership v. District of Columbia Dep't of Consumer & Regulatory Affairs*, App. D.C., 655 A.2d 865 (1995).

Insofar as the Board of Election's legal conclusions are concerned, the appellate court must defer to its interpretation of the statute which it administers, and, especially, of the regulations which it has promulgated, so long as that interpretation is not plainly wrong or inconsistent with the legislative purpose. *Allen*

v. District of Columbia Bd. of Elections & Ethics, App. D.C., 663 A.2d 489 (1995).

**Court must overturn arbitrary or capricious decision.** — In the exercise of its review function, the District of Columbia Court of Appeals is obliged to overturn a decision of the District Unemployment Compensation Board when it is found to be arbitrary and capricious or not in accordance with law. *Carpenter v. District Unemployment Comp. Bd.*, App. D.C., 409 A.2d 175 (1979).

**Review of hearing examiner's findings.** — The Special Assistant to the City Administrator, the Director of the EEOC and the court of appeals, can only reverse the hearing examiner's findings of fact if they were unsupported by substantial evidence, and overturn their ruling on the questioned conduct if plainly erroneous or inconsistent with the pertinent regulatory scheme. *Kennedy v. District of Columbia*, App. D.C., 654 A.2d 847 (1994).

**Deference to agency's assessment of credibility of witness.** — Deference to the Board of Elections findings is especially appropriate where the decision was based in part on its assessment of the credibility of the witnesses. *Allen v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 663 A.2d 489 (1995).

**Agency findings must be supported by substantial evidence.** — A finding that an employee has violated company policy, by itself, is not enough to sustain a conclusion that the employee was fired for misconduct. Among other things, the agency must make findings, supported by substantial record evidence, as to whether the employee was aware of the policy, whether it was consistently enforced, *id.*, and whether the employee's violation was deliberate, and claims examiner's determination that petitioner was fired for misconduct was not supported by substantial evidence. *McCaskill v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 572 A.2d 443 (1990).

Commission on Human Rights' findings in sex discrimination case based solely on documentary evidence were, necessarily, arbitrary and capricious where the documentation provided in the case was without accompanying testimony at an evidentiary hearing, and thus the examiner had no reliable basis for assessing credibility. *Garzon v. District of Columbia Comm'n on Human Rights*, App. D.C., 578 A.2d 1134 (1990).

The court must defer to an administrative agency's findings of fact and affirm them if they are supported by substantial evidence in the record as a whole. *4934, Inc. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 605 A.2d 50 (1992).

Substantial evidence did not support an agency's deceptive trade practice rulings under § 28-3904(e), (q) and (u) as client had cancelled

employment contract with nonattorney before nonattorney had misrepresented his actions or failed to provide a contract. *Banks v. District of Columbia Dep't of Consumer & Regulatory Affairs*, App. D.C., 634 A.2d 433 (1993), cert. denied, 513 U.S. 820, 115 S. Ct. 81, 130 L. Ed. 2d 34 (1994).

Factual findings by an agency must be supported by substantial evidence on the record as a whole, and the agency's conclusions must flow rationally from those findings and comport with the applicable law; the function of the appellate court is to ascertain whether the inferences drawn by the administrative agency are within the reasonable boundaries prescribed by the facts. *Williamson v. District of Columbia Bd. of Dentistry*, App. D.C., 647 A.2d 389 (1994).

**Agency's findings of fact are conclusive on Court of Appeals**, unless unsupported by substantial evidence in the record. *Proulx v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 430 A.2d 34 (1981).

**Court may not disturb action unless plainly wrong or without support.** — On petition for review of order of Alcoholic Beverage Control Board, the Court of Appeals may not disturb any action of the Board in exercise of its statutory powers unless such action is plainly wrong or without support by substantial evidence in administrative record. *Schiffmann v. District of Columbia ABC Bd.*, App. D.C., 302 A.2d 235 (1973).

Review by the Court of Appeals of a decision of the Board of Zoning Adjustment is limited to a determination of whether the decision reached follows as a matter of law from facts stated as its basis, and also whether facts so stated have any substantial support in the evidence. If the Board's decision follows from its findings and those findings are supported by substantial evidence, the Court of Appeals must affirm even though it might have reached another result. *Stewart v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 305 A.2d 516 (1973).

The Court's review of decision of the Alcoholic Beverage Control Board is limited to determination of whether the Board decision is supported by substantial evidence which is more than a mere scintilla, and is such relevant evidence as reasonable minds might accept as adequate to support conclusion. *Vestry of Grace Parish v. District of Columbia ABC Bd.*, App. D.C., 366 A.2d 1110 (1976).

In reviewing a decision of the Board of Zoning Adjustment the Court requires that there be a rational connection between the facts found by the Board and its decision. *Dupont Circle Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 390 A.2d 1009 (1978).

When the findings of basic facts are each supported by sufficient evidence and, when

taken together, rationally lead to conclusions of law and an agency decision consistent with the governing statute, the Court of Appeals shall affirm that decision. *Citizens Ass'n v. District of Columbia Zoning Comm'n*, App. D.C., 402 A.2d 36 (1979); *Draude v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 527 A.2d 1242 (1987).

The District of Columbia Court of Appeals may overturn an agency's decision only if the findings are unsupported by substantial evidence in the record as a whole, or if it is grounded on a faulty legal premise. *Neer v. District of Columbia Police & Firemen's Retirement & Relief Bd.*, App. D.C., 415 A.2d 523 (1980); *Woody v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 441 A.2d 987 (1982).

Administrative determinations regarding an agency's internal procedures are entitled to due respect and should not be reversed unless "clearly wrong." *Goto v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 423 A.2d 917 (1980).

In deciding questions of law, a reviewing court must give due consideration of the administrative agency's interpretation of its substantive regulation, and should uphold that interpretation unless it is plainly erroneous or inconsistent with the regulation. *George Washington Univ. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 429 A.2d 1342 (1981).

Unless unreasonable, an appellate court should defer to the agency's construction of a controlling statute or regulation. *Kramer v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 447 A.2d 28 (1982).

Under this subchapter, agency findings of fact and conclusions of law must be affirmed if supported by and in accordance with reliable, probative and substantive evidence in the record. *Barry v. Wilson*, App. D.C., 448 A.2d 244 (1982).

A reviewing court must give great weight to any reasonable construction of a regulatory statute that has been adopted by the agency charged with its enforcement. *Lee v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 509 A.2d 100 (1986).

The appellate court will not disturb an agency's decision if it flows rationally from the facts which are supported by substantial evidence in the record. *Oubre v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 630 A.2d 699 (1993).

The appellate court, in reviewing questions of law, will uphold the agency's interpretation of the statute it is responsible for administering unless it is unreasonable in light of prevailing law, or conflicts with the statute's plain meaning or legislative history. *Oubre v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 630 A.2d 699 (1993).

#### **Statutory construction by agency. —**

With respect to questions of law, the court will uphold the agency's interpretation of a statute unless it is unreasonable in light of prevailing law, or conflicts with the statute's plain meaning or legislative history, even where a party advances another reasonable interpretation of the statute which the court might have accepted if construing the statute in the first instance. *Jerome Mgt., Inc. v. District of Columbia Rental Hous. Comm'n*, App. D.C., 682 A.2d 178 (1996).

Where an agency has not identified the question of statutory construction or construed its terms, deference by the court is inappropriate. *District of Columbia Preservation League v. District of Columbia Dep't of Consumer & Regulatory Affairs*, App. D.C., 711 A.2d 1273 (1998).

While review of an agency's legal determination is de novo, the court will accord deference to agency's interpretation of a statute unless the interpretation is not reasonable and plainly wrong or inconsistent with the legislative purpose. *District of Columbia Preservation League v. District of Columbia Dep't of Consumer & Regulatory Affairs*, App. D.C., 711 A.2d 1273 (1998).

**Failure of agency to construe ambiguous terms. —** The canon requiring courts to accord weight to the administrative construction of a statute has no logical application where the agency has engaged in a practice without having made any discernable attempt to construe the purportedly ambiguous terms of the legislation. *Coumaris v. District of Columbia ABC Bd.*, App. D.C., 660 A.2d 896 (1995).

**Director of agency without authority to review de novo the evidence. —** It was not within the authority of the Director of the District of Columbia Department of Employment Services to review de novo the evidence concerning factual issue; and Director's decision to ignore substantial evidentiary support was reversible error. *Santos v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 536 A.2d 1085 (1988).

**Court may not substitute its judgment. —** If there is substantial evidence to support the Alcoholic Beverage Control Board's finding, then the mere existence of substantial evidence contrary to that finding does not allow the Court of Appeals to substitute its judgment for that of the Board. *Spevak v. District of Columbia ABC Bd.*, App. D.C., 407 A.2d 549 (1979).

In applying the substantial evidence test, the District of Columbia Court of Appeals may not substitute its judgment for that of the agency. *Liberty v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 410 A.2d 191 (1979), *aff'd*, App. D.C., 452 A.2d 1187 (1982).

The reviewing court is not empowered to substitute its judgment for that of the agency;

rather, it must determine whether a rational basis existed for the decision. *Spivey v. Barry*, 501 F. Supp. 1093 (D.D.C. 1980), rev'd on other grounds, 665 F.2d 1222 (D.C. Cir. 1981).

If there is substantial evidence to support the agency's finding, the mere existence of substantial evidence to the contrary does not allow the reviewing court to substitute its judgment for that of the Board. *Scott v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 447 A.2d 447 (1982).

On judicial review, it is not the province of the court to substitute its judgment for that of the administrative agency, provided the grounds upon which the agency acted were clearly disclosed and adequately sustained. *Kegley v. District of Columbia*, App. D.C., 440 A.2d 1013 (1982).

The scope of review of the Court of Appeals as to contested cases, as provided by this section, prohibits the substitution of the court's judgment in areas of expertise reserved for the agency. *Barry v. Wilson*, App. D.C., 448 A.2d 244 (1982).

**Court of Appeals will assume the validity of findings and conclusions which petitioner does not challenge.** *First Baptist Church v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 432 A.2d 695 (1981).

**Standards for contested cases apply to administrative decision appeals in Superior Court.** — The scope of review in the Superior Court of a decision made by the Metropolitan Police Department Police Trial Board is the same as that of the Court of Appeals in reviewing a contested case under this section. *Kegley v. District of Columbia*, App. D.C., 440 A.2d 1013 (1982); *Barry v. Wilson*, App. D.C., 448 A.2d 244 (1982).

Agency findings of fact and conclusions of law must be affirmed by the Superior Court if supported by and in accordance with reliable, probative and substantive evidence in the record as a whole. *Kegley v. District of Columbia*, App. D.C., 440 A.2d 1013 (1982).

**Review of Superior Court's administrative appeal decision by Court of Appeals.** — When a decision of the Superior Court reviewing an action of the Metropolitan Police Department Police Trial Board is appealed, the Court of Appeals should use the precise scope of review employed in reviewing contested cases: A review of the administrative record to determine if there has been procedural error, if there is substantial evidence in the record to support the action of the Trial Board, or if the action is in some manner otherwise arbitrary, capricious or an abuse of discretion. *Kegley v. District of Columbia*, App. D.C., 440 A.2d 1013 (1982); *Barry v. Holderbaum*, App. D.C., 454 A.2d 1328 (1982).

**Act of compiling and preserving a factual record enables the reviewing court to**

determine whether the decision-maker's choice was both reasonable and proper in the specific factual context. *Johnson v. United States*, App. D.C., 398 A.2d 354 (1979).

**Review of designated portions of record to determine findings.** — On appeal of a decision of an agency, the reviewing court must review the portions of the record designated by the parties to determine whether the agency could fairly and reasonably find the facts as it did. *Liberty v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 410 A.2d 191 (1979), aff'd, App. D.C., 452 A.2d 1187 (1982).

**Requirements for upholding order on review.** — On review of an order of the Board of Zoning Adjustment, Court of Appeals must determine whether findings made are supported and in accordance with reliable, probative, and substantial evidence in the whole administrative record and whether conclusions of Board flow rationally from these findings. *Dietrich v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 320 A.2d 282 (1974).

The Court of Appeals must review the record as a whole to determine whether the agency could fairly and reasonably find the facts as it did, and to assure that the agency's decision did not rely on unsupported findings. *Proulx v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 430 A.2d 34 (1981).

**Substantial evidence** is "more than a mere scintilla" of evidence; it is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Liberty v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 410 A.2d 191 (1979); *Proulx v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 430 A.2d 34 (1981); *Le Jimmy, Inc. v. District of Columbia ABC Bd.*, App. D.C., 433 A.2d 1090 (1981); *Jadallah v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 476 A.2d 671 (1984).

The appellate court's role is only to examine contested issues and to determine whether the Zoning Commission's conclusions meet the test of substantial evidence. *DuPont Circle Citizens Ass'n v. District of Columbia Zoning Comm'n*, App. D.C., 426 A.2d 327 (1981).

**Substantial evidence test requires:** (1) That the agency make findings of basic facts on all material contested issues; (2) that these findings, taken together, must rationally lead to conclusions of law which are legally sufficient to support the decision; and (3) that each basic finding is supported by substantial evidence. *DuPont Circle Citizens Ass'n v. District of Columbia Zoning Comm'n*, App. D.C., 426 A.2d 327 (1981).

**Findings held supported by substantial evidence.** — See *Citizens Ass'n of Georgetown, Inc. v. District of Columbia ABC Bd.*, App. D.C., 280 A.2d 309 (1971); *Johnson v. Board of Appeals & Review*, App. D.C., 282 A.2d 566 (1971),



cert. denied, 405 U.S. 955, 92 S. Ct. 1175, 31 L. Ed. 2d 232 (1972); *Wheeler v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 395 A.2d 85 (1978); *Seabolt v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 413 A.2d 908 (1980); *Barry v. Wilson*, App. D.C., 448 A.2d 244 (1982); *Arthur v. District of Columbia Nurses' Examining Bd.*, App. D.C., 459 A.2d 141 (1983); *Grant v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 490 A.2d 1115 (1985); *Draude v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 582 A.2d 949 (1990); *Rafferty v. District of Columbia Zoning Comm'n*, App. D.C., 583 A.2d 169 (1990).

Uncontroverted testimony that old hot and cold water risers were rotten and were replaced in a particular manner in order to minimize the cost and inconvenience to the tenants was sufficient evidence to sustain the examiner's conclusion that the expenditures would enhance and protect the health, safety, and security of the tenants, which is substantially in compliance with the requirement of a determination that the interests of the affected tenants are being protected under § 45-2520(c)(2). *Columbia Realty Venture v. District of Columbia Rental Hous. Comm'n*, App. D.C., 590 A.2d 1043 (1991).

**Court need not reverse for unsupported subsidiary finding.** — A reviewing court need not reverse when a board has made an unsupported finding if the finding is demonstrably subsidiary and the agency does not purport to rely on the finding. *Liberty v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 410 A.2d 191 (1979), *aff'd*, App. D.C., 452 A.2d 1187 (1982).

**Nor reopen the record.** — Petitioners failed to demonstrate any unusual circumstances that would have justified reopening the record in a workers' compensation case, where any relevant and material evidence in their possession could have reasonably been presented at the hearing. *Charles F. Young Co. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 681 A.2d 451 (1996).

**But remand necessary where agency may have relied on erroneous findings.** — Remand of an agency decision is necessary if the court is in substantial doubt whether the administrative agency would have made the same ultimate finding with the erroneous findings or inferences removed from the picture. *Liberty v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 410 A.2d 191 (1979), *aff'd*, App. D.C., 452 A.2d 1187 (1982).

Reversal and remand is required only if substantial doubt exists whether the agency would have made the same ultimate finding with the error removed. *Arthur v. District of Columbia Nurses' Examining Bd.*, App. D.C., 459 A.2d 141 (1983); *King v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 560 A.2d 1067 (1989).

**Reliance on information not in record.** — Where the Alcoholic Beverage Control Board may have relied upon information from staff investigative reports not made a matter of record, the case would be remanded to the Board for further proceedings. *Citizens Ass'n of Georgetown, Inc. v. District of Columbia ABC Bd.*, App. D.C., 288 A.2d 666 (1972).

**Findings set aside as unsupported by substantial evidence.** — See *Sophia's, Inc. v. ABC Bd.*, App. D.C., 268 A.2d 799 (1970); *Miller v. District of Columbia Bd. of Appeals & Review*, App. D.C., 294 A.2d 365 (1972); *Liberty v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 410 A.2d 191 (1979), *aff'd*, App. D.C., 452 A.2d 1187 (1982); *American Univ. v. District of Columbia Dep't of Labor*, App. D.C., 429 A.2d 1374 (1981); *Le Jimmy, Inc. v. District of Columbia ABC Bd.*, App. D.C., 433 A.2d 1090 (1981); *Jadallah v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 476 A.2d 671 (1984); *Selk v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 497 A.2d 1056 (1985).

**Remand required in absence of finding.** — If the agency fails to make a finding on a material, contested issue of fact, the court cannot fill the gap by making its own determination from the record, but must remand the case for findings on that issue. *Colton v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 484 A.2d 550 (1984).

**The finding that a claimant exercised reasonable diligence in seeking alternative employment following a discriminatory discharge is an issue of fact** subject to determination, upon review, by the Court of Appeals of whether it was supported by substantial evidence. *Wisconsin Ave. Nursing Home v. District of Columbia Comm'n on Human Rights*, App. D.C., 527 A.2d 282 (1987).

**Failure to show prejudiced error.** — Error in refusing timely request to examine for impeachment purposes certain material evidence was not sufficiently prejudicial to require reversal where testimony based upon such evidence was corroborated by several other witnesses. *K.G.S., Inc. v. District of Columbia ABC Bd.*, App. D.C., 531 A.2d 1001 (1987).

**Failure to appear at hearing.** — Claimant's failure to appear at hearing may have waived his right to present testimony, but because the burden was still on the employer to prove misconduct, it did not waive his appeal, and agency's dismissal of claimant's timely appeal was not legitimized by the fact that the "Notice of Hearing" stated that failure to appear at the hearing "may result in denial of benefits of the appeal." Claimant's failure to appear at a hearing where the employer had the burden of proof was no different from appearing and declining to testify. The employer still had to introduce evidence proving misconduct, and the examiner had to make particular

factual findings and legal conclusions based on that evidence. *McCaskill v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 572 A.2d 443 (1990).

**Prisoner's hearing before transfer from St. Elizabeths Hospital reviewed as agency action.** — A judicially-mandated hearing before transferring a prisoner from St. Elizabeths Hospital to the Department of Corrections is a review of the equivalent of agency action, and the appropriate inquiry is whether the decision was arbitrary, capricious, an abuse of discretion, or without substantial evidence to support it. *In re Hurt*, App. D.C., 437 A.2d 590 (1981).

**Prison discipline cases.** — There is no constitutional right to a full trial-type hearing in prison discipline cases. Prisoners are entitled to some due process protections, such as the right to receive notice of the charges against them and a written statement of reasons for any disciplinary action, but other constitutional rights must generally be balanced against the correctional goals of the prison authorities. *Singleton v. District of Columbia Dep't of Cors.*, App. D.C., 596 A.2d 56 (1991).

**Workers' compensation case.** — In a workers' compensation case, an order by the Director to remand a case to the Hearing Examiner for further findings was not a final order because the remand order only decided one of two claims. *Warner v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 587 A.2d 1091 (1991).

To obtain an evidentiary hearing on a modification petition under the workers' compensation statute, a claimant must make a threshold showing that there is reason to believe that a change of conditions has occurred. *Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 703 A.2d 1225 (1997).

**Superior Court may consider applicability of § 5-513 to DHCD enforcement action but not whether property owner's rights were violated thereby.** — A real property owner may seek declaratory and injunctive relief from the Superior Court as to the applicability of § 5-513 to a Department of Housing and Community Development (DHCD) enforcement action (subject to review by the Court of Appeals); however, since the "show cause" provision of § 5-513 requires a "contested case" hearing under the Administrative Procedure Act, the Superior Court may not consider whether the owner's rights were violated by DHCD's particular use of § 5-513 as to him. *Auger v. District of Columbia Bd. of Appeals & Review*, App. D.C., 477 A.2d 196 (1984).

**Decisions of Board of Elections and Ethics under § 1-1315(a) are reviewable by the Court of Appeals under this section.** *Pendleton*

*v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 449 A.2d 301 (1982).

**Court of Appeals lacks jurisdiction to review decisions of Joint Committee on Landmarks of National Capitol** inasmuch as the Joint Committee is not a District of Columbia agency. *A & G Ltd. Partnership v. Joint Comm. on Landmarks of Nat'l Capital*, App. D.C., 449 A.2d 291 (1982).

**Court of Appeals has exclusive jurisdiction over claim against District** based on the refusal of District of Columbia Department of Housing and Community Development to accept and process applications for registration. *Brenneman Assocs. v. District of Columbia*, App. D.C., 466 A.2d 459 (1983).

**Court of Appeals has jurisdiction to review District of Columbia Hackers' License Appeal Board ruling** affirming denial of license to a parolee because it arises from a "contested case" as defined under § 1-1502(8). *Allen v. District of Columbia Hackers' License Appeal Bd.*, App. D.C., 471 A.2d 271 (1984).

**Court of Appeals may not review agency revocation of sign permit not appealed to Board of Appeals and Review.** — Where petitioner did not appeal his sign permit revocation by District agency with the Board of Appeals and Review, the Court of Appeals does not have jurisdiction to review the agency's revocation of the permit because petitioner failed to create a "contested case." *Auger v. District of Columbia Bd. of Appeals & Review*, App. D.C., 477 A.2d 196 (1984).

**Property owner may seek review of final DHCD action by Court of Appeals.** — Because § 5-513 authorizes the Department of Housing and Community Development (DHCD), an administrative agency of the District, to deprive the owner of his property, and because the Board of Appeals and Review does not have appellate jurisdiction over an enforcement order, due process entitles the owner to a "contested case" hearing at DHCD if he elects to show cause why he should not be required to correct such condition; whether DHCD grants or refuses such a hearing, the owner can seek review of DHCD's final action directly by the Court of Appeals. *Auger v. District of Columbia Bd. of Appeals & Review*, App. D.C., 477 A.2d 196 (1984).

**Human Rights Law does not expand the scope of appeal court's jurisdiction** beyond that conferred by the Administrative Procedure Act. *Lamont v. Rogers*, App. D.C., 479 A.2d 1274 (1984).

**Office of Human Rights findings.** — An Office of Human Rights' finding of no probable cause is subject to judicial review. *Simpson v. District of Columbia Office of Human Rights*, App. D.C., 597 A.2d 392 (1991).

**District courts do not have exclusive jurisdiction over decisions of rental ac-**

**commodation office.** — Administrative Procedure Act does not grant District of Columbia courts exclusive jurisdiction to review decisions of the D.C. rental accommodation office. *District Properties Assocs. v. District of Columbia*, 743 F.2d 21 (D.C. Cir. 1984).

**Showing held insufficient for review of denial of Department of Housing and Community Development housing loan award.** — See *Rones v. District of Columbia Dep't of Hous. & Community Dev.*, App. D.C., 500 A.2d 998 (1985).

**Objections not raised before agency.** — In the absence of exceptional circumstances, the appellate court will not entertain contentions not raised before the agency. *Allen v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 663 A.2d 489 (1995).

**Cited in** *Murphy v. Heath*, App. D.C., 256 A.2d 421 (1969); *Gunnell Constr. Co. v. Contract Appeals Bd.*, App. D.C., 282 A.2d 556 (1971); *Basiliko v. Government of D.C.*, App. D.C., 283 A.2d 816 (1971); *Citizens Ass'n v. District of Columbia ABC Bd.*, App. D.C., 287 A.2d 87 (1972); *Citizens Ass'n v. District of Columbia ABC Bd.*, App. D.C., 305 A.2d 861 (1973); *Chevy Chase Citizens Ass'n v. District of Columbia Council*, App. D.C., 327 A.2d 310 (1974); *Dillard v. Yeldell*, App. D.C., 334 A.2d 578 (1975); *C & P Tel. Co. v. Public Serv. Comm'n.*, App. D.C., 339 A.2d 710 (1975); *Latimer v. Joint Comm. on Landmarks of Nat'l Capital*, App. D.C., 345 A.2d 484 (1975); *Hanke v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 353 A.2d 301 (1976); *Thomas v. District of Columbia Bd. of Appeals & Review*, App. D.C., 355 A.2d 789 (1976); *Richards v. District of Columbia Hackers' License Appeal Bd.*, App. D.C., 357 A.2d 439 (1976); *Barber v. District of Columbia Dep't of Human Resources*, App. D.C., 361 A.2d 194 (1976); *Palisades Citizens Ass'n v. District of Columbia Zoning Comm'n.*, App. D.C., 368 A.2d 1143 (1977); *Capitol Hill Restoration Soc'y v. Zoning Comm'n.*, App. D.C., 380 A.2d 174 (1977); *Jacobs v. District Unemployment Comp. Bd.*, App. D.C., 382 A.2d 282 (1978); *Cumming v. District Unemployment Comp. Bd.*, App. D.C., 382 A.2d 1010 (1978); *Wieck v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 383 A.2d 7 (1978); *Arellano v. District of Columbia Police & Firemen's Retirement & Relief Bd.*, App. D.C., 384 A.2d 29 (1978); *Jameson's Liquors, Inc. v. District of Columbia ABC Bd.*, App. D.C., 384 A.2d 412 (1978); *Kober v. District Unemployment Comp. Bd.*, App. D.C., 384 A.2d 633 (1978); *Association for Preservation of 1700 Block of N St., N.W., & Vicinity v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 384 A.2d 674 (1978); *Haugness v. District Unemployment Comp. Bd.*, App. D.C., 386 A.2d 700 (1978); *Wells v. District of Columbia Bd. of Educ.*, App. D.C., 386 A.2d 703 (1978);

*Babazadeh v. District of Columbia Hackers' License Appeal Bd.*, App. D.C., 390 A.2d 1004 (1978); *Lechter-Siegel v. District Unemployment Comp. Bd.*, App. D.C., 395 A.2d 57 (1978); *Carr v. Brown*, App. D.C., 395 A.2d 79 (1978); *Silverstone v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 396 A.2d 992 (1979); *In re Dwyer*, App. D.C., 399 A.2d 1 (1979); *Fesjian v. Jefferson*, App. D.C., 399 A.2d 861 (1979); *American Univ. Park Citizens Ass'n v. Burka*, App. D.C., 400 A.2d 737 (1979); *Russell v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 402 A.2d 1231 (1979); *In re Smith*, App. D.C., 403 A.2d 296 (1979); *Dupont Circle Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 403 A.2d 314 (1979); *Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 403 A.2d 737 (1979); *Rorie v. District of Columbia Dep't of Human Resources*, App. D.C., 403 A.2d 1148 (1979); *Taylor v. District of Columbia Rental Accommodations Comm'n.*, App. D.C., 404 A.2d 173 (1979); *Sherman v. Commission on Licensure to Practice Healing Art*, App. D.C., 407 A.2d 595 (1979); *D.T. Corp. v. District of Columbia ABC Bd.*, App. D.C., 407 A.2d 707 (1979); *Thomas v. District of Columbia Dep't of Labor*, App. D.C., 409 A.2d 164 (1979); *Capitol Hill Restoration Soc'y, Inc. v. Moore*, App. D.C., 410 A.2d 184 (1979); *Echard v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 422 A.2d 1275 (1980); *Spivey v. Barry*, 665 F.2d 1222 (D.C. Cir. 1981); *Kea v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 429 A.2d 174 (1981); *Rzepecki v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 429 A.2d 1388 (1981); *900 G St. Assocs. v. Department of Hous. & Community Dev.*, App. D.C., 430 A.2d 1387 (1981); *District of Columbia v. Sullivan*, App. D.C., 436 A.2d 364 (1981); *Haight v. District of Columbia ABC Bd.*, App. D.C., 439 A.2d 487 (1981); *Dankman v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 443 A.2d 507 (1981); *Interstate Gen. Corp. v. District of Columbia Rental Accommodations Comm'n.*, App. D.C., 441 A.2d 252 (1982); *American Combustion, Inc. v. Minority Bus. Opportunity Comm'n.*, App. D.C., 441 A.2d 660 (1982); *Hockaday v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 443 A.2d 8 (1982); *Barber v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 449 A.2d 332 (1982); *Muir v. District of Columbia ABC Bd.*, App. D.C., 450 A.2d 412 (1982); *Donnelly v. District of Columbia ABC Bd.*, App. D.C., 452 A.2d 364 (1982); *Hobson v. District of Columbia Police & Firemen's Retirement & Relief Bd.*, App. D.C., 452 A.2d 1182 (1982); *MB Assocs. v. District of Columbia Dep't of Licenses, Investigation & Inspection*, App. D.C., 456 A.2d 344 (1982); *Williams v. Barry*, 708 F.2d 789 (D.C. Cir. 1983); *NBC v. District of Columbia Comm'n on Human Rights*, App. D.C., 463 A.2d 657 (1983); *Dunn v. District of*

Columbia Dep't of Emp. Servs., App. D.C., 467 A.2d 966 (1983); *Kirkwood v. District of Columbia Police & Firemen's Retirement & Relief Bd.*, App. D.C., 468 A.2d 965 (1983); *Brice v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 472 A.2d 406 (1984); *Bealer v. District of Columbia Rental Hous. Comm'n*, App. D.C., 472 A.2d 901 (1984); *Hager v. District of Columbia Dep't of Consumer & Regulatory Affairs*, App. D.C., 475 A.2d 367 (1984); *Wire Properties, Inc. v. District of Columbia Rental Hous. Comm'n*, App. D.C., 476 A.2d 679 (1984); *Harris v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 476 A.2d 1111, cert. denied, 469 U.S. 863, 105 S. Ct. 200, 83 L. Ed. 2d 132 (1984); *Gopstein v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 479 A.2d 1278 (1984); *Vann v. District of Columbia Bd. of Funeral Dirs. & Embalmers*, App. D.C., 480 A.2d 688 (1984); *National Black Child Dev. Inst., Inc. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 483 A.2d 687 (1984); *Proctor v. District of Columbia Rental Hous. Comm'n*, App. D.C., 484 A.2d 542 (1984); *Humbles v. District of Columbia Hackers' License Appeal Bd.*, App. D.C., 484 A.2d 586 (1984); *Rap, Inc. v. District of Columbia Comm'n on Human Rights*, App. D.C., 485 A.2d 173 (1984); *Anthony v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 485 A.2d 605 (1984); *Barnett v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 491 A.2d 1156 (1985); *Weinberg v. Barry*, 604 F. Supp. 390 (D.D.C. 1985); *George Hyman Constr. Co. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 497 A.2d 103 (1985); *Plouffe v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 497 A.2d 464 (1985); *Dell v. Department of Emp. Servs.*, App. D.C., 499 A.2d 102 (1985); *Gerber v. District of Columbia ABC Bd.*, App. D.C., 499 A.2d 1193 (1985); *Bailey v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 499 A.2d 1223 (1985); *Shaw Project Area Comm., Inc. v. District of Columbia Comm'n on Human Rights*, App. D.C., 500 A.2d 251 (1985); *McEvily v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 500 A.2d 1022 (1985); *Strand v. Frenkel*, App. D.C., 500 A.2d 1368 (1985); *Interstate Gen. Corp. v. District of Columbia Rental Hous. Comm'n*, App. D.C., 501 A.2d 1261 (1985); *Stokes v. District of Columbia*, App. D.C., 502 A.2d 1006 (1985); *Johnson v. Cumis Ins. Soc'y, Inc.*, 624 F. Supp. 1170 (D.D.C. 1986); *Robinson v. Palmer*, 631 F. Supp. 52 (D.D.C. 1986), modified, 841 F.2d 1151 (D.C. Cir. 1988); *Joyner v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 502 A.2d 1027 (1986); *Liuksila v. District of Columbia Rental Hous. Comm'n*, App. D.C., 503 A.2d 666 (1986); *Henry J. Kaufman & Assocs. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 503 A.2d 684 (1986); *Afshar v. District of Columbia Rental Hous. Comm'n*, App. D.C., 504 A.2d 1105 (1986); *Harris v. District of Columbia Rental Hous. Comm'n*,

App. D.C., 505 A.2d 66 (1986); *Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 506 A.2d 1127 (1986); *McLean v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 506 A.2d 1135 (1986); *Madison Hotel v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 512 A.2d 303 (1986); *Atlantic Richfield Co. v. District of Columbia Comm'n on Human Rights*, App. D.C., 515 A.2d 1095 (1986); *Becker v. District of Columbia Dep't of Consumer & Regulatory Affairs*, App. D.C., 518 A.2d 93 (1986); *Yirenkyi v. District of Columbia Hackers' License Appeal Bd.*, App. D.C., 520 A.2d 328 (1987); *Walsh v. District of Columbia Police & Firefighters Retirement & Relief Bd.*, App. D.C., 523 A.2d 562 (1987); *New Travel, Inc. v. District of Columbia Office of Human Rights*, App. D.C., 530 A.2d 217 (1987); *United Planning Org. v. District of Columbia Comm'n on Human Rights*, App. D.C., 530 A.2d 674 (1987); *Martin v. District of Columbia Police & Firefighters' Retirement & Relief Bd.*, App. D.C., 532 A.2d 102 (1987); *Tenley & Cleveland Park Emergency Comm. v. District of Columbia*, 115 WLR 1973 (Super. Ct. 1987); *Gilles v. Touchstone*, 676 F. Supp. 341 (D.D.C. 1987); *Franks v. Office of Employee Appeals*, App. D.C., 533 A.2d 250 (1987); *Embassy of People's Republic of Benin v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 534 A.2d 310 (1987); *Revithes v. District of Columbia Rental Hous. Comm'n*, App. D.C., 536 A.2d 1007 (1987); *White v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 537 A.2d 1133 (1988); *Nwankwo v. District of Columbia Rental Hous. Comm'n*, App. D.C., 542 A.2d 827 (1988); *Snipes v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 542 A.2d 832 (1988); *Communication Workers, Local 2336 v. District of Columbia Taxicab Comm'n*, App. D.C., 542 A.2d 1221 (1988); *Price v. District of Columbia Police & Firefighters Retirement & Relief Bd.*, App. D.C., 542 A.2d 1249 (1988); *Tenley & Cleveland Park Emergency Comm. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 550 A.2d 331 (1988), cert. denied, 489 U.S. 1082, 109 S. Ct. 1539, 103 L. Ed. 2d 843 (1989); *Randall v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 551 A.2d 90 (1988); *Lyons v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 551 A.2d 1345 (1988); *Spiegler v. District of Columbia*, 866 F.2d 461 (D.C. Cir. 1989); *Park v. District of Columbia ABC Bd.*, App. D.C., 555 A.2d 1029 (1989); *Public Employee Relations Bd. v. Washington Teachers' Union Local 6*, App. D.C., 556 A.2d 206 (1989); *Mannan v. District of Columbia Bd. of Medicine*, App. D.C., 558 A.2d 329 (1989); *Wright v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 560 A.2d 509 (1989); *Parodi v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 560 A.2d 524 (1989); *Donahue v. District of Columbia Bd. of Psychology*, App. D.C., 562 A.2d 116

(1989); *Harris v. District of Columbia Comm'n on Human Rights*, App. D.C., 562 A.2d 625 (1989); *Mason v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 562 A.2d 644 (1989); *Superior Beverages, Inc. v. District of Columbia ABC Bd.*, App. D.C., 567 A.2d 1319 (1989); *Levy v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 570 A.2d 739 (1990); *Committee of 100 v. District of Columbia Dep't of Consumer & Regulatory Affairs*, App. D.C., 571 A.2d 195 (1990); *Lyles v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 572 A.2d 81 (1990); *Beins v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 572 A.2d 122 (1990); *Edward M. Crough, Inc. v. Department of Gen. Servs.*, App. D.C., 572 A.2d 457 (1990); *Murray v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 572 A.2d 1055 (1990); *Bublis v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 575 A.2d 301 (1990); *Tenants of 738 Longfellow St., N.W. v. District of Columbia Rental Hous. Comm'n*, App. D.C., 575 A.2d 1205 (1990); *Roberts v. District of Columbia Bd. of Medicine*, App. D.C., 577 A.2d 319 (1990); *Salama v. District of Columbia Bd. of Medicine*, App. D.C., 578 A.2d 693 (1990); *Holderbaum v. District of Columbia Police & Firefighters Retirement & Relief Bd.*, App. D.C., 579 A.2d 213 (1990); *Teal v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 580 A.2d 647 (1990); *Kennedy v. Dixon*, 119 WLR 2637 (Super. Ct. 1991); *Regional Constr. Co. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 600 A.2d 1077 (1991), cert. denied, 505 U.S. 1206, 112 S. Ct. 2997, 120 L. Ed. 2d 873 (1992); *Rosexpress, Inc. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 602 A.2d 659 (1992); *Davis v. University of D.C.*, App. D.C., 603 A.2d 849 (1992); *Red Star Express v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 606 A.2d 161 (1992); *Office of People's Counsel v. Public Serv. Comm'n*, App. D.C., 610 A.2d 240 (1992); *Baugh v. District of Columbia Dep't of Con-*

*sumer & Regulatory Affairs*, App. D.C., 611 A.2d 557 (1992); *Gilles v. Ware*, App. D.C., 615 A.2d 533 (1992); *Webb v. District of Columbia Dep't of Human Servs.*, App. D.C., 618 A.2d 148 (1992); *Brandywine Ltd. Partnership v. District of Columbia Rental Hous. Comm'n*, App. D.C., 631 A.2d 415 (1993); *United States v. Board of Zoning Adjustment*, App. D.C., 644 A.2d 995 (1994); *Joel Truitt Mgt., Inc. v. District of Columbia Comm'n on Human Rights*, App. D.C., 646 A.2d 1007 (1994); *United States v. Board of Zoning Adjustment*, App. D.C., 644 A.2d 995 (1994); *Fort Chaplin Park Assocs. v. District of Columbia Rental Hous. Comm'n*, App. D.C., 649 A.2d 1076 (1994); *Breen v. District of Columbia Police & Firefighters Retirement & Relief Bd.*, App. D.C., 659 A.2d 1257 (1995); *Hotel Tabard Inn v. District of Columbia Zoning Comm'n*, App. D.C., 661 A.2d 150 (1995); *Abdullah v. Roach*, App. D.C., 668 A.2d 801 (1995); *Walton v. District of Columbia*, App. D.C., 670 A.2d 1346 (1996); *Washington Post v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 675 A.2d 37 (1996); *Reneau v. District of Columbia*, App. D.C., 676 A.2d 913 (1996); *Harrison v. Children's Nat'l Medical Ctr.*, App. D.C., 678 A.2d 572 (1996); *Hively v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 681 A.2d 1158 (1996); *Robinson v. Smith*, App. D.C., 683 A.2d 481 (1996); *McKinley v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 696 A.2d 1377 (1997); *Kolson v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 699 A.2d 357 (1997); *Jimenez v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 701 A.2d 837 (1997); *Wahlne v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 704 A.2d 1196 (1997); *Braddock v. Smith*, App. D.C., 711 A.2d 835 (1998); *Washington Hosp. Ctr. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 712 A.2d 1018 (1998); *Jackson v. District of Columbia Police & Firefighters Retirement & Relief Bd.*, App. D.C., 717 A.2d 904 (1998).

## § 1-1511. Interpreters for the deaf.

Repealed.

(Oct. 21, 1968, 82 Stat. 1209, Pub. L. 90-614, § 12; Feb. 11, 1982, D.C. Law 4-67, § 2(b), 28 DCR 5043; Jan. 28, 1988, D.C. Law 7-62, § 14(b), 34 DCR 7426.)

**Legislative history of Law 7-62.** — See note to § 1-1509.

## *Subchapter II. Freedom of Information.*

### **§ 1-1521. Public policy.**

Generally the public policy of the District of Columbia is that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. To that end, provisions of this subchapter shall be construed with the view toward expansion of public access and the minimization of costs and time delays to persons requesting information. (Oct. 21, 1968, Pub. L. 90-614, title II, § 201; 1973 Ed., § 1-1521; Mar. 29, 1977, D.C. Law 1-96, § 2, 23 DCR 9532b.)

**Section references.** — This section is referred to in §§ 1-785.5, 4-920, 28-4505, and 47-391.8.

**Legislative history of Law 1-96.** — Law 1-96 was introduced in Council and assigned Bill No. 1-119, which was referred to the Committee on the Judiciary and the Committee on Criminal Law. The Bill was adopted on first and second readings on September 15, 1976 and October 12, 1976, respectively. Signed by the Mayor on November 19, 1976, it was assigned Act No. 1-178 and transmitted to both Houses of Congress for its review.

**Delegation of authority under D.C. Law 1-96, the "Freedom of Information Act of 1976."** — See Mayor's Order 91-36, March 7, 1991.

**Free Flow of Information Act of 1992.** — See §§ 16-4701 to 16-4704.

**Freedom of Information Act patterned after federal Act.** — Provisions of the District of Columbia Freedom of Information Act are patterned after, and many substantially parallel, those contained in the federal Freedom of Information Act, 5 U.S.C. § 552(b). *Dunhill v. Director, D.C. Dep't of Transp.*, App. D.C., 416 A.2d 244 (1980).

**Files of Executive Office of Mayor** generally are not protected from disclosure under any exemption of this chapter. *Washington Post Co. v. Barry*, 115 WLR 2249 (Super. Ct. 1987).

**Mayor's ceremonial funds.** — Documents related to the expenses of the Mayor from the discretionary and ceremonial funds are public records and are not exempt from production under D.C. Freedom of Information Act (FOIA). *Washington Post Co. v. Barry*, 115 WLR 2249 (Super. Ct. 1987).

**Mayor's security personnel.** — Mayor has certain privacy interests regarding security personnel assigned to the Mayor and, in producing the records related to the expenses for the Mayor's security, appropriate steps shall be taken so as not to disclose the names, addresses, telephone numbers or other identify-

ing information regarding security personnel which may appear in the documents produced. *Washington Post Co. v. Barry*, 115 WLR 2249 (Super. Ct. 1987).

**Policy favors disclosure of information.** — The general policy underlying the District of Columbia Freedom of Information Act favors the disclosure of information about governmental affairs and the acts of public officials, and includes a narrow reading of exemptions from disclosure. *Dunhill v. Director, D.C. Dep't of Transp.*, App. D.C., 416 A.2d 244 (1980).

The Freedom of Information Act, like its federal counterpart, is designed to promote the disclosure of information, not to inhibit it; it was designed to pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, App. D.C., 560 A.2d 517 (1989).

**Use as private discovery tool.** — The basic purpose of the Freedom of Information Act was to ensure an informed citizenry, vital to the functioning of a democratic society, and the act was not intended to function as a private discovery tool. Accordingly, salutary legislation enacted in the public interest is not to be converted into a vehicle for commercial espionage. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, App. D.C., 560 A.2d 517 (1989).

**Relevant documents disclosed.** — Department of Finance and Revenue supplied plaintiff with all the relevant documents that existed. *Donahue v. Thomas*, App. D.C., 618 A.2d 601 (1992).

**Cited in** *M.B.E., Inc. v. Minority Bus. Opportunity Comm'n*, App. D.C., 485 A.2d 152 (1984); *Belth v. Department of Consumer & Regulatory Affairs*, 115 WLR 2281 (Super. Ct. 1987); *Newspapers, Inc. v. Metropolitan Police Dep't*, App. D.C., 546 A.2d 990 (1988); *Wolf v. Regardie*, App. D.C., 553 A.2d 1213 (1989); *McReady v. Department of Consumer & Regulatory Affairs*, App. D.C., 618 A.2d 609 (1992).

**§ 1-1522. Right of access to public records; allowable costs; time limits.**

(a) Any person has a right to inspect, and at his or her discretion, to copy any public record of the Mayor or an agency, except as otherwise expressly provided by § 1-1524, in accordance with reasonable rules that shall be issued by the Mayor or an agency after notice and comment, concerning the time and place of access.

(b) The Mayor or an agency may establish and collect fees not to exceed the actual cost of searching for or making copies of records, but in no instance shall the total fee for searching exceed \$10 for each request. For purposes of this subsection, "request" means a single demand for any number of documents made at 1 time to an individual agency. Documents may be furnished without charge or at a reduced charge where the Mayor or agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Notwithstanding the foregoing, fees shall not be charged for examination and review by the Mayor or an agency to determine if such documents are subject to disclosure.

(c) The Mayor or an agency, upon request reasonably describing any public record, shall within 10 days (except Saturdays, Sundays, and legal public holidays) of the receipt of any such request either make the requested public record accessible or notify the person making such request of its determination not to make the requested public record or any part thereof accessible and the reasons therefor.

(d) In unusual circumstances, the time limit prescribed in subsection (c) of this section may be extended by written notice to the person making such request setting forth the reasons for extension and expected date for determination. Such extension shall not exceed 10 days (except Saturdays, Sundays, and legal public holidays). For purposes of this subsection, and only to the extent necessary for processing of the particular request, "unusual circumstances" are limited to:

(1) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(2) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among 2 or more components of the agency having substantial subject-matter interest therein.

(e) Any failure on the part of the Mayor or an agency to comply with a request under subsection (a) of this section within the time provisions of subsections (c) and (d) of this section shall be deemed a denial of the request, and the person making such request shall be deemed to have exhausted his administrative remedies with respect to such request, unless such person chooses to petition the Mayor pursuant to § 1-1527 to review the deemed denial of the request. (Oct. 21, 1968, Pub. L. 90-614, title II, § 202; 1973 Ed., § 1-1522; Mar. 29, 1977, D.C. Law 1-96, § 2, 23 DCR 9532b.)

**Section references.** — This section is referred to in §§ 1-1527, 1-1528, and 47-391.8.

**Legislative history of Law 1-96.** — See note to § 1-1521.

**Insurance Regulatory Information System reports.** — Possession and ownership indicates that Insurance Regulatory Information System reports are within the exclusive control of the D.C. Department of Consumer and Regulatory Affairs and are, therefore, "agency records" within the meaning of this

section and are subject to the presumption of disclosure. *Belth v. Department of Consumer & Regulatory Affairs*, 115 WLR 2281 (Super. Ct. 1987).

**Cited in** *Washington Post Co. v. Barry*, 115 WLR 2249 (Super. Ct. 1987); *Newspapers, Inc. v. Metropolitan Police Dep't*, App. D.C., 546 A.2d 990 (1988); *Hines v. District of Columbia Bd. of Parole*, App. D.C., 567 A.2d 909 (1989); *Donahue v. Thomas*, App. D.C., 618 A.2d 601 (1992).

## § 1-1523. Letters of denial.

(a) Denial by the Mayor or an agency of a request for any public record shall contain at least the following:

(1) The specific reasons for the denial, including citations to the particular exemption(s) under § 1-1524 relied on as authority for the denial;

(2) The name(s) of the public official(s) or employee(s) responsible for the decision to deny the request; and

(3) Notification to the requester of any administrative or judicial right to appeal under § 1-1527.

(b) The Mayor and each agency of the District of Columbia shall maintain a file of all letters of denial of requests for public records. This file shall be made available to any person on request for purposes of inspection and/or copying. (Oct. 21, 1968, Pub. L. 90-614, title II, § 203; 1973 Ed., § 1-1523; Mar. 29, 1977, D.C. Law 1-96, § 2, 23 DCR 9532b.)

**Section references.** — This section is referred to in § 47-391.8.

**Legislative history of Law 1-96.** — See note to § 1-1521.

## § 1-1524. Exemptions from disclosure.

(a) The following matters may be exempt from disclosure under the provisions of this subchapter:

(1) Trade secrets and commercial or financial information obtained from outside the government, to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained;

(2) Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy;

(3) Investigatory records compiled for law-enforcement purposes, but only to the extent that the production of such records would:

(A) Interfere with enforcement proceedings;

(B) Deprive a person of a right to a fair trial or an impartial adjudication;

(C) Constitute an unwarranted invasion of personal privacy;

(D) Disclose the identity of a confidential source and, in the case of a record compiled by a law-enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;



(E) Disclose investigative techniques and procedures not generally known outside the government;

(F) Endanger the life or physical safety of law-enforcement personnel;

(4) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(5) Test questions and answers to be used in future license, employment, or academic examinations, but not previously administered examinations or answers to questions thereon;

(6) Information specifically exempted from disclosure by statute (other than this section), provided that such statute:

(A) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(B) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(7) Information specifically authorized by federal law under criteria established by a presidential executive order to be kept secret in the interest of national defense or foreign policy which is in fact properly classified pursuant to such executive order;

(8) Information exempted from disclosure by § 28-4505; and

(9) Information disclosed pursuant to § 4-317.

(b) Any reasonably segregable portion of a public record shall be provided to any person requesting such record after deletion of those portions which may be withheld from disclosure under subsection (a) of this section.

(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from the Council of the District of Columbia. This section shall not operate to permit nondisclosure of information of which disclosure is authorized or mandated by other law.

(d) The provisions of this subchapter shall not apply to the Vital Records Act of 1981. (Oct. 21, 1968, Pub. L. 90-614, title II, § 204; 1973 Ed., § 1-1524; Mar. 29, 1977, D.C. Law 1-96, § 2, 23 DCR 9532b; Mar. 5, 1981, D.C. Law 3-169, § 3(c), 27 DCR 5368; Oct. 8, 1981, D.C. Law 4-34, § 29(i), 28 DCR 3271; June 19, 1982, D.C. Law 4-119, § 2(f), 29 DCR 1952.)

**Section references.** — This section is referred to in §§ 1-1522, 1-1523, 1-1527, 1-1528, 6-737, 6-959, and 47-391.8.

**Legislative history of Law 1-96.** — See note to § 1-1521.

**Legislative history of Law 3-169.** — Law 3-169 was introduced in Council and assigned Bill No. 3-107, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 28, 1980 and November 12, 1980, respectively. Signed by the Mayor on November 25, 1980, it was assigned Act No. 3-300 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 4-34.** — Law 4-34 was introduced in Council and assigned Bill No. 4-161, which was referred to the Com-

mittee on Human Services. The Bill was adopted on first and second readings on June 16, 1981, and June 30, 1981, respectively. Signed by the Mayor on July 20, 1981, it was assigned Act No. 4-58 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 4-119.** — Law 4-119 was introduced in Council and assigned Bill No. 4-135, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 23, 1982, and April 6, 1982, respectively. Signed by the Mayor on May 4, 1982, it was assigned Act No. 4-182 and transmitted to both Houses of Congress for its review.

**References in text.** — The "Vital Records

Act of 1981", referred to in subsection (d), is D.C. Law 4-34.

**Construction.** — Just as the provisions of the act giving citizens the right of access are to be generously construed, so the nine statutory exemptions must be approached with a jaundiced eye. Indeed, these exemptions are to be narrowly construed, with ambiguities resolved in favor of disclosure. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, App. D.C., 560 A.2d 517 (1989).

**Policy favors disclosure of information.** — The general policy underlying the District of Columbia Freedom of Information Act favors disclosure of information about governmental affairs and the acts of public officials, including a narrow reading of exemptions from disclosure. *Dunhill v. Director, D.C. Dep't of Transp.*, App. D.C., 416 A.2d 244 (1980); *Newspapers, Inc. v. Metropolitan Police Dep't*, App. D.C., 546 A.2d 990 (1988).

**Subsection (a)(1) differs from the corresponding provision in the federal Freedom of Information Act**, which exempts "trade secrets and commercial or financial information obtained from a person and privileged or confidential." *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, App. D.C., 560 A.2d 517 (1989).

**Subsection (a)(2) does not prevent disclosure where subsection (c) applies.** — Although it is true that paragraph (2) of subsection (a) of this section expressly exempts from disclosure certain "[i]nformation of a personal nature," this exemption, as well as the others in subsection (a), may not be invoked to prevent disclosure when subsection (c) of this section applies. *Dunhill v. Director, D.C. Dep't of Transp.*, App. D.C., 416 A.2d 244 (1980).

Where the information sought is available without limitation under a District of Columbia regulation, disclosure is "authorized or mandated by other law" under subsection (c) of this section, and the Department of Transportation cannot deny disclosure based on paragraph (2) of subsection (a). *Dunhill v. Director, D.C. Dep't of Transp.*, App. D.C., 416 A.2d 244 (1980).

**Ordinance not a statute under subsection (a)(6).** — The Duncan Ordinance, which provides that unexpurgated adult arrest records can only be obtained by law enforcement agents for legitimate law enforcement purposes, is not a statute within the meaning of subsection (a)(6) of this section; thus, although the Duncan Ordinance continues to have the full force and effect of law, it is not a statute authorizing the Metropolitan Police Department to withhold the disclosure of arrest records otherwise available under the FOIA. *Newspapers, Inc. v. Metropolitan Police Dep't*, App. D.C., 546 A.2d 990 (1988).

**Voluntary, nonprofit organization** can suffer no competitive injury or economic harm

and therefore may not claim protection from disclosure under subsection (a)(1). *Belth v. Department of Consumer & Regulatory Affairs*, 115 WLR 2281 (Super. Ct. 1987).

**Application of subsection (a)(3).** — Subsection (a)(3) is designed to protect a governmental interest and applies only to documents which have been compiled for investigation of specific, suspected violations of law, and not to documents generated in the routine administration, surveillance or oversight of governmental programs. *Belth v. Department of Consumer & Regulatory Affairs*, 115 WLR 2281 (Super. Ct. 1987).

**Mayor's security expenses.** — Documents relating to expenses for the Mayor's security were not exempt from disclosure as investigatory records compiled for law enforcement purposes. *Barry v. Washington Post Co.*, App. D.C., 529 A.2d 319 (1987).

**Inter-agency or intra-agency memorandums.** — Independently initiated, prepared and funded reports of a private organization which are not generated, initiated, solicited, contracted for, paid for, or supervised by a government agency or whose ultimate contents are not controlled by such agency, but which are used by such agency as the basis for important public policy decisions are not "inter-agency" or "intra-agency" memorandums immunized from disclosure under subsection (a)(4). *Belth v. Department of Consumer & Regulatory Affairs*, 115 WLR 2281 (Super. Ct. 1987).

**Mayor's ceremonial funds.** — Documents relating to the discretionary and ceremonial funds for the Mayor were not exempt under subsection (a)(6) of this section since the statutes authorizing the discretionary and ceremonial funds, §§ 1-355 and 1-356, do not specifically exempt anything from disclosure. *Barry v. Washington Post Co.*, App. D.C., 529 A.2d 319 (1987).

**Burden of proof.** — One who seeks to invoke one of these exemptions must prove that it applies; the burden is on the agency to sustain its action. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, App. D.C., 560 A.2d 517 (1989).

**Trade secrets, etc.** — The party seeking to invoke the paragraph (a)(1) exemption must show that: (1) the party from whom the information was obtained faces actual competition, and (2) disclosure will cause substantial competitive injury. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, App. D.C., 560 A.2d 517 (1989).

**Inmate records.** — Pre-sentence reports, mental health assessments, academic records, and records concerning inmates' institutional adjustment and progress are exempt from disclosure under this section. *Hines v. District of Columbia Bd. of Parole*, App. D.C., 567 A.2d 909 (1989).

Public disclosure of psychological reports forwarded to the Board of Parole by the Department of Corrections is prohibited under the District of Columbia Mental Health Information Act, § 6-2001 et seq. *Hines v. District of Columbia Bd. of Parole*, App. D.C., 567 A.2d 909 (1989).

**Production of non-exempt materials.** — In the sensitive area of national security information, an agency must produce any reasonably segregable non-exempt parts of classified documents. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, App. D.C., 560 A.2d 517 (1989).

**Requirements on appellate review.** — Appellate courts are ill-equipped to conduct

their own investigation into the validity of specific claims of exemption, and the trial judge should therefore articulate the precise relationship between each such claim and the contents of specific documents held to be exempt. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, App. D.C., 560 A.2d 517 (1989).

**Cited in** *Washington Post Co. v. Barry*, 115 WLR 2249 (Super. Ct. 1987); *Marrow v. United States*, App. D.C., 592 A.2d 1042 (1991); *McReady v. Department of Consumer & Regulatory Affairs*, App. D.C., 618 A.2d 609 (1992); *Anderson v. Thomas*, App. D.C., 683 A.2d 156 (1996).

## § 1-1525. Recording of final votes.

Each agency having more than 1 member shall maintain and make available for public inspection a record of the final votes of each member in each proceeding of that agency. (Oct. 21, 1968, Pub. L. 90-614, title II, § 205; 1973 Ed., § 1-1525; Mar. 29, 1977, D.C. Law 1-96, § 2, 23 DCR 9532b.)

**Section references.** — This section is referred to in § 47-391.8.

**Legislative history of Law 1-96.** — See note to § 1-1521.

## § 1-1526. Information required to be made public.

Without limiting the meaning of other sections of this subchapter, the following categories of information are specifically made public information:

- (1) The names, salaries, title, and dates of employment of all employees and officers of the Mayor and an agency;
- (2) Administrative staff manuals and instructions to staff that affect a member of the public;
- (3) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;
- (4) Those statements of policy and interpretations of policy, acts, and rules which have been adopted by the Mayor or an agency;
- (5) Correspondence and materials referred to therein, by and with the Mayor or an agency, relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or states an opinion upon, or is asked to determine or state an opinion upon, the rights of the District, the public, or any private party;
- (6) Information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies;
- (7) The minutes of all proceedings of all agencies; and
- (8) All names and mailing addresses of absentee real property owners and their agents. "Absentee real property owners" means owners of real property located in the District that do not reside at the real property. (Oct. 21, 1968, Pub. L. 90-614, title II, § 206; 1973 Ed., § 1-1526; Mar. 29, 1977, D.C. Law 1-96, § 2, 23 DCR 9532b; Mar. 17, 1993, D.C. Law 9-241, § 9, 40 DCR 629.)

**Section references.** — This section is referred to in § 47-391.8.

**Legislative history of Law 1-96.** — See note to § 1-1521.

**Legislative history of Law 9-241.** — Law 9-241, the "Real Property Tax Assessment Appeal Process Revision Amendment Act of 1992," was introduced in Council and assigned Bill

No. 9-199, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on January 5, 1993, it was assigned Act No. 9-375 and transmitted to both Houses of Congress for its review. D.C. Law 9-241 became effective on March 17, 1993.

## § 1-1527. Administrative appeals.

(a) Any person denied the right to inspect a public record of a public body may petition the Mayor to review the public record to determine whether it may be withheld from public inspection. Such determination shall be made in writing with a statement of reasons therefor in writing within 10 days (excluding Saturdays, Sundays, and legal holidays) of the submission of the petition.

(1) If the Mayor denies the petition or does not make a determination within the time limits provided in this subsection, or if a person is deemed to have exhausted his or her administrative remedies pursuant to subsection (e) of § 1-1522, the person seeking disclosure may institute proceedings for injunctive or declaratory relief in the Superior Court for the District of Columbia.

(2) If the Mayor decides that the public record may not be withheld, he shall order the public body to disclose the record immediately. If the public body continues to withhold the record, the person seeking disclosure may bring suit in the Superior Court for the District of Columbia to enjoin the public body from withholding the record and to compel the production of the requested record.

(b) In any suit filed under subsection (a) of this section, the Superior Court for the District of Columbia may enjoin the public body from withholding records and order the production of any records improperly withheld from the person seeking disclosure. The burden is on the Mayor or the agency to sustain its action. In such cases the court shall determine the matter de novo, and may examine the contents of such records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in § 1-1524.

(c) If a person seeking the right to inspect or to receive a copy of a public record prevails in whole or in part in such suit, he or she may be awarded reasonable attorney fees and other costs of litigation. (Oct. 21, 1968, Pub. L. 90-614, title II, § 207; 1973 Ed., § 1-1527; Mar. 29, 1977, D.C. Law 1-96, § 2, 23 DCR 9532b.)

**Section references.** — This section is referred to in §§ 1-1522, 1-1523, and 1-1528.

**Legislative history of Law 1-96.** — See note to § 1-1521.

**Redelegation of Authority Under D.C. Law 1-96, the Freedom of Information Act of 1976; Rescission of Mayor's Order 87-6.** — See Mayor's Order 89-188, August 30, 1989.

**Delegation of Authority — Secretary of**

**the District of Columbia.** — See Mayor's Order 95-26, January 27, 1995.

**Delegation of Authority — Office of the Secretary.** — See Mayor's Order 97-87, May 6, 1997 (44 DCR 2958).

**Jurisdiction in Superior Court, not federal court.** — Where party's request for information had been denied by the Police Department, and his appeal to the Mayor's office was

dismissed, dismissal of his subsequent action in the Superior Court upon conclusion that the action should have been filed in federal court was error in that this section requires that once administrative remedies are exhausted, a person seeking disclosure may institute proceeding in the Superior Court. *Anderson v. Thomas*, App. D.C., 683 A.2d 156 (1996).

**An attorney-client relationship is a prerequisite to an award of attorney's fees** under subsection (c). *Donahue v. Thomas*, App. D.C., 618 A.2d 601 (1992).

**Pro se nonattorney cannot recover attorney's fees.** — A pro se nonattorney plaintiff, although statutorily eligible for a discretionary award of costs, cannot recover attorney's fees pursuant to this section. *Donahue v. Thomas*,

App. D.C., 618 A.2d 601 (1992); *McReady v. Department of Consumer & Regulatory Affairs*, App. D.C., 618 A.2d 609 (1992).

**Plaintiff not entitled to costs.** — Where the documents in question were released pursuant to a new Freedom of Information Act request unrelated to the action in court, plaintiff did not "prevail" in the matter and was not entitled to receive costs related to those documents. *McReady v. Department of Consumer & Regulatory Affairs*, App. D.C., 618 A.2d 609 (1992).

**Cited in** *Dunhill v. Director, D.C. Dep't of Transp.*, App. D.C., 416 A.2d 244 (1980); *Hines v. District of Columbia Bd. of Parole*, App. D.C., 567 A.2d 909 (1989).

## § 1-1528. Oversight of disclosure activities.

On or before the 30th day of June of each calendar year, the Mayor shall compile and submit to the Council of the District of Columbia a report covering the public-record-disclosure activities of each agency and of the executive branch as a whole during the preceding calendar year. The report shall include:

(1) The number of determinations made by each agency not to comply with requests for records made to such agency under this subchapter and the reasons for each such determination;

(2) The number of appeals made by persons under § 1-1527(a), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) The names and titles or positions of each person responsible for the denial of records requested under this subchapter, and the number of instances of participation for each such person;

(4) A copy of the fee schedule and the total amount of fees collected by each agency for making records available under this subchapter;

(5) Such other information as indicates efforts to administer fully this subchapter; and

(6) For the prior calendar year, a listing of the total number of cases arising under this subchapter, the total number of cases in which a request was denied in whole or in part, the total number of times in which each exemption provided under § 1-1524 was cited as a reason for denial of a request, and the total amount of fees collected under § 1-1522(b). Such report shall also include a description of the efforts undertaken by the Mayor to encourage agency compliance with this subchapter. (Oct. 21, 1968, Pub. L. 90-614, title II, § 208; 1973 Ed., § 1-1528; Mar. 29, 1977, D.C. Law 1-96, § 2, 23 DCR 9532b.)

**Legislative history of Law 1-96.** — See note to § 1-1521.

## § 1-1529. Definitions.

For purposes of this subchapter, the terms "Mayor," "Council," "District," "agency," "rule," "rulemaking," "person," "party," "order," "relief," "proceeding,"

"public record," and "adjudication" shall have the meaning as provided in § 1-1502. (Oct. 21, 1968, Pub. L. 90-614, title II, § 209; 1973 Ed., § 1-1529; Mar. 29, 1977, D.C. Law 1-96, § 2, 23 DCR 9532b.)

**Legislative history of Law 1-96.** — See note to § 1-1521.

### *Subchapter III. Legal Publication.*

## **§ 1-1531. Definitions.**

For purposes of this subchapter:

(1) The terms "Mayor," "Council," "District," "agency," "rule," "rulemaking," "person," "licensing," and "regulation" (except when used in the term "District of Columbia Municipal Regulation") shall have the meaning provided in § 1-1502.

(2) The terms "Commissioner," "District of Columbia Council," "Chairman," "act," and "District of Columbia courts" shall have the meaning provided in § 1-202.

(3) The term "Administrator" means the person appointed by the Mayor to supervise and control the District of Columbia Office of Documents in accordance with § 1-1611.

(4) The phrase "D.C. Code" means the Code of the District of Columbia laws as provided for in Chapter 3 of Act of July 30, 1947 (61 Stat. 636) and any continuations, supplements, or revisions thereof authorized by act, congressional resolution, or act.

(5) The phrase "document having general applicability and legal effect" means any document issued under lawful authority prescribing a sanction or course of conduct, conferring a right, privilege, authority, or immunity or imposing an obligation, and applicable to the general public, members of a class or persons in a locality, as distinguished from named individuals or organizations. The phrase "document having general applicability and legal effect" does not include any act to be codified in the D.C. Code or a personnel manual or internal staff directive solely applicable to employees or agents of the District of Columbia. (1973 Ed., § 1-1531; Mar. 6, 1979, D.C. Law 2-153, § 4(301), 25 DCR 6960.)

**Cross references.** — As to public records management, see Chapter 29 of this title.

Cited in *In re O.M.*, 117 WLR 1253 (Super. Ct. 1989).

**Legislative history of Law 2-153.** — See note to § 1-1505.

## **§ 1-1532. District of Columbia Municipal Regulations.**

(a) The District of Columbia Office of Documents, established pursuant to § 1-1611, shall supervise, manage, and direct the preparation, editing, publishing, and supplementation of an official legal compilation entitled the District of Columbia Municipal Regulations (DCMR). The District of Columbia Municipal Regulations shall be published in a manner to promote efficient public access to all current District of Columbia rules and regulations.

(b) Except as otherwise provided by law, the following documents shall be accurately compiled in the District of Columbia Municipal Regulations:

(1) Every rule, regulation, and document having general applicability and legal effect adopted by the Commissioner, the Mayor, the District of Columbia Council, and each agency;

(2) Every act of the Council which is not codified or to be codified in the D.C. Code and which is not enacted in emergency circumstances as provided in § 1-229;

(3) Every rule, regulation, and document having general applicability and legal effect which is adopted under authority of law by a board, commission, or instrumentality of the District of Columbia: Provided, that nothing in this paragraph shall be construed to apply to the District of Columbia courts; and

(4) Any document which the Council by resolution finds to be a document having general applicability and legal effect and which the Council by resolution orders to be printed.

(c) The District of Columbia Municipal Regulations shall contain the entire text of each document to be compiled under this section without any incorporation by reference unless:

(1) The publication of the document would be impractical due to its unusual lengthiness;

(2) The document is not itself a rule, regulation, or document having general applicability and legal effect but is incorporated by reference in a rule, regulation, or document having general applicability and legal effect;

(3) A copy of the document incorporated by reference is available to the public at every public library branch in the District of Columbia and at the relevant agency headquarters; and

(4) The incorporation by reference includes a specific indication of how and where a copy of such document may be inspected and obtained.

(d) The Administrator shall ensure that the District of Columbia Municipal Regulations shall contain the following research aids:

(1) A citation or historical note to the original rule or act from which each section in the District of Columbia Municipal Regulations was derived;

(2) A reference to where the original form of each rule, act, or document contained in the District of Columbia Municipal Regulations can be inspected or copied;

(3) Parallel reference tables indexing the sections of the District of Columbia Municipal Regulations to enabling legislation and other provisions of law which the District of Columbia Municipal Regulations implements;

(4) Major parts organized according to subject-matter headings with subdivisions thereof organized according to government agency titles; and

(5) A comprehensive index relating sections of the District of Columbia Municipal Regulations to subject-matter topics and to the organizational units of government.

(e) The Administrator may prepare (or procure by contract in accordance with applicable law) and include in the District of Columbia Municipal Regulations annotations of judicial decisions, and other explanatory material relating to any document published in the District of Columbia Municipal Regulations.

(f) Each complete edition of the entire District of Columbia Municipal Regulations may be published in segments if it is deemed to be expeditious in the judgment of the Administrator. (1973 Ed., § 1-1532; Mar. 6, 1979, D.C. Law 2-153, § 4(302), 25 DCR 6960.)

**Section references.** — This section is referred to in § 1-1535

**Legislative history of Law 2-153.** — See note to § 1-1505.

**Due process.** — The demands of due process were satisfied where the challenged regulation was duly published and adopted in compliance with the notice and comment procedures of § 1-1506, and subsequently published in final

form in compliance with this section. *Flores v. District of Columbia Rental Hous. Comm'n*, App. D.C., 547 A.2d 1000 (1988), cert. denied, 490 U.S. 1081, 109 S. Ct. 2103, 104 L. Ed. 2d 664 (1989).

**Cited in** *Draude v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 527 A.2d 1242 (1987).

### § 1-1533. District of Columbia Register.

(a) The District of Columbia Office of Documents shall also supervise, manage, and direct the preparation, editing, and publishing of the District of Columbia Register which shall serve as the only official legal bulletin in the District of Columbia government and the temporary supplement of the District of Columbia Municipal Regulations.

(b) The District of Columbia Register shall contain the entire text of the following:

(1) Every rule, regulation, and document having general applicability and legal effect required to be but not yet published and integrated in the District of Columbia Municipal Regulations as provided in this subchapter;

(2) Every notice of public hearing issued by an agency;

(3) Every notice of proposed agency rulemaking or repeal and every other document required to be published under the District of Columbia Administrative Procedure Act (D.C. Code § 1-1501 et seq.); and

(4) Every act, resolution, and notice of the Council and any other document requested to be published by the Chairman of the Council or his or her designee.

(c) The Administrator is authorized to publish in the District of Columbia Register:

(1) Any document requested to be published by the Joint Committee on Judicial Administration in the District of Columbia;

(2) Information on changes in the organization of the District of Columbia government;

(3) Notices of public hearings not published under authority of subsection (b) of this section; and

(4) Such other matters as the Mayor may from time to time determine to be of general public interest.

(d) The Administrator may exercise the discretion of omitting from the District of Columbia Register the publication of the entire text of a document if:

(1) Such publication would be unduly cumbersome or expensive; and

(2) If, in lieu of such publication, there is included in the District of Columbia Register a notice stating the general subject matter of any document



so omitted and the specific manner in which a copy of such document may be obtained.

(e) If the text of an adopted act or rule is the same as the text of the previously published proposed act or rule, the Administrator may insert in the District of Columbia Register a notation to this effect, giving the publication date of and citation to the District of Columbia Register issue containing the proposed act or rule.

(f) If, after a proposed rule has been published initially in the District of Columbia Register, an agency decides to alter the initial text so that the proposed rule is substantially different from the initial text, the agency shall submit the altered text as though for initial publication. The alterations shall be indicated by the use of symbols determined by the Administrator.

(g) The District of Columbia Register shall be published on at least each Friday, or, if Friday is a legal holiday, on the next working day. Each year the Administrator shall publish quarterly a cumulative index of all matters published in the District of Columbia Register during the year.

(h) On each document published in the District of Columbia Register there shall appear the date upon which such document was filed with the Administrator pursuant to § 1-1534. On each issue of the District of Columbia Register there shall appear on its cover the actual date such issue was generally circulated to the public for review and comment: Provided, that should the District of Columbia Register be generally circulated after the cover date shown, a notice stating the correct date shall be attached thereto. All time computations based upon publication in the District of Columbia Register shall commence from the cover date, or, if corrected, the date of notice thereof. The provisions of this subsection shall apply to any and all supplemental editions to the District of Columbia Register. (1973 Ed., § 1-1533; Mar. 6, 1979, D.C. Law 2-153, § 4(303), 25 DCR 6960.)

**Legislative history of Law 2-153.** — See note to § 1-1505.

## **§ 1-1534. Documents to be filed in the District of Columbia Office of Documents.**

Any document required or authorized to be published in the District of Columbia Municipal Regulations or the District of Columbia Register shall be filed with the District of Columbia Office of Documents. If a document has been published pursuant to subchapter I of this chapter and forwarded to the Office of the Secretariat prior to March 6, 1979, such document need not be filed with the District of Columbia Office of Documents, unless the Administrator otherwise notifies the person responsible for filing the document. (1973 Ed., § 1-1534; Mar. 6, 1979, D.C. Law 2-153, § 4(304), 25 DCR 6960.)

**Section references.** — This section is referred to in §§ 1-1533 and 1-1536.

**Legislative history of Law 2-153.** — See note to § 1-1505.

**§ 1-1535. Permanent supplements to the District of Columbia Municipal Regulations.**

At least once each year, every document required to be compiled pursuant to § 1-1532 shall be permanently integrated into the District of Columbia Municipal Regulations by publication of loose-leaf pages or other appropriate permanent supplements of the District of Columbia Municipal Regulations. The index of the DCMR shall be similarly supplemented or reissued. (1973 Ed., § 1-1535; Mar. 6, 1979, D.C. Law 2-153, § 4(305), 25 DCR 6960.)

**Legislative history of Law 2-153.** — See note to § 1-1505.

**§ 1-1536. Documents to be filed with Administrator.**

Except as provided in § 1-1534, 2 copies of any document to be published pursuant to this subchapter shall be filed with the Administrator. The Administrator shall immediately review filed documents to determine their conformity to the provisions of this subchapter and to editorial standards promulgated by the Administrator. Upon the Administrator's determination of a document's conformity with this section, 1 copy of each document shall be prepared for publication and 1 copy kept for permanent historic preservation. (1973 Ed., § 1-1536; Mar. 6, 1979, D.C. Law 2-153, § 4(306), 25 DCR 6960.)

**Legislative history of Law 2-153.** — See note to § 1-1505.

**§ 1-1537. Publication, specifications, and distribution of the District of Columbia Municipal Regulations.**

(a) The District of Columbia Municipal Regulations and its permanent supplements shall be published pursuant to typographical and contractual arrangements which ensure that the District of Columbia Municipal Regulations can be purchased at a reasonable cost in its entirety or in portions of related rules, regulations, or documents having general applicability and legal effect.

(b) Copies of the District of Columbia Municipal Regulations shall be available to the public at each regular branch of the District of Columbia library system and to each Advisory Neighborhood Commission established by the Council. (1973 Ed., § 1-1537; Mar. 6, 1979, D.C. Law 2-153, § 4(307), 25 DCR 6960.)

**Legislative history of Law 2-153.** — See note to § 1-1505.

**§ 1-1538. Legal effectiveness of documents.**

(a) Notwithstanding any other provision of this subchapter, any rule, regulation, or document having general applicability and legal effect which has

been adopted or enacted by the Commissioner, the Mayor, the District of Columbia Council, an agency, or other instrumentality of the District before March 6, 1979, and which is not published in the District of Columbia Municipal Regulations on or before June 30, 1984, shall not be in effect thereafter.

(b) Except in the case of emergency rules or acts, no rule or document of general applicability and legal effect adopted or enacted on or after March 6, 1979, shall become effective until after its publication in the District of Columbia Register, nor shall such rule or document of general applicability and legal effect become effective if it is required by law, other than subchapter I of this chapter or this subchapter, to be otherwise published, until such rule or document of general applicability and legal effect is also published as required by such law. (1973 Ed., § 1-1538; Mar. 6, 1979, D.C. Law 2-153, § 4(308), 25 DCR 6960; July 1, 1980, D.C. Law 3-75, § 2, 27 DCR 2277; Oct. 17, 1981, D.C. Law 4-41, § 2, 28 DCR 3423; May 20, 1983, D.C. Law 5-10, § 2, 30 DCR 1793; Aug. 2, 1983, D.C. Law 5-22, § 2, 30 DCR 3337.)

**Legislative history of Law 2-153.** — See note to § 1-1505.

**Legislative history of Law 3-75.** — Law 3-75 was introduced in Council and assigned Bill No. 3-253, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on April 22, 1980 and May 6, 1980, respectively. Signed by the Mayor on May 14, 1980, it was assigned Act No. 3-184 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 4-41.** — Law 4-41 was introduced in Council and assigned Bill No. 4-266, which was referred to the Committee on Government Operations and the Committee on the Judiciary. The Bill was adopted on first and second readings on July 1, 1981 and July 14, 1981, respectively. Signed by the Mayor on July 23, 1981, it was assigned Act No. 4-70 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 5-10.** — Law 5-10 was introduced in Council and assigned Bill No. 5-150, which was retained by Council. The Bill was adopted on first and second readings on March 15, 1983 and March 29, 1983, respectively. Signed by the Mayor on April 6, 1983, it was assigned Act No. 5-24 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 5-22.** — Law 5-22 was introduced in Council and assigned Bill No. 5-151, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 10, 1983

and May 24, 1983, respectively. Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-39 and transmitted to both Houses of Congress for its review.

**Regulation not rendered ineffective by failure to meet original deadline as to defendants arrested prior to extension.** — Where the July 1, 1981, deadline had been extended to December 31, 1982, before defendants were arrested under a District of Columbia police regulation, the police regulation was not rendered ineffective by failure to meet the original July 1 deadline. *Green v. District of Columbia*, 710 F.2d 876 (D.C. Cir. 1983).

**Claim must first be decided by local courts of District of Columbia.** — Claim that failure of District of Columbia Department of Corrections to comply with the public notice and comment requirements of the District of Columbia Administrative Procedure Act, D.C. Code § 1-1501 et seq., and the publication requirement of subsection (b) of this section rendered prison visitation regulations invalid must be decided in the first instance by the local courts of the District of Columbia. *Robinson v. Palmer*, 841 F.2d 1151 (D.C. Cir. 1988).

**Cited in** *Hutchison Bros. Excavating Co. v. District of Columbia*, App. D.C., 511 A.2d 3 (1986); *Draude v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 527 A.2d 1242 (1987); *Committee of Blind Vendors v. District of Columbia*, 695 F. Supp. 1234 (D.D.C. 1988) (D.C. 1988); *In re O.M.*, 117 WLR 1253 (Super. Ct. 1989).

**§ 1-1539. Correction of errors in documents.**

The Administrator of the District of Columbia Office of Documents shall correct grammatical or typographical errors in the printing of the text of a document in the District of Columbia Statutes-at-Large, the District of Columbia Register or the District of Columbia Municipal Regulations by the publication of an errata list or by publication of the entire document or the affected part of the document in its corrected form so as to indicate the actual corrections which were made. (1973 Ed., § 1-1539; Mar. 6, 1979, D.C. Law 2-153, § 4(309), 25 DCR 6960.)

**Legislative history of Law 2-153.** — See note to § 1-1505. **Cited in** *Sheetz v. District of Columbia*, App. D.C., 629 A.2d 515 (1993).

**§ 1-1540. Certification.**

Each part of the District of Columbia Statutes-at-Large, the District of Columbia Municipal Regulations, each permanent supplement of the District of Columbia Municipal Regulations, and the District of Columbia Register shall contain a certificate by the Administrator stating that such part contains all documents required to be published pursuant to this subchapter as of the date of such certificate. (1973 Ed., § 1-1539.1; Mar. 6, 1979, D.C. Law 2-153, § 4(310), 25 DCR 6960.)

**Legislative history of Law 2-153.** — See note to § 1-1505.

**§ 1-1541. Presumption created by publication.**

The publication of any document in the District of Columbia Statutes-at-Large, the District of Columbia Municipal Regulations, or the District of Columbia Register creates a rebuttable presumption:

- (1) That it was duly issued, prescribed, adopted, or enacted; and
  - (2) That all requirements of this subchapter have been complied with.
- (1973 Ed., § 1-1539.2; Mar. 6, 1979, D.C. Law 2-153, § 4(311), 25 DCR 6960.)

**Legislative history of Law 2-153.** — See note to § 1-1505.

**§ 1-1542. Penalties.**

Any person who knowingly and willfully causes any document not to be published in the District of Columbia Statutes-at-Large, the District of Columbia Register, or the District of Columbia Municipal Regulations which is required to be so published pursuant to this subchapter shall be guilty of a misdemeanor and shall be fined not more than \$100, or imprisoned not more than 30 days, or both. (1973 Ed., § 1-1539.3; Mar. 6, 1979, D.C. Law 2-153, § 4(312), 25 DCR 6960.)

**Legislative history of Law 2-153.** — See note to § 1-1505.

# CHAPTER 16. CODIFICATION AND PUBLICATION OF ACTS, RESOLUTIONS, RULES, AND ORDERS.

## *Subchapter I. General Provisions.*

- Sec.  
1-1601. Definitions.  
1-1602. Publication prerequisite for effectiveness of Council acts and resolutions.  
1-1603. Statutes-at-Large.  
1-1604. Enrollment of Council acts and resolutions; filing with Archives.  
1-1605. Judicial notice.

## *Subchapter II. District of Columbia Office of Documents.*

- 1-1611. Established; appointment and qualifi-

## Sec.

cations of Administrator; duties; compensation of Administrator; authorization of positions and fundings; transfer of property, records, and unexpended balances of appropriated funds.

- 1-1612. Duties of Administrator.

## *Subchapter III. Government Notices in Newspapers.*

- 1-1621. Requirement.

## *Subchapter I. General Provisions.*

### § 1-1601. Definitions.

For the purpose of this subchapter:

(1) The term "act" shall have the same meaning as is ascribed to it in § 1-202(7).

(2) The term "agency" means any officer, employee, office, department, division, board, commission, or other agency of the government of the District of Columbia including both those which are independent of and those which are subordinate to the Mayor and Council but not including the Superior Court of the District of Columbia and the District of Columbia Court of Appeals.

(3) The term "Board of Commissioners" means the Board of Commissioners of the District of Columbia established by Act of June 11, 1878 (20 Stat. 102).

(4) The term "Commissioner" means the Commissioner of the District of Columbia established by subsection (a) of § 301 of Reorganization Plan No. 3 of 1967 (81 Stat. 949).

(5) The term "Council" means the Council of the District of Columbia created by § 1-221(a) unless the phrase "District of Columbia Council" is used in which event the term shall mean the District of Columbia Council created by subsection (a) of § 201 of Reorganization Plan No. 3 of 1967 (81 Stat. 948).

(6) The term "Council year" means the legislative period of the Council beginning on January 2nd of each year and ending on January 1st of the following year.

(7) The term "District of Columbia Code" means the Code of the District of Columbia as provided for in the Act of July 30, 1947 (61 Stat. 638) and any continuations, supplements, or revisions thereof authorized by Act, Congressional resolution, or act.

(8) The term "District of Columbia Register" means the District of Columbia Register mandated by § 1-1505.

(9) The term "Mayor" means the Mayor of the District of Columbia created by § 1-241(a) or his or her designated agent.

(10) The term "rule" means the whole or any part of any Board of Commissioners', Commissioner's, District of Columbia Council's, Mayor's, or agency's statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or designed to describe organization, procedure, or practice requirements.

(11) The term "regulation" shall have the same meaning as the term "rule."

(12) The term "resolution" means a resolution of the Council unless the term "Congressional resolution" is used in which case it shall mean a resolution of the Congress of the United States or either House thereof. (1973 Ed., § 1-1601; Oct. 8, 1975, D.C. Law 1-19, title II, § 202, 22 DCR 2056.)

**Legislative history of Law 1-19.** — Law 1-19 was introduced in Council and assigned Bill No. 1-1, which was referred to the Committee of the Whole, the Committee on the Judiciary and the Committee on Criminal Law. The Bill was adopted on first and second readings on June 3, 1975 and June 20, 1975, respectively. Signed by the Mayor on July 10, 1975, it was assigned Act No. 1-30 and transmitted to both Houses of Congress for its review.

**References in text.** — "Act of June 11, 1878," referred to in paragraph (3), is also known as the Organic Act of 1878, and is set forth in its entirety in Volume 1.

Provisions of the Act of July 30, 1947, relating to the District of Columbia Code, referred to in paragraph (7), appear in Chapter 3 of Title 1, United States Code.

## § 1-1602. Publication prerequisite for effectiveness of Council acts and resolutions.

No act or resolution shall be effective until the act or resolution has been published in the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations, except that any emergency act or resolution approved pursuant to § 1-229(a), any resolution to approve or disapprove proposed actions pursuant to § 1-229(a)(2), or any resolution that pertains to the internal operation or organization of the Council shall be effective without prior publication, but shall be published as soon as practicable. (1973 Ed., § 1-1602; Oct. 8, 1975, D.C. Law 1-19, title II, § 204, 22 DCR 2058; Oct. 30, 1975, D.C. Law 1-27, § 4, 22 DCR 2472; Apr. 7, 1977, D.C. Law 1-115, § 2, 23 DCR 8744; Mar. 6, 1979, D.C. Law 2-153, § 6(c), 25 DCR 6960; Mar. 15, 1990, D.C. Law 8-89, § 2, 37 DCR 644; Feb. 5, 1994, D.C. Law 10-68, § 8, 40 DCR 6311.)

**Cross references.** — As to publication and codification of acts of Council, see § 1-227.

**Section references.** — This section is referred to in § 40-612.

**Legislative history of Law 1-19.** — See note to § 1-1601.

**Legislative history of Law 1-27.** — Law 1-27 was introduced in Council and assigned Bill No. 1-90, which was referred to the Committee on Advisory Neighborhood Councils. The Bill was adopted on first and second readings on June 17, 1975 and July 1, 1975, respectively.

Signed by the Mayor on August 4, 1975, it was assigned Act No. 1-39 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 2-153.** — See note to § 1-1611.

**Legislative history of Law 8-89.** — Law 8-89 was introduced in Council and assigned Bill No. 8-265, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1989, and December 19, 1989, respectively. Signed by the Mayor on January 8, 1990, it was assigned

Act No. 8-140 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 10-68.** — Law 10-68, the "Technical Amendments Act of 1993," was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July

13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

**Cited in** *Temple v. District of Columbia Rental Hous. Comm'n*, App. D.C., 536 A.2d 1024 (1987).

## § 1-1603. Statutes-at-Large.

(a) Within 45 days of the end of each Council year, the Mayor shall compile and publish the District of Columbia Statutes-at-Large which shall include in separate chronological order:

(1) Council acts, including emergency acts adopted after December 31, 1986, which become law during that Council year; and

(2) Council resolutions adopted during that Council year, except ceremonial resolutions adopted after December 31, 1986.

(b) The 1st publication of the District of Columbia Statutes-at-Large shall also contain in a separate part each regulation and resolution of the District of Columbia Council in chronological order.

(c) The Mayor shall make copies of the District of Columbia Statutes-at-Large available to the public at a reasonable cost calculated to cover the costs of its compilation, publication, and distribution. (1973 Ed., § 1-1603; Oct. 8, 1975, D.C. Law 1-19, title II, § 205, 22 DCR 2062; Mar. 6, 1979, D.C. Law 2-153, § 6(c), 25 DCR 6960; Feb. 18, 1988, D.C. Law 7-78, § 2, 34 DCR 7956.)

**Legislative history of Law 1-19.** — See note to § 1-1601.

**Legislative history of Law 2-153.** — See note to § 1-1611.

**Legislative history of Law 7-78.** — Law 7-78 was introduced in Council and assigned Bill No. 7-179, which was referred to the Com-

mittee of the Whole. The Bill was adopted on first and second readings on October 27, 1987 and November 10, 1987, respectively. Signed by the Mayor on November 24, 1987, it was assigned Act No. 7-113 and transmitted to both Houses of Congress for its review.

## § 1-1604. Enrollment of Council acts and resolutions; filing with Archives.

After enactment by the Council, but before any presentation to the Mayor, each act and resolution of the Council shall be set forth on parchment or other such suitable paper. (1973 Ed., § 1-1604; Oct. 8, 1975, D.C. Law 1-19, title II, § 206, 22 DCR 2062; Mar. 8, 1991, D.C. Law 8-235, § 3, 38 DCR 302.)

**Cross references.** — As to public records management, see Chapter 29 of this title.

**Legislative history of Law 1-19.** — See note to § 1-1601.

**Legislative history of Law 8-235.** — Law 8-235 was introduced in Council and assigned Bill No. 8-559, which was referred to the Com-

mittee on Government Operations. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-318 and transmitted to both Houses of Congress for its review.

**§ 1-1605. Judicial notice.**

All courts within the District of Columbia shall take judicial notice of the acts and resolutions published in the District of Columbia Statutes-at-Large. (1973 Ed., § 1-1605; Oct. 8, 1975, D.C. Law 1-19, title II, § 207, 22 DCR 2063; Mar. 6, 1979, D.C. Law 2-153, § 6(c), 25 DCR 6960.)

**Legislative history of Law 1-19.** — See note to § 1-1601.

**Legislative history of Law 2-153.** — See note to § 1-1611.

**Statutes-at-Large prevail over Code.** —

When the District of Columbia Statutes-at-Large are inconsistent with the D.C. Code the former must prevail. *Burt v. District of Columbia*, App. D.C., 525 A.2d 616 (1987).

*Subchapter II. District of Columbia Office of Documents.*

**§ 1-1611. Established; appointment and qualifications of Administrator; duties; compensation of Administrator; authorization of positions and fundings; transfer of property, records, and unexpended balances of appropriated funds.**

(a) Part IV D of Organization Order No. 2, Commissioner's Order No. 67-23, December 13, 1967, creating the Secretariat within the executive office of the Mayor, is amended:

(1) By striking subsection 1. k.; and

(2) By transferring, as provided in this subchapter, to the District of Columbia Office of Documents all of the powers, duties, and functions assigned to the Secretariat under any provision of law relating to the preparation, certification, and publication of the District of Columbia Register and all District of Columbia rules, regulations, codes, ordinances, and any amendments thereto.

(b) There is hereby established within the executive office of the Mayor (created by Organization Order No. 2, dated December 23, 1967) a District of Columbia Office of Documents which shall be under the supervision and control of an Administrator appointed by the Mayor without regard to political affiliation and solely on the basis of fitness to perform the duties of the position.

(c) The District of Columbia Office of Documents shall provide for the prompt preparation, editing, printing, and public distribution of the District of Columbia Statutes-at-Large, the District of Columbia Register, and the District of Columbia Municipal Regulations in accordance with this subchapter.

(d) The Administrator of the District of Columbia Office of Documents (hereinafter also referred to as "Administrator") shall be a member of the District of Columbia Bar. The Administrator shall appoint such employees within the District of Columbia Office of Documents as may be necessary for the prompt and efficient performance of the functions of the Office and for which sufficient appropriation is authorized and provided.

(e) The Administrator shall be paid at a per annum gross rate not to exceed the highest step level of GS-15 of the General Schedule.



(f) No fewer than 7 funded and authorized positions and the attendant funding totaling at least \$150,000 for salaries and personnel benefits for such positions shall be transferred by the Mayor to the District of Columbia Office of Documents.

(g) All property, records, and unexpended balances of appropriated funds in the Office of the Secretariat which are currently allotted for legal publications, codification, and the District of Columbia Register functions shall be transferred to the District of Columbia Office of Documents. All rules, regulations, documents, and other materials assembled or developed by the Mayor's municipal code compilation project shall be transferred to the Office of Documents. (1973 Ed., § 1-1611; Mar. 6, 1979, D.C. Law 2-153, § 2, 25 DCR 6960.)

**Section references.** — This section is referred to in §§ 1-603.1, 1-1531, and 1-1532.

**Legislative history of Law 2-153.** — Law 2-153 was introduced in Council and assigned Bill No. 2-96, which was referred to the Committee on the Judiciary. The Bill was adopted

on first and second readings on November 28, 1978 and December 12, 1978, respectively. Signed by the Mayor on December 29, 1978, it was assigned Act No. 2-319 and transmitted to both Houses of Congress for its review.

## § 1-1612. Duties of Administrator.

The Administrator of the District of Columbia Office of Documents shall:

(1) Supervise, manage, and direct the preparation, editing, printing and public distribution of all legal publications of the District of Columbia government including the District of Columbia Statutes-at-Large, the District of Columbia Register, and the District of Columbia Municipal Regulations in accordance with this subchapter;

(2) Promulgate appropriate rules of procedure to implement the provisions of this subchapter;

(3) With the assistance of the Office of the Corporation Counsel, the officer designated by the Chairman of the Council, or legal counsels to agencies and other governmental entities, certify the promulgation, adoption, or enactment of documents to be published in accordance with this subchapter;

(4) Coordinate with the officer designated by the Chairman of the Council the drafting and preparation of legislation to be published in the District of Columbia Register and the District of Columbia Municipal Regulations;

(5) Establish editorial standards for the removal of unnecessary sex-based terminology in documents and for the numbering, grammar, and style of all documents to be published pursuant to this subchapter;

(6) Except with respect to acts or resolutions of the Council, reject for publication proposed rules, regulations, orders, administrative issuances, or ordinances which fail to comply substantially with the publication requirements authorized by this subchapter;

(7) In accordance with applicable law, procure contracts for the preparation and publication of documents pursuant to this subchapter; and

(8) Instruct promulgators of documents to be published under this subchapter concerning the requirements established by the Administrator under this subchapter and the means to comply with those requirements. (1973 Ed., § 1-1612; Mar. 6, 1979, D.C. Law 2-153, § 3, 25 DCR 6960.)

**Cross references.** — As to public records management, see Chapter 29 of this title.

**Section references.** — This section is referred to in § 5-1308.

**Legislative history of Law 2-153.** — See note to § 1-1611.

*Subchapter III. Government Notices in Newspapers.*

**§ 1-1621. Requirement.**

Notwithstanding any other provisions of law, any other requirement that the District of Columbia publish notices in 2 daily newspapers shall be satisfied by publication in at least 2 general circulation newspapers, published in the District of Columbia, once every 2 weeks or more frequently. (Mar. 16, 1982, D.C. Law 4-81, § 6, 29 DCR 156.)

**Legislative history of Law 4-81.** — Law 4-81 was introduced in Council and assigned Bill No. 4-323, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 10, 1981 and November 24, 1981, respectively.

Signed by the Mayor on December 21, 1981, it was assigned Act No. 4-135 and transmitted to both Houses of Congress for its review.

**Cited in** *Jones v. District of Columbia*, App. D.C., 585 A.2d 1320 (1990); *Sheetz v. District of Columbia*, App. D.C., 629 A.2d 515 (1993).

## CHAPTER 17. OFFICIAL CORRESPONDENCE.

Sec.

- 1-1701. Definitions.
- 1-1702. Permitted categories of official mail.
- 1-1703. Marking requirements for envelopes.
- 1-1704. Use of expedited services; use of officially marked envelopes; payment for nonconforming enclosures prohibited; inspection of agency mail; promulgation of rules and regulations.

Sec.

- 1-1705. Use of official mail by officials-elect.
- 1-1706. Prohibited uses of official mail by elected officials.
- 1-1707. Authorized uses of official mail by elected officials.
- 1-1708. Penalties.
- 1-1709. Unintentional violations.
- 1-1710. Deposit of fines.

## § 1-1701. Definitions.

For the purpose of this chapter, the term:

(1) "Agency" includes all departments, entities, agencies, offices, or other subdivisions of the executive and legislative branches of the government of the District of Columbia as well as all independent boards, commissions, agencies, or other independent entities.

(2) "Director" means the director or head of the Department of Administrative Services, or its successor agency, or his or her designated agent.

(3) "Government employee" includes members of any board or commission appointed by the Mayor or Council, officers or employees paid by appropriated or grant funds authorized for expenditure by the District of Columbia government, or an officer or employee of any agency when acting in an official capacity.

(4) "Mass mailing" means the transmission through the mail during any 30-day period of more than 100 newsletters or similar types of materials which contain substantially identical contents.

(5) "Elected official" includes the Mayor, the Chairman of the Council, members of the Council, and Chairman and members of the Board of Education.

(6) "Official mail" means the mail which is either prepaid or postpaid by any branch, division, or other agency of the government of the District of Columbia. (1973 Ed., § 1-1701; Apr. 7, 1977, D.C. Law 1-118, § 2, 23 DCR 8746; Mar. 16, 1989, D.C. Law 7-188, § 2(a), 35 DCR 8651.)

**Section references.** — This section is referred to in § 1-1705.

**Legislative history of Law 1-118.** — Law 1-118 was introduced in Council and assigned Bill No. 1-341, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 22, 1976 and December 7, 1976, respectively. Enacted without signature by the Mayor, it was assigned Act No. 1-211 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 7-188.** — Law 7-188 was introduced in Council and assigned Bill No. 7-330, which was referred to the Com-

mittee on Government Operations. The Bill was adopted on first and second readings on October 25, 1988 and November 15, 1988, respectively. Signed by the Mayor on December 1, 1988, it was assigned Act No. 7-250 and transmitted to both Houses of Congress for its review.

**Transfer of functions.** — The functions of the Department of General Services were transferred, in part, to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984, and transferred, in part, to the Department of Administrative Services by Reorganization Plan No. 5 of 1983, effective March 1, 1984.

**§ 1-1702. Permitted categories of official mail.**

Except as otherwise provided in this chapter, a government employee may not mail, as official mail, any matter, article, material, or document for any reasons other than the following:

- (1) A request for the matter, article, material, or document has been previously received by the agency;
- (2) The mailing of the document is required by law;
- (3) The material or matter requests information pertinent to the conduct of the official business of the agency;
- (4) The material contains information relating to the activities of the agency or to the availability of agency publications or other documents;
- (5) The enclosures are forms, blanks, cards, or other documents necessary or beneficial to the administration of the agency;
- (6) The materials are copies of federal, state or local laws, rules, regulations, orders, instructions, or interpretations thereto; or
- (7) The materials are being mailed to federal, state, or other public authorities. (1973 Ed., § 1-1702; Apr. 7, 1977, D.C. Law 1-118, § 3, 23 DCR 8746.)

**Section references.** — This section is referred to in § 1-1704.

**Legislative history of Law 1-118.** — See note to § 1-1701.

**§ 1-1703. Marking requirements for envelopes.**

Envelopes or other materials which are used to enclose official mail shall bear upon its facing, in addition to the name and address of the agency mailing the official mail, the words "official business." (1973 Ed., § 1-1703; Apr. 7, 1977, D.C. Law 1-118, § 4, 23 DCR 8746.)

**Section references.** — This section is referred to in § 1-1704.

**Legislative history of Law 1-118.** — See note to § 1-1701.

**§ 1-1704. Use of expedited services; use of officially marked envelopes; payment for nonconforming enclosures prohibited; inspection of agency mail; promulgation of rules and regulations.**

(a) Funds administered by District agencies, whether appropriated funds, or grant funds, may not be used to pay for the use of telegrams, night letters, mailgrams, or similar types of mail, except in emergency circumstances and as provided by regulations promulgated pursuant to subsection (f) of this section.

(b) Envelopes or other materials described by § 1-1703 may not be used to enclose materials, documents, or other articles except those enumerated in §§ 1-1702 and 1-1707, or other materials not prohibited by § 1-1706.

(c) Funds administered by District agencies may not be used to pay the postage of materials whose enclosures do not conform to the requirements set forth in § 1-1703 unless the head of the agency mailing the material certifies

to the Director of the Department of General Services that there are circumstances, which shall be made known to the Director prior to the mailing, which preclude the observance of the requirements.

(d) The Director shall maintain the certifications required in subsection (c) of this section for a period of 3 years.

(e) The Director may inspect and return to the agency any mail which, in his or her judgment, fails to meet the requirement of the act or the regulations promulgated pursuant to this chapter. Under regulations promulgated pursuant to subsection (f) of this section, the Director shall provide for the designation of a person within each agency, department, commission, or other office to assist him or her to certify compliance with the provisions of this chapter.

(f) For the executive branch, independent agencies, boards and commissions of the District of Columbia, the Director is hereby authorized to promulgate rules and regulations, in the manner prescribed by subchapter 1 of Chapter 15 of Title 1 to carry out the provisions and intent of this chapter within 60 days after July 1, 1977.

(g) For the Council of the District of Columbia, the rules to implement this law shall be those adopted in rules of the Council. (1973 Ed., § 1-1704; Apr. 7, 1977, D.C. Law 1-118, § 5, 23 DCR 8746; Mar. 16, 1989, D.C. Law 7-188, § 2(b), 35 DCR 8651.)

**Legislative history of Law 1-118.** — See note to § 1-1701.

**Legislative history of Law 7-188.** — See note to § 1-1701.

**References in text.** — “The act,” referred to in subsection (e), is probably a reference to the Act of April 7, 1977, D.C. Law 1-118.

**Transfer of functions.** — The functions of

the Department of General Services were transferred, in part, to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984, and transferred, in part, to the Department of Administrative Services by Reorganization Plan No. 5 of 1983, effective March 1, 1984.

## § 1-1705. Use of official mail by officials-elect.

In addition to government employees and elected officials as defined in § 1-1701, the following officials may mail materials as official mail:

(1) The Mayor-elect;

(2) The Chairman-elect and members-elect of the Council. (1973 Ed., § 1-1705; Apr. 7, 1977, D.C. Law 1-118, § 6, 23 DCR 8746.)

**Legislative history of Law 1-118.** — See note to § 1-1701.

## § 1-1706. Prohibited uses of official mail by elected officials.

(a) An elected official may not mail, as official mail, any mass mailing within the 90-day period that immediately precedes a primary, special, or general election in which such official is a candidate for office.

(b) An elected official may mail, as official mail, news releases or newsletters; provided, that such materials do not contain any of the following:

(1) Autobiographical articles;

- (2) Political cartoons;
- (3) References to past or future campaigns;
- (4) Announcements of filings for reelection;
- (5) Announcements of campaign schedules;
- (6) Announcements of political or partisan meetings;
- (7) Reports on family life; or
- (8) Pictures of the official members with any partisan label such as "Democrat," "Republican," "Statehood Party," or any other label which purports to advertise the member rather than to illustrate the accompanying text.

(c) An elected official may not use official mail to solicit directly or indirectly funds for any purpose.

(d) An elected official may not use official mail for transmission of matter which is purely personal to the sender or to any other person and is unrelated to the official business, activities, and duties of the member.

(e) An elected official may not mail, as official mail, cards or other materials which express holiday greetings from the member or his or her family.

(f) An elected official may not mail, as official mail, information which would exceed the provisions of § 1-1704 and § 1-1707 of the act of fund raising appeals related to citizen-service activities established pursuant to § 1-1443. (1973 Ed., § 1-1706; Apr. 7, 1977, D.C. Law 1-118, § 7, 23 DCR 8746; Mar. 16, 1982, D.C. Law 4-88, § 4, 29 DCR 458.)

**Section references.** — This section is referred to in §§ 1-1704 and 1-1707.

**Legislative history of Law 1-118.** — See note to § 1-1701.

**Legislative history of Law 4-88.** — Law 4-88 was introduced in Council and assigned Bill No. 4-271, which was referred to the Com-

mittee on Government Operations. The Bill was adopted on first and second readings on November 24, 1981 and December 8, 1981, respectively. Signed by the Mayor on January 20, 1982, it was assigned Act No. 4-142 and transmitted to both Houses of Congress for its review.

## § 1-1707. Authorized uses of official mail by elected officials.

The provisions of § 1-1706 do not prohibit an elected official or his or her staff from mailing, as official mail, any of the following:

- (1) The whole or part of any record, speech, debate, or report of the Council or any committee thereof;
- (2) The tabulation of an official's vote or explanation thereof;
- (3) Matter which expresses condolences to a person who has suffered a loss or congratulations to a person who has achieved some personal or public distinction; provided, that mass mailings of a congratulatory nature which are substantially the same except for individualized addresses are not authorized;
- (4) Information concerning the official's schedule of meeting constituents;
- (5) Information concerning the meeting schedule and agenda for committees and subcommittees upon which the official serves;
- (6) Information concerning financial disclosure information, whether or not required by law;
- (7) Matter which consists of federal, state, or local laws, regulations or publications paid for by public funds;

(8) Questionnaires which relate to matters respecting public policy or administration; and

(9) Matter which contains pictures of the member or biographical or autobiographical data whenever such matter is mailed in response to a specific request therefor. (1973 Ed., § 1-1707; Apr. 7, 1977, D.C. Law 1-118, § 8, 23 DCR 8746.)

**Section references.** — This section is referred to in § 1-1704.

**Legislative history of Law 1-118.** — See note to § 1-1701.

### § 1-1708. Penalties.

(a) Except as otherwise provided in this chapter, a person who, at the time of the mailing, is not a government employee and who mails or attempts to mail materials, documents, or other items as official mail shall be fined an amount not exceeding \$100 or confined for a term not exceeding 1 year.

(b) Any person who willfully violates any provision of this chapter shall be subject to a fine not exceeding \$1,000 or confined for a term not exceeding 1 year, plus double the amount of money incidental to the unlawful mailing. (1973 Ed., § 1-1708; Apr. 7, 1977, D.C. Law 1-118, § 9, 23 DCR 8746.)

**Section references.** — This section is referred to in § 1-1710.

**Legislative history of Law 1-118.** — See note to § 1-1701.

### § 1-1709. Unintentional violations.

(a) Any person who by reason of ignorance, forgetfulness, or misunderstanding improperly or unlawfully uses official mail shall be liable to the District for double the cost of the postage.

(b) Any person who willfully violates provisions of this chapter shall be subject to a fine not exceeding \$1,000 or imprisonment not exceeding 1 year, plus double the amount of money incidental to the unlawful mailing. (1973 Ed., § 1-1709; Apr. 7, 1977, D.C. Law 1-118, § 10, 23 DCR 8746.)

**Legislative history of Law 1-118.** — See note to § 1-1701.

### § 1-1710. Deposit of fines.

Money inuring to the District as a result of the fines imposed under § 1-1708 shall be deposited in the Treasury of the United States to the credit of the District of Columbia or in any other depository designated by the Council. (1973 Ed., § 1-1710; Apr. 7, 1977, D.C. Law 1-118, § 11, 23 DCR 8746.)

**Legislative history of Law 1-118.** — See note to § 1-1701.

## CHAPTER 18. PRESIDENTIAL INAUGURAL CEREMONIES.

Sec.

1-1801. Definitions.

1-1802. Regulations by Council authorized; special registration tags.

1-1803. Appropriations; authorized; use.

1-1804. Permits for use of federal grounds and reservations.

1-1805. Installation of electrical facilities.

1-1806. Installation of communication facilities.

Sec.

1-1807. Effective period of regulations and licenses; publication of regulations; penalties.

1-1808. Property under jurisdiction of Congress.

1-1809. Reference to "Mayor."

### § 1-1801. Definitions.

For the purposes of this chapter:

(1) The term "inaugural period" means the period which includes the day on which the ceremony of inaugurating the President is held, the 5 calendar days immediately preceding such day, and the 4 calendar days immediately subsequent to such day.

(2) The term "Inaugural Committee" means the committee in charge of the presidential inaugural ceremony and functions and activities connected therewith, to be appointed by the President-elect.

(3) The term "Mayor" means the Mayor of the District of Columbia or his designated agent or agents.

(4) The term "Secretary of Defense" means the Secretary of Defense or his designated agent or agents.

(5) The term "Secretary of the Interior" means the Secretary of the Interior or his designated agent or agents. (Aug. 6, 1956, 70 Stat. 1049, ch. 974, § 1 (b); 1973 Ed., § 1-1201.)

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

### § 1-1802. Regulations by Council authorized; special registration tags.

(a) For each inaugural period the Council of the District of Columbia is authorized and directed to make all reasonable regulations necessary to secure the preservation of public order and protection of life, health, and property; to make special regulations respecting the standing, movement, and operation of vehicles of whatever character or kind during such period; and to grant, under such conditions as it may impose, special licenses to peddlers and vendors for



the privilege of selling goods, wares, and merchandise in such places in the District of Columbia, and to charge such fees for such privilege, as it may deem proper.

(b) The Mayor of the District of Columbia is authorized to issue, for both duly registered motor vehicles and unregistered motor vehicles made available for the use of the Inaugural Committee, special registration tags, valid for a period not exceeding 90 days, designed to celebrate the occasion of the inauguration of the President and Vice President. (Aug. 6, 1956, 70 Stat. 1049, ch. 974, § 2; Jan. 30, 1968, 82 Stat. 4, Pub. L. 90-251, § 1; 1973 Ed., § 1-1202.)

**New implementing regulations.** — Pursuant to this section, the following new regulations were adopted in 1982: The "Presidential Inauguration Special Regulations and Rule of Interpretation Concerning Nonrevival of Statutes Act of 1982" (D.C. Law 4-125, July 2, 1982, 29 DCR 2093).

**Issuance of 1985 Inaugural License Tags authorized.** — See Mayor's Order 84-229, December 15, 1984.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(33) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Cited in** *Saffron v. Wilson*, 70 F.R.D. 51 (D.D.C. 1975).

## § 1-1803. Appropriations; authorized; use.

There are hereby authorized to be appropriated such sums as may be necessary, payable in like manner as other appropriations for the expenses of the District of Columbia, to enable the Mayor to provide additional municipal services in said District during the inaugural period, including employment of personal services without regard to the civil-service and classification laws; travel expenses of enforcement personnel, including sanitarians, from other jurisdictions; hire of means of transportation; meals for policemen, firemen, and other municipal employees, cost of removing and relocating streetcar loading platforms, construction, rent, maintenance, and expenses, incident to the operation of temporary public comfort stations, first-aid stations, and information booths; and other incidental expenses in the discretion of the Mayor; and such sums as may be necessary, payable in like manner as other appropriations for the expenses of the Department of the Interior, to enable the Secretary of the Interior to provide meals for the members of the United States Park Police during the inaugural period. (Aug. 6, 1956, 70 Stat. 1049, ch. 974, § 3; Jan. 30, 1968, 82 Stat. 4, Pub. L. 90-251, § 2; 1973 Ed., § 1-1203.)

**References in text.** — The "civil-service and classification laws," referred to near the beginning of the section, are set forth in Title 5 of the United States Code.

**Federal payment to the District of Co-**

**lumbia.** — Public Law 104-194, 110 Stat. 2356, the D.C. Appropriations Act, 1997, provided for payment to the District of Columbia, in lieu of reimbursements for expenses incurred in connection with Presidential inauguration activi-

ties, \$5,702,000 as authorized by this section, which shall be apportioned by the Chief Financial Officer within the various appropriations in the act.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

## § 1-1804. Permits for use of federal grounds and reservations.

The Secretary of the Interior, with the approval of such officer as may exercise jurisdiction over any of the federal reservations or grounds in the District of Columbia, is authorized to grant to the Inaugural Committee permits for the use of such reservations or grounds during the inaugural period, including a reasonable time prior and subsequent thereto; and the Mayor is authorized to grant like permits for the use of public space under his jurisdiction. Each such permit shall be subject to such restrictions, terms, and conditions as may be imposed by the grantor of such permit. With respect to public space, no reviewing stand or any stand or structure for the sale of goods, wares, merchandise, food, or drink shall be built on any sidewalk, street, park, reservation, or other public grounds in the District of Columbia, except with the approval of the Inaugural Committee, and with the approval of the Secretary of the Interior or the Mayor, as the case may be, depending on the location of such stand or structure. The reservation, ground, or public space occupied by any such stand or structure shall, after the inaugural period, be promptly restored to its previous condition. The Inaugural Committee shall indemnify and save harmless the District of Columbia and the appropriate agency or agencies of the federal government against any loss or damage to such property and against any liability arising from the use of such property, either by the Inaugural Committee or a licensee of the Inaugural Committee. (Aug. 6, 1956, 70 Stat. 1049, ch. 974, § 4; 1973 Ed., § 1-1204.)

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

### § 1-1805. Installation of electrical facilities.

The Mayor is authorized to permit the Inaugural Committee to install suitable overhead conductors and install suitable lighting or other electrical facilities, with adequate supports, for illumination or other purposes. If it should be necessary to place wires for illuminating or other purposes over any park or reservation in the District of Columbia, such placing of wires and their removal shall be under the supervision of the official in charge of said park or reservation. Such conductors with their supports shall be removed within 5 days after the end of the inaugural period. The Mayor, or such other officials as may have jurisdiction in the premises, shall enforce the provisions of this chapter, take needful precautions for the protection of the public, and insure that the pavement of any street, sidewalk, avenue, or alley which is disturbed or damaged is restored to its previous condition. No expense or damage from the installation, operation, or removal of said temporary overhead conductors or said illumination or other electrical facilities shall be incurred by the United States or the District of Columbia, and the Inaugural Committee shall indemnify and save harmless the District of Columbia and the appropriate agency or agencies of the federal government against any loss or damage and against any liability whatsoever arising from any act of the Inaugural Committee or any agent, licensee, servant, or employee of the Inaugural Committee. (Aug. 6, 1956, 70 Stat. 1050, ch. 974, § 5; 1973 Ed., § 1-1205.)

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

### § 1-1806. Installation of communication facilities.

The Mayor, the Secretary of the Interior, and the Inaugural Committee are authorized to permit telegraph, telephone, radio-broadcasting, and television companies to extend overhead wires to such points along the line of any parade as shall be deemed convenient for use in connection with such parade and other inaugural purposes. Such wires shall be removed within 10 days after the conclusion of the inaugural period. (Aug. 6, 1956, 70 Stat. 1050, ch. 974, § 7; 1973 Ed., § 1-1207.)

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the

District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

## § 1-1807. Effective period of regulations and licenses; publication of regulations; penalties.

The regulations and licenses authorized by this chapter shall be in full force and effect only during the inaugural period. Such regulations shall be published in 1 or more of the daily newspapers published in the District of Columbia and no penalty prescribed for the violation of any such regulation shall be enforced until 5 days after such publication. Any person violating any regulation promulgated by the Council of the District of Columbia under the authority of this chapter shall be fined not more than \$100 or imprisoned not more than 30 days. Each and every day a violation of such regulation exists shall constitute a separate offense, and the penalty prescribed shall be applicable to each such separate offense. (Aug. 6, 1956, 70 Stat. 1051, ch. 974, § 8; Jan. 30, 1968, 82 Stat. 4, Pub. L. 90-251, § 3; 1973 Ed., § 1-1208.)

**Change in government.** — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of govern-

ment were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Evidence was held insufficient to overcome presumptive validity of regulations.** *Saffron v. Wilson*, 70 F.R.D. 51 (D.D.C. 1975).

## § 1-1808. Property under jurisdiction of Congress.

Nothing contained in this chapter shall be applicable to the United States Capitol buildings or grounds or other properties under the jurisdiction of the Congress or any committee, commission, or officer thereof: Provided, however, that any of the services or facilities authorized by or under this chapter shall be made available with respect to any such properties upon request or approval of the joint committee of the Senate and House of Representatives appointed by the President of the Senate and the Speaker of the House of Representatives to make the necessary arrangements for the inauguration of the President-elect and the Vice President-elect. (Aug. 6, 1956, 70 Stat. 1051, ch. 974, § 9; 1973 Ed., § 1-1209.)

## § 1-1809. Reference to "Mayor."

Whenever the term "Mayor" is used in this chapter, such term will be deemed to refer to the Mayor of the District of Columbia. (Aug. 6, 1956, ch. 974, § 10; Jan. 30, 1968, 82 Stat. 4, Pub. L. 90-251, § 4; 1973 Ed., § 1-1211.)

**Change in government.** — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia

Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

## CHAPTER 19. SUBMISSION OF STATE ENERGY PLANS.

### *Subchapter I. General Provisions.*

Sec.

1-1901. Legislative findings; purposes.

1-1902. Definitions.

1-1903. Energy policy of District.

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.

1-1905. Review by District Auditor.

Sec.

1-1906. Citizens Energy Advisory Committee.

1-1907. Severability.

### *Subchapter II. Submission of State Energy Plans.*

1-1911. Submission of state energy plans to Council prior to filing with federal agency.

1-1912. Limitation of expenditures.

1-1913. Review period; time for filing state energy plans; approval.

### *Subchapter I. General Provisions.*

**Editor's notes.** — Because of the enactment of subchapter II of this chapter by D.C. Law 6-173, the preexisting text of Chapter 19, to

include §§ 1-1901 through 1-1907, has been designated as subchapter I of this chapter.

## § 1-1901. Legislative findings; purposes.

(a) The Council of the District of Columbia finds that:

(1) An adequate, reliable, and continuous supply of energy is essential to the health, safety, and welfare of the citizens of the District of Columbia and to sustain the growth of the District's economy;

(2) The District of Columbia is seriously threatened and adversely affected by the increasing shortages and the escalating prices of nonrenewable energy resources;

(3) Growth in the consumption of energy resources is due in part to wasteful and inefficient uses of energy, and the continuation of this trend will adversely affect the social, economic, and environmental development of the District of Columbia;

(4) It is the responsibility of the District of Columbia government to encourage and foster a reliable and adequate supply of energy resources for the District at a level consistent with the protection of public health and safety, the promotion of the general welfare and economic well-being, and the promotion of environmental quality;

(5) The District of Columbia must provide for the development of a unified energy policy:

(A) To minimize duplication and overlapping responsibilities for energy-related matters among various District departments, commissions, and agencies; and

(B) To ensure a reliable and adequate supply of energy resources for the District's citizens and economy; and

(6) The establishment of the District of Columbia Office of Energy is in the public interest and will promote the general welfare of the public by assuring coordinated and efficient management of the District's energy policy and programs.

(b) The purposes of this subchapter are as follows:

- (1) To establish the District of Columbia Office of Energy;
- (2) To provide for the development of a comprehensive energy plan, policy, and programs for the District of Columbia;
- (3) To achieve effective management of energy functions of the District government through the District of Columbia Office of Energy in cooperation with the Public Service Commission of the District of Columbia, the People's Counsel of the District of Columbia, and all other appropriate District agencies and departments;
- (4) To provide for the development of an emergency energy shortage contingency plan to ensure the health, safety, and welfare of District of Columbia citizens and industry during any public emergency, caused by an actual or impending acute shortage of usable energy resources; and
- (5) To encourage and ensure full and effective public participation in formulation and implementation of a District of Columbia energy policy. (Mar. 4, 1981, D.C. Law 3-132, § 2, 28 DCR 445.)

**Legislative history of Law 3-132.** — Law 3-132 was introduced in Council and assigned Bill No. 3-192. The Bill was adopted on first and second readings on November 25, 1980 and December 9, 1980, respectively. Signed by the Mayor on January 7, 1981, it was assigned Act No. 3-341 and transmitted to both Houses of Congress for its review.

**Editor's notes.** — Because of the codification of D.C. Law 6-173 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 19 as subchapter I, "subchapter" has been substituted for "chapter" in the introductory language of subsection (b).

## § 1-1902. Definitions.

As used in this subchapter:

- (1) The term "agency" means and includes any executive department, or other establishment in the executive branch of the District of Columbia government or any independent regulatory agency as defined in § 1-1502(3).
- (2) The term "appliance" means any energy consuming article or device designed for household use or small business use, the primary purpose of which is labor saving or personal convenience, and which, although connected to public utilities servicing a building, is not attached to the building in such a way that it would be considered a part of the building or building system. Central heat pumps, central air conditioners, and central heating units are not appliances for the purposes of this subchapter.
- (3) The term "building" means any structure which includes provisions for a heating, ventilating, or cooling system, or for a hot water system.
- (4) The term "building code" means property standards in the Building Code approved pursuant to the Construction Codes Approval and Amendments Act of 1986.
- (5) The term "car pool" means a joint arrangement by a group of private persons in which each in turn drives a privately-owned car and carries other passengers.
- (6) The term "construction" means on-site work to install permanent equipment or structure for any facility.
- (7) The term "Council" means the Council of the District of Columbia.

(8) The term "Director" means the Director of the District of Columbia Office of Energy.

(9) The term "District" means the District of Columbia.

(10) The term "District-assisted facility" means any building, the construction, capital, or operating costs of which are financed in whole or in part by the District's general or special fund appropriations, or disbursements, or by federal funds.

(11) The term "energy" means work that is, or may be, produced from any fuel or source whatsoever.

(12) The term "energy audit" means a process which identifies and specifies the energy and cost savings which are likely to be realized through the purchase and installation of an energy conservation measure or renewable energy resources measure, through improved energy management procedures.

(13) The term "energy auditor" means any person who has:

(A) A valid mechanical, electrical, engineering, or architectural license;

(B) Successfully completed an approved District of Columbia energy audit training course for those persons familiar with heating, ventilating, and air conditioning systems; or

(C) Otherwise qualified by virtue of training or experience.

(14) The term "energy conservation" means the efficient use of energy resources.

(15) The term "energy conservation measure" means a modification which has been determined by means of an energy audit or by a rule of the District of Columbia Office of Energy to likely improve the efficiency of energy use.

(16) The term "energy distributor" means any person who imports energy resources into the District of Columbia for use, distribution, storage, or sale; and any person who produces, refines, manufactures, blends, or compounds energy resources, and sells, uses, stores, or distributes the same within the District: Provided, however, that in no case shall a retail dealer be construed to be a distributor.

(17) The term "energy efficiency guidelines" means, with respect to particular buildings, industrial plants, appliances, or energy resource consuming articles, the measures, or minimum accepted levels of energy conservation which the District of Columbia Office of Energy determines to be appropriate for the location and category of such or similar buildings, industrial plants, appliances, energy resources, or energy consuming articles.

(18) The term "energy information" includes:

(A) All information in whatever form of:

(i) Fuel reserves, exploration, extraction, and energy resources (including petrochemical feedstocks) wherever located;

(ii) Production, distribution, and consumption of energy and fuels wherever carried on; and

(B) Matters relating to energy and fuels, such as corporate structure and proprietary relationships, costs, prices, capital investment, assets, and other matters directly related thereto, wherever they exist.

(19) The term "energy resources" means any force or material which yields, or has the potential to yield energy, including, but not limited to,



electricity, petroleum products, residual fuel oil, distillate fuel oil, natural gas, methane, liquified natural gas, manufactured or synthetic fuel gases, coal, solid wastes, biomass, wood, solar radiation, geothermal or mineral formations, thermal gradients, wind, water, enriched uranium U235 and U238, plutonium U239, or other nuclear fuels.

(20) The term "environmental residual" means any pollutant or pollution-causing factor which results from any activity.

(21) The term "life-cycle cost" means the total costs of owning, operating, and maintaining a building, industrial plant, appliance, or energy consuming article over its economic life, including its fuel and energy costs, determined on the basis of a systematic evaluation and comparison of alternative costs for such buildings, industrial plants, appliances or energy consuming articles.

(22) The term "life-cycle cost analysis" means the estimation and comparison of the life-cycle costs of buildings, industrial plants, appliances, or energy consuming articles so as to increase the efficient use of a particular building, industrial plant, appliance, or energy consuming article.

(23) The term "Mayor" means the Mayor of the District of Columbia.

(24) The term "nonresidential building" means any building which is not a residential building which, including, but is not limited to, multi-purpose buildings, such as school learning centers, office/retail buildings, hospitals, sports arenas, retail stores, and transportation terminals.

(25) The term "Office" means the District of Columbia Office of Energy established by this subchapter.

(26) The term "performance standards" means rules and regulations adopted by the Office which establish minimum acceptable levels of site design, site preparation, exterior and interior appurtenances which apply to buildings or industrial plants, or which establish minimum acceptable levels of life-cycle cost and life-cycle cost analysis, which apply to purchasing and procurement practices.

(27) The term "person" means any individual, public or private corporation, partnership, firm, association, organization, trustee or other fiduciary, company, board, bureau, commission, department, authority, agency, committee, council, legislative committee, public agency, public utility, the District or any agency or instrumentality thereof, and the United States to the extent authorized by federal law or other legal entity.

(28) The term "renewable energy source" means energy resources which are capable of being continuously restored by natural or other means, or which are so large as to be useable for centuries without significant depletion, and include, but are not limited to, solar radiation, solid wastes, biomass, wind, geothermal formations, tidal and other water resources, thermal gradients, deuterium, and hydrogen.

(29) The term "renewable energy resource measure" means a modification which has been determined by means of an energy audit or a rule of the District of Columbia Office of Energy to involve changing, in whole or in part, the energy resources used to meet the requirements of any building or industrial plant from a nonrenewable energy resource to a renewable energy source.

(30) The term "residential" means any building which is exclusively residential or residential mixed-purpose buildings, including, but not limited to, residential, retail, office, or recreational.

(31) The term "retail dealer" means any person who engages in the business of selling energy resources from a delivery vehicle or from a fixed location, such as a service station, filling station, store, or garage, directly to the ultimate users of said energy resources. (Mar. 4, 1981, D.C. Law 3-132, § 3, 28 DCR 445; Mar. 21, 1987, D.C. Law 6-216, § 13(b), 32 DCR 1072.)

**Legislative history of Law 3-132.** — See note to § 1-1901.

**Legislative history of Law 6-216.** — Law 6-216 was introduced in Council and assigned Bill No. 6-500, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 18, 1986 and December 16, 1986, respectively. Signed by the Mayor on February 2, 1987, it was assigned Act No. 6-279 and transmitted to both Houses of Congress for its review.

**References in text.** — The "Construction Codes Approval and Amendments Act of 1986," referred to in paragraph (4), is D.C. Law 6-216.

**Editor's notes.** — Because of the codification of D.C. Law 6-173 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 19 as subchapter I, "subchapter" has been substituted for "chapter" in the introductory language to the section and in paragraphs (2) and (25).

## § 1-1903. Energy policy of District.

The energy policy of the District of Columbia shall be the following:

(1) To ensure, to the maximum extent practicable, an adequate, economically affordable, and reliable supply of energy for all citizens, businesses, and industries in the District;

(2) To foster prudent research, development, and use, within the District, of a diverse array of energy resources, with emphasis on renewable energy resources;

(3) To employ energy conservation techniques, including performance standards, and energy audits, in the design, construction, and renovation of District-owned and assisted facilities, and in the procurement of District materials and supplies for the District government;

(4) To promote energy conservation in the construction and operation of residential and nonresidential buildings through energy efficient guidelines, energy audits, and through proven techniques for heating, lighting, cooling, ventilating, insulating, and building design and operation;

(5) To cooperate and assist departments and other agencies or instrumentalities of federal, state, and local government, in the development, implementation, and coordination of energy policies and programs;

(6) 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 work schedules, preferential traffic controls, and urban area traffic restrictions;

(7) To assist District citizens and industry, during emergency energy shortages, in managing scarce energy resources in order to maintain the public health, safety, and welfare, and to minimize the adverse impact on the physical, social, and economic well-being of the District of Columbia;

(8) To assist and advise industries, businesses and public utilities of the District in the application of energy conservation and supply enforcement measures in industrial and commercial apparatus and processes, and to promote the availability of reliable and abundant energy resources for the use of industrial, commercial, and public utility energy users in the District;

(9) To promote community development and job creation by encouraging establishment of District-based conservation and renewable energy businesses and cooperatives;

(10) To promote and secure the location within the District of Columbia of projects, programs, installations, grants, loans, funds, and other public or private capital investments for the research, development, innovation, and demonstration of uses, processes, apparatuses, and other applications of energy technologies utilizing renewable energy resources;

(11) To assure that the District's energy policies and plans developed under this subchapter shall be, to the maximum extent practicable, consistent with the statutory environmental policies of the District;

(12) To protect energy consumers and users from unfair, deceptive, and anti-competitive acts and practices employed in the marketing, advertising, and selling of energy conserving goods and services;

(13) To utilize public funds as a means of ensuring equity in the way energy costs are allocated, including, but not limited to, programs which will aid low- and moderate-income citizens in developing energy efficient housing, in gaining access to renewable sources of energy and in meeting the costs of high utility bills;

(14) To assist small businesses in developing energy efficient management techniques, and assist with energy conservation efforts as well as other related activities which will alleviate the burden of escalating costs;

(15) To provide a source of impartial and objective information in order that this energy policy may be achieved; and

(16) To encourage and ensure full and effective public participation in the formulation and implementation of a District energy policy. (Mar. 4, 1981, D.C. Law 3-132, § 4, 28 DCR 445.)

**Section references.** — This section is referred to in § 1-1904.

**Legislative history of Law 3-132.** — See note to § 1-1901.

**Editor's notes.** — Because of the codifica-

tion of D.C. Law 6-173 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 19 as subchapter I, "subchapter" has been substituted for "chapter" in paragraph (11).

## **§ 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) Recommendation 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 and 1-1906: 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 of 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 and 1-1906: Except, that no public hearings on the plan shall be required other than pursuant to subsection (h)(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.)

**Legislative history of Law 3-132.** — See note to § 1-1901.

**References in text.** — Section 1-1906, referred to in (f)(5) and (g)(6), expired pursuant to its own terms on March 4, 1995.

"Subsection (h)(4) of this section," referred to in (g)(6), does not exist. The reference should probably be to subsection (e)(6) of this section.

**Energy and water savings at District of Columbia facilities.** —

Section 149 of Pub. L. 104-194, 110 Stat. 2377 provided that "the Director of the District of Columbia Office of Energy shall, subject to the contract approval provisions of Public Law 104-8—

(A) develop a comprehensive plan to identify and accomplish energy conservation measures to achieve maximum cost effective energy and water savings;

(B) enter into innovative financing and contractual mechanisms including, but not limited to, utility demand-side management programs and energy savings performance contracts and water conservation performance contracts: *Provided*, That the terms of such contracts do not exceed twenty-five years; and

(C) permit and encourage each department or agency and other instrumentality of the District of Columbia to participate in programs conducted by any gas, electric or water utility of

the management of electricity or gas demand or for energy or water conservation."

**Interagency energy task force established.** — See Mayor's Order 86-61, April 22, 1986.

**Editor's notes.** — Because of the codification of D.C. Law 6-173 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 19 as subchapter I, "subchapter" has been substituted for "chapter" throughout the section.

**Transfer of functions.** — The functions of the Department of General Services were transferred, in part, to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984, and transferred, in part, to the Department of Administrative Services by Reorganization Plan No. 5 of 1983, effective March 1, 1984.

The functions of the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

The Weatherization Assistance Program in the Department of Housing and Community Development was transferred to the D.C. Energy Office under the Department of Public Works by Reorganization Plan No. 3 of 1993, approved January 20, 1993.

**§ 1-1905. Review by District Auditor.**

In the 1st year and every 3 to 4 years thereafter, the Auditor of the District of Columbia shall conduct an audit of the Office. The audit shall be completed and the results and report thereof submitted to the Mayor and to the Council by April 1st of the year following the audit. The report shall recommend whether or not the Office should continue in operation, should be changed or modified, or should be dissolved; and shall contain findings on which to base such recommendations. (Mar. 4, 1981, D.C. Law 3-132, § 6, 28 DCR 445.)

**Section references.** — This section is referred to in § 1-1904.

**Legislative history of Law 3-132.** — See note to § 1-1901.

**Interagency energy task force established.** — See Mayor's Order 86-61, April 22, 1986.

**§ 1-1906. Citizens Energy Advisory Committee.**

Expired.

(Mar. 4, 1981, D.C. Law 3-132, § 7, 28 DCR 445; Aug. 2, 1983, D.C. Law 5-24, § 11, 30 DCR 3341; May 19, 1987, D.C. Law 7-4, § 2, 34 DCR 2334; Oct. 9, 1987, D.C. Law 7-33, § 2, 34 DCR 5314; Apr. 30, 1988, D.C. Law 7-104, § 32, 35 DCR 147; June 18, 1991, D.C. Law 9-6, § 2, 38 DCR 2722; Aug. 17, 1991, D.C. Law 9-45, § 2, 38 DCR 4988.)

**Expiration of the Citizens Energy Advisory Committee.** — Pursuant to subsection (e) of former § 1-1906, as amended, the Citizens Energy Advisory Committee "shall continue in existence for 14 years, at which time, it

shall be terminated unless reestablished by the Council of the District of Columbia." The citizens Energy Advisory Committee is deemed to have expired on March 4, 1995.

**§ 1-1907. Severability.**

If any provisions of this subchapter, or of any rule, regulation, or order thereunder or the application of such provision to any person or circumstance shall be held invalid, the remainder of this subchapter and application of such provisions of this subchapter or of such rule, regulation, or order to persons or circumstances other than those to which it is held invalid shall not be affected thereby. (Mar. 4, 1981, D.C. Law 3-132, § 8, 28 DCR 445.)

**Legislative history of Law 3-132.** — See note to § 1-1901.

**Editor's notes.** — Because of the codification of D.C. Law 6-173 as subchapter II of this

chapter, and the designation of the preexisting text of Chapter 19 as subchapter I, "subchapter" has been substituted for "chapter" throughout the section.

*Subchapter II. Submission of State Energy Plans.*

**§ 1-1911. Submission of state energy plans to Council prior to filing with federal agency.**

The Mayor shall submit, on an annual basis, all federally required state energy plans and modifications of approved state energy plans for the following

energy programs to the Council of the District of Columbia ("Council") for its review and approval prior to submission to the federal agency administering the program:

- (1) The supplementary weather assistance program for low-income persons authorized by 42 U.S.C. § 6851 et seq.;
- (2) The state energy conservation programs authorized by 42 U.S.C. § 6201 et seq.;
- (3) The energy conservation programs for schools, hospitals, and buildings owned by units of local governments and public care institutions authorized by 42 U.S.C. § 6371 et seq.;
- (4) The energy outreach programs authorized by 42 U.S.C. § 7001 et seq.; and
- (5) The home energy assistance program for low-income persons authorized by 42 U.S.C. § 8621 et seq. (Feb. 24, 1987, D.C. Law 6-173, § 2, 33 DCR 7224.)

**Section references.** — This section is referred to in § 1-1912.

**Legislative history of Law 6-173.** — Law 6-173, the "State Energy Plans Submission Requirement Act of 1986," was introduced in Council and assigned Bill No. 6-402, which was referred to the Committee on Public Service and Cable Television. The Bill was adopted on first and second readings on September 23,

1986 and October 7, 1986, respectively. Signed by the Mayor on October 30, 1986, it was assigned Act No. 6-222 and transmitted to both Houses of Congress for its review.

**References in text.** — 42 U.S.C. § 7001 et seq., referred to in (4), was repealed by P.L. 102-486, Title I, Subtitle E, § 143(a), 106 Stat. 2843, effective October 24, 1992.

## § 1-1912. Limitation of expenditures.

The Mayor shall not expend, except in accordance with a state energy plan identified in § 1-1911, any revenues owed or accruing to the District of Columbia ("District") on or after January 27, 1986, as a result of action taken by the United States Department of Energy pursuant to the following authority:

- (1) 12 U.S.C. § 1904, note, as incorporated by 15 U.S.C. § 754(a)(1);
- (2) 15 U.S.C. § 757 et seq.;
- (3) 42 U.S.C. § 7101 et seq.; and
- (4) Section 155 of a Joint Resolution Making further continuing appropriations and providing for productive employment for the fiscal year 1983, and for other purposes, effective December 21, 1982 (96 Stat. 1830). (Feb. 24, 1987, D.C. Law 6-173, § 3, 33 DCR 7224.)

**Legislative history of Law 6-173.** — See note to § 1-1911.

**References in text.** — 15 U.S.C. §§ 754 and 757, referred to in (1) and (2), respectively, have

been omitted pursuant to the terms of former 15 U.S.C. § 760g.

## § 1-1913. Review period; time for filing state energy plans; approval.

Each state energy plan shall be submitted to the Council for a 60-day review period (excluding Saturdays, Sundays, holidays, and days of Council recess) at

least 90 days before the plan is required to be submitted to the federal agency administering the program. Proposed modifications to an approved state plan shall be submitted to the Council for a 30-day review period (excluding Saturdays, Sundays, holidays, and days of Council recess) at least 45 days before the modification is required to be submitted to the federal agency administering the program. The Council may, by resolution, approve or disapprove any plan or modification, in whole or in part, within the review period. If the Council, by resolution, does not approve or disapprove any plan or modification before the expiration of the review period, the plan or modification shall be deemed approved. (Feb. 24, 1987, D.C. Law 6-173, § 4, 33 DCR 7224.)

**Legislative history of Law 6-173.** — See note to § 1-1911.

## CHAPTER 20. NATIONAL CAPITAL PLANNING COMMISSION.

Sec.

- 1-2001. General purposes; findings; definitions.
- 1-2002. National Capital Planning Commission created; composition; officers and employees; advisory and coordinating committees; duties.
- 1-2003. Comprehensive plan.
- 1-2004. Proposed federal and District developments and projects.
- 1-2005. Program of public works projects; capital improvements plan.

Sec.

- 1-2006. Zoning and subdivision functions.
- 1-2007. Transfers from predecessor agencies.
- 1-2008. Appropriations.
- 1-2009. Acquisition of land — Authorization.
- 1-2010. Same — Appropriation; control.
- 1-2011. Annual report to Congress; annual estimate to Office of Management and Budget.

Cited in *Speyer v. Barry*, App. D.C., 588 A.2d 1147 (1991).

**§ 1-2001. General purposes; findings; definitions.**

(a) It is the purpose of this chapter to secure comprehensive planning for the physical development of the National Capital and its environs; to provide for the participation of the appropriate planning agencies of the environs in such planning; and to establish the agency and procedures requisite to the administration of the functions of the federal and District of Columbia governments related to such planning. The Congress hereby finds that the location of the seat of government in the District of Columbia has brought about the development of a metropolitan region extending well into adjoining territory in Maryland and Virginia; that effective comprehensive planning is necessary on a regional basis and of continuing importance to the federal establishment; that the distribution of federal installations throughout the region has been and will continue to be a major influence in determining the extent and character of development; that there is needed a central planning agency for the National Capital region to coordinate certain developmental activities of the many different agencies of the federal and District governments so that such activities may conform with general objectives; that there is an increasing mutuality of interest and responsibility between the various levels of government that calls for coordinate and unified policies in planning both federal and local development in the interest of order and economy; that there are developmental problems of an interstate character, the planning of which requires collaboration between federal, state, and local governments in the interest of equity and constructive action; and that the instrumentalities and procedures herein provided will aid in providing the Congress from time to time with information and advice requisite to legislation. The general objective of this chapter is to enable appropriate agencies to plan for the development of the federal establishment at the seat of government in a manner consistent with the nature and function of the National Capital and with due regard for the rights and prerogatives of the adjoining states and local governments to exercise control appropriate to their functions, and in a manner which will, in accordance with present and future needs, best promote public health, safety,

morals, order, convenience, prosperity, and the general welfare, as well as efficiency and economy in the process of development.

(b) As used in this chapter:

(1) "Region" or "National Capital region" means the District of Columbia; Montgomery and Prince Georges Counties in Maryland; Arlington, Fairfax, Loudoun, and Prince William Counties in Virginia; and all cities now or hereafter existing in Maryland or Virginia within the geographic area bounded by the outer boundaries of the combined area of said counties.

(2) "Environs" means the territory surrounding the District of Columbia included within the National Capital region.

(3) "National Capital" means the District of Columbia and territory owned by the United States within the environs.

(4) "Planning agency" means any city, county, bi-county, part-county, or regional planning agency authorized under state and local laws to make and adopt comprehensive plans whether or not its jurisdiction is exclusive or concurrent. (June 6, 1924, 43 Stat. 463, ch. 270, § 1; Feb. 26, 1925, 43 Stat. 983, ch. 339, § 3; Apr. 30, 1926, 44 Stat. 374, ch. 198; May 24, 1928, 45 Stat. 726, ch. 726; June 10, 1933, Ex. Ord. No. 6166, § 2; Mar. 2, 1934, 48 Stat. 389, ch. 38, § 1; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a); July 19, 1952, 66 Stat. 781, ch. 949, § 1; 1973 Ed., § 1-1001.)

**Cross references.** — As to the Comprehensive Plan for the National Capital, see § 1-245.

**Section references.** — This section is referred to in §§ 1-2007 to 1-2009 and 1-2011.

**Council concurrence in amendment adding Diagram No. 1, Special Streets and Places, to comprehensive plan.** — Pursuant to Resolution 6-137, the "Federal Preservation and Historic Features Element Amendment

Concurrence Resolution of 1985," effective May 14, 1985, the Council concurred in the amendment to the federal Preservation and Historic Features Element of the Comprehensive Plan for the National Capital, adding Diagram No. 1, Special Streets and Places.

**Cited in** Embassy of People's Republic of Benin v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 534 A.2d 310 (1987).

## § 1-2002. National Capital Planning Commission created; composition; officers and employees; advisory and coordinating committees; duties.

(a)(1) The National Capital Planning Commission (hereinafter referred to as the "Commission") is created as the central federal planning agency for the federal government in the National Capital, and to preserve the important historical and natural features thereof, except with respect to the United States Capitol Buildings and Grounds as defined in §§ 9-106 and 9-128, and to any extension thereof or additions thereto, or to buildings and grounds under the care of the Architect of the Capitol.

(2) The Mayor of the District of Columbia (hereinafter referred to as the "Mayor") shall be the central planning agency for the government of the District of Columbia (hereinafter referred to as the "District") in the National Capital. The Mayor shall be responsible for coordinating the planning activities of the District government and for preparing and implementing the District elements of the comprehensive plan for the National Capital, which may include land use elements, urban renewal and redevelopment elements, a multi-year program of public works for the District, and physical, social,



economic, transportation, and population elements. The Mayor's planning responsibility shall not extend to federal or international projects and developments in the District, as determined by the Commission, or to the United States Capitol Buildings and Grounds as defined in §§ 9-106 and 9-128, or to any extension thereof or additions thereto, or to buildings and grounds under the care of the Architect of the Capitol. In carrying out his responsibility under this section, the Mayor shall establish procedures for citizen participation in the planning process, and for appropriate meaningful consultation with any state or local government or planning agency in the National Capital region affected by any aspect of a comprehensive plan (including amendments thereto) affecting or relating to the District.

(3) The Mayor shall submit each District element of the comprehensive plan, and any amendment thereto, to the Council for revision or modification, and adoption, by act, following public hearings. Following adoption and prior to implementation, the Council shall submit each such element or amendment to the Commission for review and comment with regard to the impact of such element or amendment on the interests or functions of the federal establishment in the National Capital.

(4)(A) The Commission shall, within 60 days after receipt of such a District element of the comprehensive plan, or amendment thereto, from the Council, certify to the Council whether such element or amendment has a negative impact on the interests or functions of the federal establishment in the National Capital. If within such 60 days the Commission takes no action with respect to such element or amendment, such element or amendment shall be deemed to have no such negative impact, and such element or amendment shall be incorporated into the comprehensive plan for the National Capital and shall be implemented.

(B) If the Commission finds, within such 60 days, such negative impact, it shall certify its findings and recommendations with respect to such negative impact to the Council. Upon receipt of the Commission's findings and recommendations, the Council may: (i) Reject such findings and recommendations and resubmit such element or amendment, in a modified form, to the Commission for reconsideration; or (ii) accept such findings and recommendations and modify such element or amendment accordingly. If the Council accepts such findings and recommendations and modifies such element or amendment under clause (ii) of this subparagraph, the Council shall submit such element or amendment to the Commission for it to determine whether such modification has been made in accordance with the Commission's findings and recommendations. If, within 30 days after receipt of the modified element or amendment, the Commission takes no action with respect to such element or amendment, it shall be deemed to have been modified in accordance with such findings or recommendations, and shall be incorporated into the comprehensive plan for the National Capital and shall be implemented. If within such 30 days, the Commission again determines such element or amendment to have a negative impact on the functions or interests of the federal establishment in the National Capital such element or amendment shall not be implemented.

(C) If the Council rejects the findings and recommendations of the Commission and resubmits a modified element or amendment to it under clause (i) of subparagraph (B) of this paragraph, the Commission shall, within 60 days after receipt of such modified element or amendment from the Council, determine whether such modified element or amendment has a negative impact on the interests or functions of the federal establishment within the National Capital. If the Commission finds such negative impact it shall certify its findings (in sufficient detail that the Council can understand the basis of the objection of the Commission) and recommendations to the Council, and such element or amendment shall not be implemented. If the Commission takes no action with respect to such modified element or amendment within such 60 days, such modified element or amendment shall be deemed to have no such negative impact and shall be incorporated into the comprehensive plan and it shall be implemented. Any element or amendment which the Commission has determined to have a negative impact on the federal establishment in the National Capital, and which is submitted again in a modified form not less than 1 year from the day it was last rejected by the Commission shall be deemed to be a new element or amendment for purposes of the review procedure specified in this section.

(D) The Commission and the Mayor shall jointly publish, from time to time as appropriate, a comprehensive plan for the National Capital, consisting of the elements of the comprehensive plan for the federal activities in the National Capital developed by the Commission, and the District elements developed by the Mayor and the Council in accordance with the provisions of this section.

(E) The Council may grant, upon request made to it by the Commission, an extension of any time limitation contained in this section.

(F) The Commission and the Mayor shall jointly establish procedures for appropriate meaningful continuing consultation throughout the planning process for the National Capital.

(b) The National Capital Planning Commission shall be composed of: (1) Ex officio, the Secretary of the Interior, the Secretary of Defense, the Administrator of the General Services Administration, the Mayor, the Chairman of the Council of the District of Columbia and the Chairmen of the Committees on the District of Columbia of the Senate and the House of Representatives, or such alternates as each such person may from time to time designate to serve in his stead, and in addition; (2) five/citizens with experience in city or regional planning, 3 of whom shall be appointed by the President and 2 of whom shall be appointed by the Mayor. The citizen members appointed by the Mayor shall be bona fide residents of the District of Columbia and of the 3 appointed by the President at least 1 shall be a bona fide resident of Virginia and at least 1 shall be a bona fide resident of Maryland. The terms of office of members appointed by the President shall be for 6 years, except that of the members first appointed, the President shall designate 1 to serve 2 years and 1 to serve 4 years. Members appointed by the Mayor shall serve for 4 years. The members first appointed under this section shall assume their office on January 2, 1975. Any person appointed to fill a vacancy shall be appointed only for the

unexpired term of the member whom he shall succeed. The citizen members shall each receive compensation at the rate of \$100 for each day such member is engaged in the actual performance of duties vested in the Commission in addition to reimbursement for necessary expenses incurred by them in the performance of such duties.

(c) The President shall designate the Chairman of the Commission and the Commission may elect from among its members such other officers as it deems desirable. The Commission is authorized to employ a Director, an Executive Officer, and such other technical and administrative personnel as it may deem necessary. Further, without regard to § 1-1110, the civil service and classification laws, or § 3109 of Title 5, United States Code, the Commission may employ, by contract or otherwise, the temporary or intermittent (not in excess of 1 year) services of city planners, architects, engineers, appraisers, and other experts or organizations thereof, as may be necessary to carry out its functions, and in any such case the rate of compensation shall be fixed by the Commission so as not to exceed the rate usual for similar services.

(d) The Commission may establish, with the consent of each agency concerned as to its representation, such advisory and coordinating committees composed of representatives of such agencies of the federal and District of Columbia governments as may be necessary or helpful to obtain the maximum amount of cooperation and correlation of effort among the various agencies of such governments, in order that the National Capital may be developed in accordance with the comprehensive plan. As it may deem appropriate, the Commission may invite representatives of the planning and developmental agencies of the environs to participate in the work of such committees.

(e) As hereinafter more specifically described in §§ 1-2003 to 1-2006, it shall be among the principal duties of the Commission to:

(1) Prepare, adopt, and amend a comprehensive plan for the federal activities in the National Capital and make related recommendations to the appropriate developmental agencies;

(2) Serve as the central planning agency for the federal government within the National Capital region, and in such capacity to review their development programs in order to advise as to consistency with the comprehensive plan; and

(3) Be the representative of the federal and District governments for collaboration with the Regional Planning Council, as hereinafter provided. (June 6, 1924, 43 Stat. 463, ch. 270, § 2; July 10, 1952, 66 Stat. 782, ch. 949, § 1; Sept. 25, 1962, 76 Stat. 575, Pub. L. 87-683; 1973 Ed., § 1-1002; Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title II, § 203(a), (b).)

**Cross references.** — As to duty of Mayor to submit proposed Land Use Element, see § 1-246.

As to duty of Mayor to prepare ward plans, see § 1-247.

**Section references.** — This section is referred to in §§ 1-245, 1-2008, 1-2009, 1-2011, and 5-805.

**Repeal of § 2 of D.C. Law 5-187.** — Section 3(a) of D.C. Law 12-275 provided that § 2 of

D.C. Law 5-187 is repealed effective April 27, 1999. Section 2 of D.C. Law 5-187 had added a new title XI to the District of Columbia Comprehensive Plan of 1984 adopted by D.C. Law 5-76.

**References in text.** — The "civil service and classification laws", referred to in subsection (c) of this section, are set forth in Title 5, United States Code.

Section 1-1110, referred to in subsection (c),

was repealed by D.C. Law 11-259, § 405, 44 DCR 1423, effective April 12, 1997.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Transfer of functions.** — All functions of the Commissioner of Public Buildings and of the Commissioner of Public Roads were transferred to the Administrator of General Services, and the Public Roads Administration, to be known as the Bureau of Public Roads, was transferred to the General Services Administration by § 103(a) of the Act of June 30, 1949, 63 Stat. 380. The office of the Commissioner of Public Buildings was abolished by § 103(b) of that Act. The Bureau of Public Roads was transferred to the Department of Commerce to be administered by the Commissioner of Public Roads subject to the direction and control of the Secretary of Commerce under the provisions of 1949 Reorganization Plan No. 7, § 1, 14 F.R. 5228, 63 Stat. 1070. The Commissioner of Public Roads was redesignated the Federal Highway Administrator by the Act of August 3, 1956, 70 Stat. 990, ch. 937, § 2. Section 3(f)(4) of the Department of Transportation Act provided for the transfer of the office of Federal Highway Administrator to and continuation within the Department of Transportation under the title of Director of Public Roads. Section 3(e) of the same Act established within the Department of Transportation a Federal Highway Administration, headed by an Administrator. A Public Buildings Service, under the direction of a Commissioner, was established December 11, 1949, by the Administrator of General Services, to supersede the abolished Public Buildings Administration. All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of such Department were, with 2 exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their perfor-

mance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorganization Plan No. 3, §§ 1 and 2, 15 F.R. 3174, 64 Stat. 1262.

**Regional Planning Council abolished.** — The Regional Planning Council, referred to in paragraph (3) of subsection (e), was abolished by Reorganization Plan No. 5 of 1966, 31 F.R. 11857.

**Definitions applicable.** — The definitions contained in § 1-202 apply to terms appearing in this section.

**Termination of advisory committees.** — Section 14 of the Act of October 6, 1972, 86 Stat. 776, Pub. L. 92-463, provided that advisory committees in existence on January 5, 1973, were to terminate not later than the expiration of the 2-year period following January 5, 1973, unless, in the case of a committee established by the President or an officer of the federal government, such committee was renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. Advisory committees established after January 5, 1973, were to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the federal government, such committee was renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress its duration is otherwise provided by law.

**Assignment of planning responsibilities under Pub. L. 93-198.** — Commissioner's Order No. 74-146, dated June 29, 1974 delegated the responsibility to develop local elements of the comprehensive plan and to coordinate the planning activities of the District of Columbia to the Director of the Office of Planning and Management, directed the designation of planning liaison officers in all departments and agencies of the District government, provided for the appointment of and staff support for a citizens' panel to advise the Director of Planning and Management in the preparation of the comprehensive plan, and designated the Director of Planning and Management as the alternate for the Mayor-Commissioner on the National Capital Planning Commission. These planning responsibilities were subsequently assigned to the Municipal Planning Office by Organization Order No. 50. The Municipal Planning Office was abolished by Mayor's Order No. 79-8, dated January 2, 1979, and the duties, functions, and resources of the Municipal Planning Office were transferred to the Office of Planning and Development by Mayor's Order No. 79-9, dated January 2, 1979.

**Comprehensive plan goals and policies.** — Act of March 3, 1979, D.C. Law 2-134,

established the goals and policies of the District of Columbia as the first District element of the comprehensive plan for the National Capital.

Section 4 of the District of Columbia Comprehensive Plan Act of 1984 (D.C. Law 5-76) repealed the District of Columbia Comprehensive Plan Goals and Policies Act of 1978 (D.C. Law 2-134).

**District of Columbia Comprehensive Plan of 1984.** — Section 3 of D.C. Law 5-76 sets forth titles I through X adopted by the Council of the District of Columbia entitled "The District of Columbia Comprehensive Plan for 1984," and was reprinted in its entirety in 31 DCR 1049 and is contained in the 10 DCMR compilation. On April 5, 1984, the National Capital Planning Commission adopted a resolution finding that "the District elements adopted and amended by the Council by D.C. Act 5-112 do not have a negative impact on the interests or functions of the Federal Establishment in the National Capital."

Section 2 of D.C. Law 8-129, as amended by § 201 of D.C. Law 8-132, amended Titles I through VIII, X and XI, and added Title XII to the District of Columbia Comprehensive Plan of 1984, adopted by D.C. Law 5-76. D.C. Law 8-129 was reprinted in its entirety in 37 DCR 55. Amended Titles I through VII, X, XI, and new Title XII will be codified at Title 10 of the District of Columbia Municipal Regulations. D.C. Law 8-132 is found at 38 DCR 2213.

**Concurrence with Preservation and Historic Features Element of Comprehensive Plan for the National Capital.** — Section 6 of D.C. Law 5-76 provided that the Council of the District of Columbia concurs with the Preservation and Historic Features Element of the Comprehensive Plan for the National Capital adopted by the National Capital Planning Commission to the extent the Preservation and Historic Features Element is consistent with titles I and VIII of the act.

**Review of District elements by National Capital Planning Commission.** — Section 8(b) of D.C. Law 5-76, § 6(b) of D.C. Law 5-187, and § 4(b) of D.C. Law 8-129, provided that no District element of the Comprehensive Plan for the National Capital shall take effect until it has been reviewed by the National Capital Planning Commission as provided in subsection (a) of this section and § 1-244(a).

**Conformance of federal plan to amendment of District of Columbia Comprehensive Plan.** — Section 5 of D.C. Law 5-187 provided that the Council concurs in the adoption of an amendment to conform the federal Preservation and Historic Features Element of the Comprehensive Plan for the National Capital to the amendment made to § 808 of the District of Columbia Comprehensive Plan by § 3(c) of the act, which directed certain addi-

tions to the network of special streets and places.

**Authority to adopt a new comprehensive plan is vested jointly** in the District of Columbia (as to local elements of the plan) and the National Capital Planning Commission (as to federal elements of the plan). *Citizens Ass'n v. Zoning Comm'n*, App. D.C., 392 A.2d 1027 (1978).

The National Capital Planning Act empowers the National Capital Planning Commission to preserve the important historical and natural features of the federal city. Much of the planning commission's duties center on the comprehensive plan for the national capital which it prepares and updates in conjunction with the D.C. government. *McMillan Park Comm. v. National Capital Planning Comm'n*, 968 F.2d 1283 (D.C. Cir. 1992).

**Amendment of plan.** — The D.C. government, through action by the mayor and city council, may adopt proposed amendments to the comprehensive plan and then submit them to the National Capital Planning Commission for review and comment with regard to the impact of such amendment on the interests or functions of the federal establishment in the national capital. *McMillan Park Comm. v. National Capital Planning Comm'n*, 968 F.2d 1283 (D.C. Cir. 1992).

**Effect of 1973 amendment on role of Commission.** — After July 1, 1974 (the effective date of the 1973 amendment to this section), the planning role of the National Capital Planning Commission became limited to preparing the federal elements of the comprehensive plan for the National Capital and to exercising veto authority over the proposed district elements which it found would have a negative impact on the interests of the federal establishment. *Citizens Ass'n v. Zoning Comm'n*, App. D.C., 392 A.2d 1027 (1978).

**No time limit is set for preparation of the plan**, nor is there a moratorium upon zoning activities until the plan is in effect. *Citizens Ass'n v. Zoning Comm'n*, App. D.C., 392 A.2d 1027 (1978).

**Meanwhile 1968 plan does not control.** — Although the plan to be adopted pursuant to subsection (a) had not yet been published, there was no Congressional intent that until publication a plan prepared by the National Capital Planning Commission in 1968 (when it still retained total authority for land use planning in the District) should control. *Citizens Ass'n v. Zoning Comm'n*, App. D.C., 392 A.2d 1027 (1978).

**Cited in** *A & G Ltd. Partnership v. Joint Comm. on Landmarks of Nat'l Capital*, App. D.C., 449 A.2d 291 (1982); *Tenley & Cleveland Park Emergency Comm. v. District of Columbia*, 115 WLR 1989 (Super. Ct. 1987).

**§ 1-2003. Comprehensive plan.**

(a) The Commission is hereby charged with the duty of preparing and adopting a comprehensive, consistent, and coordinated plan for the National Capital, which plan shall include the Commission's recommendations or proposals for federal developments or projects in the environs, and those District elements, or amendments thereto, of the comprehensive plan adopted by the Council and with respect to which the Commission has not determined a negative impact to exist, which elements or amendments shall be incorporated into such comprehensive plan without change. The Commission shall collaborate with the National Capital Regional Planning Council in the development of those elements of the plan for the National Capital. While consistency between the respective proposals of the Commission and the National Capital Regional Planning Council shall be sought, lack of action or agreement by the National Capital Regional Planning Council shall not prevent the Commission from adopting any part of its plan or any recommendation or proposal for federal developments or projects in the environs. The Commission may include in its plan any portion of any plan adopted by the National Capital Regional Planning Council or any planning agency in the environs and from time to time make recommendations of collateral interest to the National Capital Regional Planning Council or to the aforesaid agencies.

(b) The Commission may, as the work of preparing the comprehensive plan progresses, adopt any element or a part or parts thereof and from time to time shall review and may amend or extend the plan, in order that its recommendations may be kept up to date.

(c)(1) Prior to the final adoption of the comprehensive plan or any element thereof, or any subsequent revision, the Commission shall present such plan, element, or revision to the appropriate federal or District of Columbia authorities for comment and recommendations. Presentation of proposed revisions may at the Commission's discretion be made annually in a consolidated form. The said recommendations by federal and District of Columbia authorities shall not be binding on the Commission, but it shall give careful consideration to such views and recommendations as are submitted prior to final adoption. The Commission may, in addition and at its discretion, periodically provide opportunity by public hearings, meetings, or conferences, exhibitions and publication of its plans, for review and comments by nongovernmental agencies or groups, and, in consultation with the District of Columbia Council, encourage the formation of 1 or more citizen advisory councils.

(2) In carrying out its planning functions with respect to federal developments or projects in the environs, the Commission may act in conjunction and cooperation and enter into agreements with any state or local authority or planning agency, as the Commission may deem necessary, to effectuate the adoption of any plan or proposal and secure its realization. (June 6, 1924, 43 Stat. 464, ch. 270, § 4; July 19, 1952, 66 Stat. 785, ch. 949, § 1; 1973 Ed., § 1-1004; Dec. 24, 1973, 87 Stat. 782, Pub. L. 93-198, title II, § 203(c)(3).)

**Cross references.** — As to comprehensive plan for zoning, see § 5-414.

**Section references.** — This section is referred to in §§ 1-2002, 1-2008, 1-2009, 1-2011, and 7-1032.

**Repeal of § 2 of D.C. Law 5-187.** — Section 3(a) of D.C. Law 12-275 provided that § 2 of D.C. Law 5-187 is repealed effective April 7, 1999. Section 2 of D.C. Law 5-187 had added a new title XI to the District of Columbia Comprehensive Plan of 1984 adopted by D.C. Law 56-76.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(28) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**National Capital Regional Planning Council abolished.** — The National Capital Regional Planning Council, referred to in subsection (a) of this section, was abolished by Reorganization Plan No. 5 of 1966, 31 F.R. 11857.

**Definitions applicable.** — The definitions contained in § 1-202 apply to this section.

**District of Columbia Comprehensive Plan of 1984.** — Section 3 of D.C. Law 5-76 sets forth titles I through X adopted by the Council of the District of Columbia entitled "The District of Columbia Comprehensive Plan for 1984," and was reprinted in its entirety in 31 DCR 1049 and is contained in the 10 DCMR compilation. On April 5, 1984, the National Capital Planning Commission adopted a resolution finding that "the District elements adopted and amended by the Council by D.C. Act 5-112 do not have a negative impact on the interests or functions of the Federal Establishment in the National Capital."

**"Undertaking."** — The National Capital Planning Commission did not engage in an "undertaking," as that term is defined in regulations implementing the National Historic Preservation Act, when it reviewed an amendment to the comprehensive plan for the national capital that would allow commercial development of McMillan Park. *McMillan Park Comm. v. National Capital Planning Comm'n*, 968 F.2d 1283 (D.C. Cir. 1992).

**Implementation of environmental policies through comprehensive plan.** — The environmental policies delineated in the National Environmental Policy Act should find expression in the planning and zoning process in the District, and the proper avenue for the implementation of the purposes of the NEPA is in the planning operations of the National Capital Planning Commission, particularly in the formulation of the comprehensive plan. *McLean Gardens Residents, Ass'n v. National Capital Planning Comm'n*, 390 F. Supp. 165 (D.D.C. 1974).

**Cited in** *Levy v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 570 A.2d 739 (1990); *United States v. Board of Zoning Adjustment*, App. D.C., 644 A.2d 995 (1994).

## § 1-2004. Proposed federal and District developments and projects.

(a) In order to insure the comprehensive planning and orderly development of the National Capital, each federal and District of Columbia agency, prior to the preparation of construction plans originated by such agency for proposed developments and projects or to commitments for the acquisition of land, to be paid for in whole or in part from federal or District funds, shall advise and consult with the Commission in the preparation by the agency of plans and programs in preliminary and successive stages which affect the plan and development of the National Capital: Provided, however, that the Commission shall determine in advance the type or kinds of plans, developments, projects, improvements, or acquisitions which do not need to be submitted for review by the Commission as to conformity with its plans. After receipt of such plans,

maps, and data, it shall be the duty of the Commission to make promptly a preliminary report and recommendations to the agency or agencies concerned. If, after having received and considered the report and recommendations of the Commission the agency does not concur, it shall advise the Commission with its reasons therefor, and the Commission shall submit a final report. After such consultation and suitable consideration of the views of the Commission the agency may proceed to take action in accordance with its legal responsibilities and authority.

(b) The procedure prescribed in subsection (a) of this section shall not apply to projects within the Capitol grounds or to structures erected by the Department of Defense during wartime or national emergency within existing military, naval, or air force reservations, except that the appropriate defense agency shall consult with the Commission as to any developments which materially affect traffic or require coordinated planning of the surrounding area.

(c) The provisions of § 5-432 are extended to include public buildings erected by any agency of the government of the District of Columbia within the boundaries of the central area of the District, as such central area may be defined and from time to time redefined by concurrent action of the Commission and the Council, except that the Commission shall transmit its approval or disapproval respecting any such building within 30 days after the day it was submitted to the Commission.

(d) Within the environs, general plans showing the location, character, extent and intensity of use for proposed federal and District developments and projects involving the acquisition of land, shall be submitted to the Commission for report and recommendations before final commitment to said acquisition, unless such matters shall have been specifically approved by an act of Congress. Before acting on any general plan, the Commission shall advise and consult with the National Capital Regional Planning Council and the appropriate planning agency having jurisdiction over the affected part of the environs. When, in the judgment of the Commission, proposed developments or projects submitted to the Commission under subsection (a) of this section involve a major change in the character or intensity of an existing use in the environs, the Commission shall likewise advise and consult with the National Capital Regional Planning Council and the aforesaid planning agency. The report and recommendations required under this subsection shall be submitted within 60 days and shall be accompanied by any reports or recommendations that may have been prepared by the National Capital Regional Planning Council or the aforesaid planning agency.

(e) It is the intent of this section to obtain cooperation and correlation of effort between the various agencies of the federal government which are responsible for public developments and projects, including the acquisition of land. These agencies, therefore, shall look to the Commission and utilize it as the central planning agency for the federal activities in the National Capital region. To aid the Commission in carrying out this function, plans, data, and records, or copies thereof, necessary to the Commission shall be furnished upon its request by such federal and District governmental agencies; and the



Commission shall likewise furnish related plans, data, and records, or copies thereof, to federal and District of Columbia governmental agencies upon request. (June 6, 1924, ch. 270, § 5; July 19, 1952, 66 Stat. 787, ch. 949, § 1; 1973 Ed., § 1-1005; Dec. 24, 1973, 87 Stat. 782, Pub. L. 93-198, title II, § 203(d).)

**Section references.** — This section is referred to in §§ 1-2002, 1-2008, 1-2009, 1-2011, and 7-1041.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(29) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**National Capital Regional Planning Council abolished.** — The National Capital Regional Planning Council, referred to in subsection (d), was abolished by Reorganization Plan No. 5 of 1966, 31 F.R. 11857.

**Metropolitan Washington Airports Authority established.** — D.C. Law 6-67, effective December 3, 1985, endorsed on behalf of the District government the creation of a regional airport authority to acquire Washington National Airport [now Reagan National Airport] and Washington Dulles International Airport from the federal government.

D.C. Law 12-8, effective August 1, 1997, amended D.C. Law 6-67.

**Definitions applicable.** — The definitions contained in § 1-202 apply to this section.

**Cited in** District of Columbia Fed'n of Civic Ass'ns v. Volpe, 459 F.2d 1231 (D.C. Cir. 1971), cert. denied, 405 U.S. 1030, 92 S. Ct. 1290, 31 L. Ed. 2d 489 (1972); Maryland-National Capital Park & Planning Comm'n v. United States Postal Serv., 349 F. Supp. 1212 (D.D.C. 1972), modified, 487 F.2d 1029 (D.C. Cir. 1973); District of Columbia Fed'n of Civic Ass'ns v. Volpe, 71 F.R.D. 206 (D.D.C. 1976); Speyer v. Barry, App. D.C., 588 A.2d 1147 (1991).

## § 1-2005. Program of public works projects; capital improvements plan.

(a) The Commission shall recommend a 6-year program of public works projects for the federal government which it shall review annually with the agencies concerned. To this end, each federal agency shall submit to the Commission in the 1st quarter of each fiscal year a copy of its advance program of capital improvements within the National Capital and its environs.

(b) The Mayor shall submit to the Commission, by February 1st of each year, a copy of the multiyear capital improvements plan for the District developed by him under § 47-303. The Commission shall have 30 days within which to comment upon such plan but shall have no authority to change or disapprove of such plan. (June 6, 1924, ch. 270, § 7; July 19, 1952, 66 Stat. 789, ch. 949, § 1; 1973 Ed., § 1-1007; Dec. 24, 1973, 87 Stat. 782, Pub. L. 93-198, title II, § 203(f).)

**Section references.** — This section is referred to in §§ 1-2002, 1-2008, 1-2009, and 1-2011.

**Change in government.** — This section originated at a time when local government

powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(32)

of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of

Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Definitions applicable.** — The definitions contained in § 1-202 apply to this section.

## § 1-2006. Zoning and subdivision functions.

(a) The Commission may make a report and recommendation to the Zoning Commission of the District of Columbia, as provided in § 5-417, on proposed amendments of the zoning regulations and maps as to the relation, conformity, or consistency of such amendments with the comprehensive plan for the National Capital. The Commission may also submit to the said Zoning Commission proposed amendments or general revisions to the zoning regulations or the zoning map for said District.

(b) When requested by a properly authorized representative of the Commission, the Zoning Commission may at its discretion recess for a reasonable period of time any public hearing held by it to consider a proposed amendment to the zoning regulations or map, in order that the Commission or its representative may have an opportunity to present to the Zoning Commission a further report on the proposed amendment.

(c) The functions vested in the Commission pursuant to this section may, to such extent as the Commission shall determine, and subject to confirmation by the Commission when requested by the Zoning Commission of the District of Columbia, be performed by a committee of the Commission which shall be known as the Zoning Committee of the National Capital Planning Commission and shall consist of not less than 3 members of the Commission designated by the Commission for the purpose. The number of members serving on the Zoning Committee may be varied from time to time.

(d) Any proposed change in or addition to the regulations or general orders regulating the platting and subdividing of lands and grounds in the District of Columbia shall first be submitted to the Commission by the Council of the District of Columbia for report and recommendation prior to adoption by such Council. Should the Council not concur in the recommendations of the Commission, it shall so advise the Commission with its reasons therefor and the Commission shall submit a final report within 30 days. After consideration of this final report, the Council may proceed to take action in accordance with its legal responsibilities and authority. It shall be the duty of the Commission to submit any proposed changes in or amendments to the general orders that the Commission considers appropriate and the Council shall treat the amendments proposed in the same manner as other proposed amendments. (June 6, 1924, ch. 270, § 8; July 19, 1952, 66 Stat. 790, ch. 949, § 1; 1973 Ed., § 1-1008; Dec. 24, 1973, 87 Stat. 783, Pub. L. 93-198, title II, § 203(g).)

**Cross references.** — As to zoning regulations, see §§ 5-413 and 5-414.

**Section references.** — This section is referred to in §§ 1-2002, 1-2008, 1-2009, and 1-2011.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Substantial weight given by Zoning Commission to zoning recommendations.**

— The Zoning Commission must accord substantial weight and respect to the National Planning Commission's statutorily authorized commentary on proposed maps, regulations, and amendments to the comprehensive plan. *Capitol Hill Restoration Soc'y v. Zoning Comm'n*, App. D.C., 380 A.2d 174 (1977), overruled on other grounds, *Citizens Ass'n of Georgetown, Inc. v. Zoning Comm'n*, App. D.C., 392 A.2d 1027 (1978).

**However, the record must contain a strong basis** for resort to a different interpretation. *Capitol Hill Restoration Soc'y v. Zoning Comm'n*, App. D.C., 380 A.2d 174 (1977), overruled on other grounds, *Citizens Ass'n of Georgetown, Inc. v. Zoning Comm'n*, App. D.C., 392 A.2d 1027 (1978).

## § 1-2007. Transfers from predecessor agencies.

All other functions, powers, and duties of the National Capital Park and Planning Commission, including those formerly vested in the Highway Commission established by §§ 7-107 to 7-111, and those formerly vested in the National Capital Park Commission by §§ 1-2001, 1-2009, 1-2010, and 1-2011, together with the personnel, records, property, and unexpended balances (available or to be made available) of appropriations, allocations, and all other funds, including trust funds, of the National Capital Park and Planning Commission, are hereby transferred to the Commission. (June 6, 1924, ch. 270, § 9; July 19, 1952, 66 Stat. 790, ch. 949, § 1; 1973 Ed., § 1-1009.)

**Section references.** — This section is referred to in §§ 1-2008, 1-2009, and 1-2011.

**References in text.** — Section 7-111 was

repealed by D.C. Law 4-201, § 711, effective March 10, 1983.

## § 1-2008. Appropriations.

There are hereby authorized to be appropriated, out of any moneys in the Treasury of the United States not otherwise appropriated and in any appropriate appropriation act other than the annual District of Columbia appropriation act, such sums as may be necessary to carry out the provisions of §§ 1-2001 to 1-2008, any existing provisions of law to the contrary notwithstanding. (June 6, 1924, ch. 270, § 10; July 19, 1952, 66 Stat. 791, ch. 949, § 1; 1973 Ed., § 1-1010.)

**Section references.** — This section is referred to in §§ 1-2009 and 1-2011.

**§ 1-2009. Acquisition of land — Authorization.**

Said Commission or a majority thereof is authorized and directed to acquire such lands as in its judgment shall be necessary and desirable in the District of Columbia and adjacent areas in Maryland and Virginia, within the limits of the appropriations made for such purposes, for suitable development of the National Capital park, parkway, and playground system. Said Commission is authorized to acquire such lands by purchase when they can be acquired at prices reasonable in the judgment of said Commission, otherwise by condemnation proceedings, such proceedings to acquire lands within the District of Columbia to be in accordance with the provisions of the Act of August 30, 1890, 26 Stat. 412, ch. 837, the Chief of Engineers of the Army being, for the purposes of §§ 1-2001 to 1-2011, hereby clothed with all the power vested by the said Act of August 30, 1890, in the Board thereby created. Said Commission is hereby authorized to acquire such lands, located in Maryland or Virginia, either by purchase or condemnation proceedings, by such arrangements as to acquisition and payment for the lands as it shall determine upon by agreement with the proper officials of the States of Maryland and Virginia. In the selection of lands to be acquired the advice of the Commission of Fine Arts shall be requested. The designation of all lands to be acquired by condemnation, all contracts for purchase of lands, and all agreements between said Commission and the officials of the States of Maryland and Virginia shall be subject to the approval of the President of the United States. (June 6, 1924, 43 Stat. 463, ch. 270, § 11; July 19, 1952, 66 Stat. 791, ch. 949, § 2; 1973 Ed., § 1-1011.)

**Section references.** — This section is referred to in §§ 1-2007 and 1-2011.

**References in text.** — Act of August 30, 1890, 26 Stat. 412, ch. 837, created a board to acquire land for the Government Printing Office and established the procedure for such acquisition.

**Delegation of functions.** — The authority of the President under the last sentence of this section was delegated to the Director of the Office of Management and Budget, by § 9(4) of Executive Order No. 11609, July 22, 1971, 36 F.R. 13747.

**§ 1-2010. Same — Appropriation; control.**

There is authorized to be appropriated, each year, in the annual District of Columbia appropriation act, a sum not exceeding \$.01 for each inhabitant of the continental United States as determined by the last preceding decennial census, said sum to be used by said Commission for the payment of its expenses and for the acquisition of the lands herein authorized to be acquired by said Commission for the purposes named, the compensation for the land, the expense of surveys, ascertainment of title, condemnation proceedings, if any, and necessary conveyancing to be paid from said appropriations. The funds so appropriated shall be paid from the revenues of the District of Columbia and the general funds of the Treasury in the same proportion as other expenses of the District of Columbia. The land so acquired within the District of Columbia shall be a part of the park system of the District of Columbia and be under control of the Director of the National Park Service. Areas suitable for playground purposes may, in the discretion of said Commission, be assigned to the control of the Mayor of the District of Columbia for

playground purposes. The land so acquired outside the District of Columbia shall be controlled as determined by agreement between said Commission and the proper officers of the States of Maryland and Virginia, such agreements to be subject to the approval of the President. (June 6, 1924, 43 Stat. 463, ch. 270, § 12; Feb. 26, 1925, 43 Stat. 983, ch. 339, § 3; June 10, 1933, Ex. Ord. No. 6166, § 2; Mar. 2, 1934, 48 Stat. 389, ch. 38, § 1; July 19, 1952, 66 Stat. 791, ch. 949, § 2; 1973 Ed., § 1-1012.)

**Section references.** — This section is referred to in §§ 1-2007, 1-2009 and 1-2011.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

## **§ 1-2011. Annual report to Congress; annual estimate to Office of Management and Budget.**

Said Commission shall report to Congress annually on the 1st Monday of March the lands acquired during the preceding fiscal year, the method of acquisition, and the cost of each tract. It shall also submit to the Office of Management and Budget on or before December 15th of each year its estimate of the total sum to be appropriated for expenditure under the provisions of §§ 1-2001 to 1-2011 during the succeeding fiscal year. (June 6, 1924, 43 Stat. 464, ch. 270, § 13; July 19, 1952, 66 Stat. 791, ch. 949, § 2; 1973 Ed., § 1-1013; Apr. 21, 1976, 90 Stat. 379, Pub. L. 94-273, § 21.)

**Section references.** — This section is referred to in §§ 1-2007 and 1-2009.

CHAPTER 21. WASHINGTON METROPOLITAN REGION DEVELOPMENT.

Sec.

1-2101. Congressional declaration.

1-2102. Congressional policy.

1-2103. Priority projects.

1-2104. Study of final report of Joint Commit-

Sec.

tee on Washington Metropolitan Problems.

1-2105. "Washington metropolitan region" defined.

§ 1-2101. Congressional declaration.

The Congress hereby declares that, because the District which is the seat of the government of the United States and has now become the urban center of a rapidly expanding Washington metropolitan region, the necessity for the continued and effective performance of the functions of the government of the United States at the seat of said government in the District of Columbia, the general welfare of the District of Columbia and the health and living standards of the people residing or working therein and the conduct of industry, trade, and commerce therein require that the development of the District of Columbia and the management of its public affairs shall, to the fullest extent practicable be coordinated with the development of the other areas of the Washington metropolitan region and with the management of the public affairs of such other areas, and that the activities of all of the departments, agencies, and instrumentalities of the federal government which may be carried out in, or in relation to, the other areas of the Washington metropolitan region shall, to the fullest extent practicable, be coordinated with the development of such other areas and with the management of their public affairs; all toward the end that, with the cooperation and assistance of the other areas of the Washington metropolitan region, all of the areas therein shall be so developed and the public affairs thereof shall be so managed as to contribute effectively toward the solution of the community development problems of the Washington metropolitan region on a unified metropolitan basis. (June 27, 1960, 74 Stat. 223, Pub. L. 86-527, § 2; 1973 Ed., § 1-1301.)

**Section references.** — This section is referred to in §§ 1-2102, 1-2103, and 1-2105.

§ 1-2102. Congressional policy.

The Congress further declares that the policy to be followed for the attainment of the objective established by § 1-2101, and for the more effective exercise by the Congress, the executive branch of the federal government and the Mayor of the District of Columbia and all other officers and agencies and instrumentalities of the District of Columbia of their respective functions, powers, and duties in respect of the Washington metropolitan region, shall be that all such functions, powers, and duties shall be exercised and carried out in such manner as (with proper recognition of the sovereignty of the State of Maryland and the Commonwealth of Virginia in respect to those areas of the Washington metropolitan region as are situate within their respective jurisdictions) will best facilitate the attainment of such objective of the coordinated development of the areas of the Washington metropolitan region and coordi-

nated management of their public affairs so as to contribute effectively to the solution of the community development problems of the Washington metropolitan region on a unified metropolitan basis. (June 27, 1960, 74 Stat. 223, Pub. L. 86-527, § 3; 1973 Ed., § 1-1302.)

**Section references.** — This section is referred to in §§ 1-2103 and 1-2105.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

### § 1-2103. Priority projects.

The Congress further declares that, in carrying out the policy pursuant to § 1-2102 for the attainment of the objective established by § 1-2101, priority should be given to the solution, on a unified metropolitan basis, of the problems of water supply, sewage disposal, and water pollution and transportation. (June 27, 1960, 74 Stat. 223, Pub. L. 86-527, § 4; 1973 Ed., § 1-1303.)

**Section references.** — This section is referred to in § 1-2105.

### § 1-2104. Study of final report of Joint Committee on Washington Metropolitan Problems.

The Congress further declares that the officers, departments, agencies, and instrumentalities of the executive branch of the federal government and the Mayor of the District of Columbia and the other officers, agencies, and instrumentalities of the District of Columbia, and other agencies of government within the Washington metropolitan region are invited and encouraged to engage in an intensive study of the final report and recommendation of the Joint Committee on Washington Metropolitan Problems with a view to submitting to the Congress the specific recommendations of each of the agencies of government specified. (June 27, 1960, 74 Stat. 223, Pub. L. 86-527, § 5; 1973 Ed., § 1-1304.)

**Section references.** — This section is referred to in § 1-2105.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

## § 1-2105

## ADMINISTRATION

§ 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

### **§ 1-2105. “Washington metropolitan region” defined.**

As used in §§ 1-2101 to 1-2105, the term “Washington metropolitan region” includes the District of Columbia, the Counties of Montgomery and Prince Georges in the State of Maryland, the Counties of Arlington and Fairfax and the Cities of Alexandria and Falls Church in the Commonwealth of Virginia. (June 27, 1960, 74 Stat. 224, Pub. L. 86-527, § 6; 1973 Ed., § 1-1305.)



## BUSINESS AND ECONOMIC DEVELOPMENT

### CHAPTER 22. BUSINESS AND ECONOMIC DEVELOPMENT.

#### *Subchapter I. Office of Business and Economic Development.*

Sec.

- 1-2201. Findings; purpose.
- 1-2202. [Repealed].
- 1-2203. Same — Functions.
- 1-2204. Same — Executive Director.
- 1-2205. Same — Funding.

#### *Subchapter I-A. Economic Development Liaison Office.*

- 1-2207.1. Establishment of the Economic Development Liaison Office.
- 1-2207.2. Functions.
- 1-2207.3. Transfer of functions; abolishment of the Office of Tourism and Promotions.

#### *Subchapter II. Economic Development Finance Corporation.*

- 1-2211. Findings.
- 1-2212. Definitions.
- 1-2213. Economic Development Finance Corporation — Established; composition; appointment; term of office; vacancies; quorum; reimbursement for expenses.
- 1-2214. Same — President.
- 1-2215. Conflict of interest.
- 1-2216. Powers of Corporation.
- 1-2217. Capitalization.
- 1-2218. Project criteria.
- 1-2219. Rules and regulations; sponsorship of projects; application for for-profit subsidiary corporation.
- 1-2220. Biennial audit; report of audit; annual report of operation.
- 1-2221. Minority Enterprise Small Business Investment Company and Small Business Investment Company.
- 1-2222. Title to property upon dissolution.
- 1-2223. Business Purchase Assistance Program.

#### *Subchapter III. Business Incubator Facilitation.*

- 1-2231. Purposes.
- 1-2232. Definitions.
- 1-2233. Eligibility criteria.
- 1-2234. Admissions policy.
- 1-2235. Services.
- 1-2236. Mayor may contract for outside management.
- 1-2237. Priority to residents.
- 1-2238. First source employment agreement required.
- 1-2239. Maximum stay policy.
- 1-2240. Location of business incubators.

Sec.

- 1-2241 to 1-2243. [Repealed].
- 1-2244. Annual report.

#### *Subchapter IV. Enterprise Zone Study Commission.*

- 1-2251. Statement of purpose.
- 1-2252. Findings.
- 1-2253. Commission established.
- 1-2254. Duties of commission.
- 1-2255. Commission report.
- 1-2256. Compensation; assistance from other agencies.

#### *Subchapter V. Contractors Guarantee Association.*

- 1-2261. Establishment of Technical Assistance Program.
- 1-2262. Contractor fees.
- 1-2263. Establishment of Financial Assurance Fund.

#### *Subchapter VI. Business Improvement Districts.*

- 1-2271. Findings and purpose.
- 1-2272. Definitions.
- 1-2273. BID formation.
- 1-2274. Establishment of Business Improvement District.
- 1-2275. Review of application.
- 1-2276. Hearing.
- 1-2277. Board of Directors; officers; qualifications; expenses.
- 1-2278. Bylaws and articles of incorporation; amendments.
- 1-2279. Expanding the geographic area of a BID.
- 1-2280. Meetings of members and the Board.
- 1-2281. Voting.
- 1-2282. Books, minutes, and records; inspection; accounts; budgets.
- 1-2283. Annual report of BID corporation.
- 1-2284. Liability.
- 1-2285. Collection and disbursement of BID taxes.
- 1-2286. Additional authority and duties of BIDs; dispute resolution.
- 1-2287. Civil action for BID taxes.
- 1-2288. Term of BID; extension; termination and dissolution.
- 1-2289. Prohibited acts.
- 1-2290. Maintenance of base level of city services.
- 1-2291. Exempt property owners; BID membership.
- 1-2292. Rulemaking.

#### *Subchapter VII. Tax Increment Financing.*

- 1-2293.1. Definitions.
- 1-2293.2. TIF bond authorization and forward commitment.

Sec.

- 1-2293.3. Certification of development project.
- 1-2293.4. Approval by the Council.
- 1-2293.5. Allocation of tax increments.
- 1-2293.6. TIF bond issuance.
- 1-2293.7. TIF bond security.
- 1-2293.8. Default.
- 1-2293.9. Public inspection.
- 1-2293.10. Liability.
- 1-2293.11. Transfer of authority.

*Subchapter VIII. National Capital  
Revitalization Corporation.*

- 1-2295.1. Definitions.
- 1-2295.2. Establishment of the Corporation;  
purposes; fiscal year.
- 1-2295.3. Board of Directors.
- 1-2295.4. Meetings of the Board.
- 1-2295.5. Officers and employees.
- 1-2295.6. Limitations of actions.
- 1-2295.7. Relation to other laws.
- 1-2295.8. Establishment of Enterprise Fund.
- 1-2295.9. Prohibition on political activity.
- 1-2295.10. Rules with respect to gifts, procure-  
ment of goods and services, prop-  
erty disposition, conflict of inter-  
est.
- 1-2295.11. Conflict of interest; disclosure;

Sec.

- waiver of bar against participa-  
tion by interested party.
- 1-2295.12. Revitalization Plan.
- 1-2295.13. Performance plan; independent au-  
dit; evaluation.
- 1-2295.14. Criteria for assistance.
- 1-2295.15. General powers.
- 1-2295.16. Subsidiaries.
- 1-2295.17. Revolving funds.
- 1-2295.18. Revenue bonds, notes, or other ob-  
ligations.
- 1-2295.19. Eminent domain.
- 1-2295.20. Priority development areas.
- 1-2295.21. Redevelopment districts; allocation  
of tax increment revenues.
- 1-2295.22. Determination, publication, collec-  
tion, and deposit of tax increment  
revenues.
- 1-2295.23. Tax increment revenue bonds.
- 1-2295.24. Certification of borrowings.
- 1-2295.25. District pledges.
- 1-2295.26. No taxing power.
- 1-2295.27. Intragovernmental cooperation.
- 1-2295.28. Dissolution; termination of affairs.
- 1-2295.29. Transfer; assignment; assumption  
of other powers; duties.

*Subchapter I. Office of Business and Economic Development.*

**Editor's notes.** — Because of the enactment of subchapter II of this chapter by D.C. Law 5-89, the preexisting text of Chapter 22, to

include §§ 1-2201 through 1-2205, has been designated as subchapter I of this chapter.

**§ 1-2201. Findings; purpose.**

(a) The Council finds that:

(1) There exists in the District of Columbia a substantial problem of chronic unemployment and underemployment;

(2) In the last 2 decades, growth in employment, new business develop-  
ment, and commercial development in the District of Columbia has failed to  
keep pace with employment growth and commercial expansion in neighboring  
jurisdictions;

(3) During the same period, the District has experienced a substantial  
loss in retail businesses and other commercial enterprises which contributed  
significantly to local employment and the city's tax base;

(4) Expansion of the tax base in the District of Columbia has, in recent  
years, lagged significantly behind the rate of inflation and the rate of increase  
in District of Columbia government expenditures;

(5) Substantial expansion of the tax base is necessary to help avert future  
governmental fiscal crises, prevent ever-increasing individual business and  
professional tax levels, and assure provision of necessary public services;

(6) The District of Columbia government lacks an organized capacity or  
comprehensive strategy to assess its economic needs, encourage business

retention, attract commercial enterprises, or otherwise promote and stimulate economic growth;

(7) The absence of such a capacity and strategy has been a significant factor in the District's inability to compete with neighboring jurisdictions in the retention of existing businesses and the attraction of new enterprises;

(8) Direct and continuing active participation of all levels of the business community is essential to carrying out the objectives of this subchapter.

(b) The purposes of this subchapter are:

(1) To establish an office with ongoing responsibility to assess the economic needs of the City; stimulate new employment opportunities; assist existing businesses; promote the City as a location for businesses and investment to priority City locations in accordance with the City's comprehensive plan and its economic development objectives; and

(2) To centralize the economic development functions in the District of Columbia government in a single agency devoted solely to these tasks. (1973 Ed., § 1-1351; Mar. 29, 1977, D.C. Law 1-97, § 2, 23 DCR 9532b.)

**Legislative history of Law 1-97.** — Law 1-97 was introduced in Council and assigned Bill No. 1-260, which was referred to the Committee on Employment and Economic Development. The Bill was adopted on first and second readings on September 15, 1976 and October 12, 1976, respectively. Signed by the Mayor on November 19, 1976, it was assigned Act No. 1-179 and transmitted to both Houses of Congress for its review.

**Establishment of State Job Training Coordinating Council.** — See Mayor's Order 89-72, April 5, 1989.

**Establishment of District of Columbia Private Industry Council.** — See Mayor's Order 89-73, April 5, 1989.

**Editor's notes.** — Because of the codification of D.C. Law 5-89 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 22 as subchapter I, "subchapter" has been substituted for "chapter" in paragraph (8) of subsection (a) and in the introductory language of subsection (b) of this section.

## § 1-2202. Office of Business and Economic Development — Established; purposes.

Omitted.

(1973 Ed., § 1-1352; Mar. 29, 1977, D.C. Law 1-97, § 3, 23 DCR 9532b; Oct. 17, 1981, D.C. Law 4-42, § 9(a), 28 DCR 3425.)

**Omission of text.** — The provisions of former § 1-2202 have been omitted as obsolete, the Board referred to herein having been abolished.

**Transfer of powers, duties, and responsibilities from Office of Economic Development.** — Section 30(d) of D.C. Law 12-144 provided for the transfer of the powers, duties, and responsibilities of the Office of Economic Development to the Board of Directors of the National Capital Revitalization Corporation, and for the abolition of the Office of Economic Development.

**Office of Business and Economic Development abolished.** — Section 301 of D.C. Law 10-11 and § 301 of D.C. Law 10-25 provided that in accordance with § 404(b) of the District

of Columbia Self-Government and Governmental Reorganization Act of 1973, approved December 24, 1973 (87 Stat. 787; D.C. Code § 1-227(b)), the Office of Business and Economic Development, established pursuant to § 3 of the District of Columbia Business and Economic Development Act of 1976, effective March 29, 1977 (D.C. Law 1-97; D.C. Code § 1-2202), is abolished and all capital project authority and financial balances of the Office of Business and Economic Development shall be transferred to the Office of the Deputy Mayor for Economic Development, established pursuant to Reorganization Plan No. 3 of 1975, effective July 3, 1975 (21 DCR 2793; D.C. Code Vol. 1, 1981 Ed.).

Section 601(b)(6) of D.C. Law 10-11 provided

that § 301 shall apply as of October 1, 1993.

Section 701(b) of D.C. Law 10-11 provided that the act shall expire on the 225th day of its having taken effect.

Section 601(b)(6) of D.C. Law 10-25 provided that § 301 shall apply as of October 1, 1993.

**International Business Program abolished.** — Pursuant to Reorganization Plan No. 7 of 1996, effective December 13, 1996, the International Business Program in the Office of Economic Development was abolished and its functions transferred to the Office of International Affairs which was created as an independent subordinate agency within the Executive Office of the Mayor. Additionally, Reorganization Plan No. 7 of 1996 transferred to the Office of International Affairs, 2 International Business Program positions, associated property,

records and unexpended balances of appropriations, and other funds, if any, that related to the positions and functions assigned to the Office of International Affairs.

**Transfer of functions.** — The functions of the Office of Business and Economic Development and the Office of International Business were transferred to the jurisdiction and control of the Office of Economic Development by Reorganization Plan No. 4 of 1993, approved October 7, 1993.

**Establishment of State Job Training Coordinating Council.** — See Mayor's Order 89-72, April 5, 1989.

**Establishment of District of Columbia Private Industry Council.** — See Mayor's Order 89-73, April 5, 1989.

### § 1-2203. Same — Functions.

(a) The Office shall give priority to activities, including economic research and analysis, to stimulate employment, promote tourism and business retention, and to attract new commercial and industrial enterprises. Long range priorities shall include development and implementation with the Office of the Assistant City Administrator for Planning and Development of an economic development plan for the District of Columbia.

(b) Pursuant to these priorities, the Office shall:

(1) Initiate and implement an ongoing economic and commercial survey including data to monitor business migration, business and commercial expansion, business opportunities, manpower availability, manpower needs, and other factors relevant to promotion of economic development;

(2) Assist businessmen and developers in securing research data needed for feasibility and market studies;

(3) Initiate and implement programs aimed at stimulating employment opportunities in the District of Columbia, retaining existing businesses in the District, and attracting new commercial and industrial enterprises to the District, as well as, locating and encouraging investors for these enterprises;

(4) Develop and support programs to ensure minority business development and minority participation in public and private economic development activities;

(5) Coordinate the economic development functions of other District of Columbia offices and departments;

(6) Coordinate economic development activities and projects within the District of Columbia government pursuant to the priorities established in the comprehensive plan and through other actions taken by the District of Columbia government;

(7) Act as ongoing District of Columbia liaison with the business and commercial community and as a vehicle to assist existing businesses in their procedural relationships with the District government, including, but not limited to, the expediting of administrative processes, such as approval of necessary permits, zoning actions, street closings, and other relevant District government administrative actions;

(8) Serve as liaison with pertinent federal government agencies and conduit for federal economic development funding;

(9) Stimulate development or expansion of neighborhood commercial facilities and centers;

(10) Develop financial and technical assistance programs;

(11) Initiate and stimulate public investment as a catalyst to private investment in commercial and industrial enterprises otherwise unavailable to the District of Columbia; and

(12) Recommend various types of commercial industrial development, incentives appropriate for certain development projects.

(c) Basic research and statistical programs would be undertaken in the following areas:

(1) Land use studies of urban renewal, housing, and industrial sites, with emphasis on the disposition of idle industrial land, factories, and commercial properties;

(2) Taxes, including such matters as determining new areas for new revenue for the City and possible tax incentives to encourage development; an examination of the effect of the District tax structure on certain industries; assessing the comparability of the tax structure;

(3) An examination of the District government powers, organization, and practices as they affect economic development; and

(4) Special industry problems, including the District's mature and declining industries. (1973 Ed., § 1-1353; Mar. 29, 1977, D.C. Law 1-97, § 4, 23 DCR 9532b.)

**Section references.** — This section is referred to in § 1-2204.

**Legislative history of Law 1-97.** — See note to § 1-2201.

**Establishment of State Job Training Coordinating Council.** — See Mayor's Order 89-72, April 5, 1989.

**Establishment of District of Columbia Private Industry Council.** — See Mayor's Order 89-73, April 5, 1989.

**Office of Business and Economic Development abolished.** — See note to § 1-2202.

**Office of Tourism and Promotions.** — Pursuant to Reorganization Plan No. 2 of 1992, effective October 1, 1992, the Office of Tourism and Promotions ("office") is hereby established

in the Executive Branch of the Government under the Deputy Mayor for Economic Development (DMED). The Office shall be supervised and administered by a Director who shall be appointed by the Mayor to a position in the Executive Service pursuant to Title X of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, §§ 1-611.1 and 1-611.2, and subject to the advice and consent of the Council. The Mayor's Special Assistant for Tourism shall be the Acting Director pending confirmation by the Council.

**International Business Program abolished.** — See note to § 1-2202.

**Transfer of functions.** — See note to § 1-2202.

## § 1-2204. Same — Executive Director.

(a) The Office shall be headed by an Executive Director (hereinafter in this subchapter referred to as the "Director"), who shall be appointed by the Mayor. The Director shall devote his full time to the duties of his Office, and shall appoint qualified staff including a "Business Ombudsman" charged primarily with the implementation of the functions provided in § 1-2203. The annual compensation of the Director shall be determined in accordance with Chapter 51 of Title 5, United States Code (relating to the classification of government employees and related matters), but shall be no less than a GS-16, step 1 or

equivalent compensation pursuant to the provisions of subchapter XII of Chapter 6 of this title.

(b) In order to best carry out his duties and responsibilities and to serve the people of the District in the promotion of business economic development, the Director may engage in programs and projects jointly with a private person, firm, corporation, or association, and may enter into contracts under terms to be mutually agreed upon to carry out such programs and projects not including acquisition of land or buildings. Such contracts may be negotiated and shall not be subject to the provisions of § 1-1110, insofar as such provisions relate to competitive bidding. (1973 Ed., § 1-1354; Mar. 29, 1977, D.C. Law 1-97, § 5, 23 DCR 9532b; Mar. 3, 1979, D.C. Law 2-139, § 3205(x), 25 DCR 5740.)

**Cross references.** — As to effective date of D.C. Law 2-139, see § 1-637.1.

**Section references.** — This section is referred to in § 1-637.1.

**Legislative history of Law 1-97.** — See note to § 1-2201.

**Legislative history of Law 2-139.** — Law 2-139 was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

**References in text.** — “GS-16, step 1”, referred to in subsection (a), is contained in the General Schedule which is set out under § 5332 of Title 5, United States Code.

Section 1-1110, referred to in subsection (b), was repealed by D.C. Law 11-259, § 405, 44 DCR 1423, effective April 12, 1997.

**Delegation of Authority Pursuant to D.C. Law 7-173, the “Supermarket Tax Incentive Amendment Act of 1988”.** — See Mayor’s Order 89-84, April 24, 1989.

**Office of Business and Economic Development abolished.** — See note to § 1-2202.

**Transfer of functions.** — See note to § 1-2202.

**Editor’s notes.** — Because of the codification of D.C. Law 5-89 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 22 as subchapter I, “subchapter” has been substituted for “chapter” near the beginning of the first sentence of subsection (a).

## § 1-2205. Same — Funding.

The Office shall be funded by a variety of sources currently available or potentially available in the future, including, but not limited to, federal loans and grant funds, community development block grant funds, District of Columbia government appropriated or borrowed funds, and private endowments. Sources of funding for the Office shall include no less than \$300,000 in community development block grant funds conditionally approved by the United States Department of Housing and Urban Development for business and economic development programs, pursuant to the Department’s approval on June 24, 1975 of the District of Columbia “Application for Federal Assistance for a Community Development Block Grant Program — 1975.” (1973 Ed., § 1-1355; Mar. 29, 1977, D.C. Law 1-97, § 6, 23 DCR 9532b.)

**Legislative history of Law 1-97.** — See note to § 1-2201.

**Legislative history of Law 8-159.** — Law 8-159 was introduced in Council and assigned Bill No. 8-579. The Bill was adopted on first and second readings on May 15, 1990, and May 29, 1990, respectively. Approved without the signature of the Mayor on June 20, 1990, it was

assigned Act No. 8-221 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 9-73.** — Law 9-73 was introduced in Council and assigned Bill No. 9-352. The Bill was adopted on first and second readings on November 5, 1991, and December 3, 1991, respectively. Signed by the Mayor on December 20, 1991, it was assigned

Act No. 9-125 and transmitted to both Houses of Congress for its review.

**Office of Business and Economic Development abolished.** — See note to § 1-2202.

**Transfer of functions.** — See note to § 1-2202.

### *Subchapter I-A. Economic Development Liaison Office.*

## **§ 1-2207.1. Establishment of the Economic Development Liaison Office.**

(a) In accordance with § 1-227(b), there is hereby established in the Executive Branch of the government of the District of Columbia an Economic Development Liaison Office, to be headed by an Assistant City Administrator for Economic Development, who shall serve as liaison between the Mayor, the City Administrator, the Chief Financial Officer, the National Capital Revitalization Corporation, hospitality industry organizations, and economic development policy groups.

(b) The Economic Development Liaison Office shall give priority to assisting activities that foster economic growth and employment opportunities in the District by retaining, expanding, and attracting business through strategic neighborhood revitalization policies and actions to remove blight and facilitating opportunities for commercial and human capital development consistent with the economic, social, housing, and employment needs of residents and citizens of the District. (Mar. 26, 1999, D.C. Law 12-175, § 1832, 45 DCR 7193.)

**Emergency act amendments.** — For temporary addition of §§ 1-2207.1 through 1-2207.3, see §§ 1432-1434 of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and §§ 1432-1434 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

Section 1436 of D.C. Act 12-401 provides for the application of the act.

Section 2101 of D.C. Act 12-564 provides for the application of the act.

**Legislative history of Law 12-175.** — Law 12-175, the "Fiscal Year 1999 Budget Support Act of 1998," was introduced in Council and

assigned Bill No. 12-618, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 5, 1998, and June 2, 1998, respectively. Signed by the Mayor on June 23, 1998, it was assigned Act No. 12-399 and transmitted to both Houses of Congress for its review. D.C. Law 12-175 became effective on March 26, 1999.

**Application of Law 12-175.** — Section 1836 of D.C. Law 12-175 provided that this subchapter shall apply as of October 1, 1998.

**Establishment of the Economic Development Liaison Office.** — Section 1831 of D.C. Law 12-175 provides this subchapter may be cited as the "Economic Development Liaison Office Establishment Act of 1998."

## **§ 1-2207.2. Functions.**

The Economic Development Liaison Office shall perform the following functions:

(1) Develop and support programs to ensure local business development and the participation of small and disadvantaged businesses in public and private economic development activities;

(2) Assist businesses in their procedural relationships with the District government, including, but not limited to, the expediting of administrative

processes, such as approval of necessary permits, zoning actions, street closings, and other relevant District administrative actions;

(3) Assist the Executive in the administration and supervision of the Office of Planning;

(4) Assist the Executive in the administration and supervision of the Office of Banking and Financial Institutions;

(5) Assist the Executive in the administration and supervision of the Office of Local Business Opportunity Administration;

(6) Assist the Executive in the administration and supervision of the Office of Motion Pictures and Television Development;

(7) Assist the Executive in the coordination of activities of the Zoning Commission with other economic development activities of the District government;

(8) Assist the Executive and the Chief Financial Officer in the transfer payment of all taxes collected on behalf of business improvement districts; and

(9) Assist the Executive in the coordination of activities between the Executive and the Department of Housing and Community Development, the National Capital Revitalization Corporation, the President of the United States District of Columbia Task Force, the Washington Convention Center Authority, the Washington Convention and Visitors Association, the Hotel Association of Washington, the Restaurant Association of Washington, the D.C. Committee to Promote Washington, the D.C. Chamber of Commerce, the D.C. Building Industries Association, the Federal City Council, and the Committee of 100 on the Federal City. (Mar. 26, 1999, D.C. Law 12-175, § 1833, 45 DCR 7193.)

**Emergency act amendments.** — For temporary addition of §§ 1-2207.1 through 1-2207.3, see note to § 1-2207.1.

**Application of Law 12-175.** — See note to § 1-2207.1.

**Legislative history of Law 12-175.** — See note to § 1-2207.1.

### § 1-2207.3. Transfer of functions; abolishment of the Office of Tourism and Promotions.

(a) All authorities, responsibilities, and functions assigned to the Office of Tourism and Promotions by Reorganization Plan No. 2 of 1992, effective October 1, 1992, including oversight responsibility for the D.C. Committee to Promote Washington and the Office of Motion Picture and Television Development, established by Mayor's Order 79-218, dated September 14, 1979, are hereby transferred to the Economic Development Liaison Office.

(b) The Office of Tourism and Promotions, established by Reorganization Plan No. 2 of 1992, effective January 6, 1993, is hereby abolished. (Mar. 26, 1999, D.C. Law 12-175, § 1834, 45 DCR 7193.)

**Emergency act amendments.** — For temporary addition of §§ 1-2207.1 through 1-2207.3, see note to § 1-2207.1.

**Application of Law 12-175.** — See note to § 1-2207.1.

**Legislative history of Law 12-175.** — See note to § 1-2207.1.



*Subchapter II. Economic Development Finance Corporation.***§ 1-2211. Findings.**

The Council of the District of Columbia finds that:

(1) Current economic trends have resulted in a reduction of the availability of private capital to support various development activities, including business expansion.

(2) The reduced availability of private capital presents a substantial disincentive to potential developers and to businesses and other organizations which wish to expand, locate, or relocate within the District of Columbia ("District").

(3) There is a significant amount of public and private land which is presently unutilized or underutilized within the District, but which otherwise could support significant economic development projects.

(4) Current economic trends have stifled the growth of small businesses, particularly minority-owned small businesses, with a concomitant reduction in employment opportunities, loss of potential tax revenue, increased unemployment, deterioration of heretofore viable commercial centers, and economic instability throughout the District.

(5) The present and future health, safety, right to gainful employment, business opportunities, and overall welfare of the people of the District require, as a public purpose, the creation of a vehicle which encourages and facilitates the formation of a partnership between the public and private sectors for the purpose of implementing development projects and providing financial and technical assistance to small and minority-owned businesses, thereby strengthening and stabilizing businesses within the District, reducing unemployment, broadening the tax base, and relieving conditions of blight, obsolescence, and the nonutilization and underutilization of public and private property. (June 29, 1984, D.C. Law 5-89, § 2, 31 DCR 2514.)

**Legislative history of Law 5-89.** — Law 5-89, the "District of Columbia Economic Development Finance Corporation Act of 1984," was introduced in Council and assigned Bill No. 5-41, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on April 10, 1984 and April 30, 1984, respectively. Signed by the Mayor on May 9, 1984, it was assigned Act No. 5-130 and transmitted to both Houses of Congress for its review.

**Transfer of powers, duties, and responsibilities from Board of Directors of Economic Development Finance Corporation.** — Section 30(b) of D.C. Law 12-144 provided for the transfer of the powers, duties, and responsibilities of the Board of Directors of the Economic Development Finance Corporation to the Board of Directors of the National Capital Revitalization Corporation, and for the abolition of the Board of Directors of the Economic Development Finance Corporation.

**§ 1-2212. Definitions.**

For the purpose of this subchapter, the term:

(1) "Board" means the Board of Directors of the National Capital Revitalization Corporation.

(2) "Capital participation investments" means stock, both common and preferred, convertible securities, warrants, subscriptions, options to acquire any of the foregoing, capital loans, loan guarantees, interest rate subsidies,

working capital, inventory loans, royalties, and other lawful derivations of the foregoing.

(3) "Community Development Corporation" or "CDC" means a community-based and community-controlled nonprofit corporation organized under Chapter 5 of Title 29, to carry out certain public purposes and with articles of incorporation and bylaws that are consistent with rules and regulations issued by the Mayor pursuant to § 1-2219.

(4) "Corporation" means the District of Columbia Economic Development Finance Corporation established by § 1-2213.

(5) "Costs of a project" means all costs associated with the design, planning, and implementation of a project which reasonably can be recovered in the financing of the project. Costs may include, but are not limited to, costs of planning and design, feasibility or other studies, venture capital, working capital, construction, interest, taxes, and any other costs determined by the Board to be necessary to the implementation of the project.

(6) "Council" means the Council of the District of Columbia.

(7) "Eligible business" means a corporation, company, association (including an association operating on a cooperative basis pursuant to Chapter 11 of Title 29), firm, partnership, individual, or other legal entity engaging in or conducting a trade or business for profit, a university, or a health-related facility which is found by the Corporation to be locally based, capable of managing or otherwise meeting the responsibilities associated with a proposed project, and which meets the requirements of this subchapter and rules issued by the Board for the receipt of financial or technical assistance from the Corporation in connection with a project approved by the Corporation.

(8) "Health-related facility" means an entity which is operating as or is in control of a public or private general hospital, psychiatric hospital, other specialty hospital, rehabilitation facility, skilled nursing facility, ambulatory care facility or clinic, kidney disease treatment center, freestanding hemodialysis facility, intermediate care facility, ambulatory surgical treatment facility, diagnostic health-care facility, or any other facility as defined by regulations issued in conformance with the National Health Planning and Resources Development Act of 1974 (42 U.S.C. § 300k et seq.), which has an annual operating budget of at least \$75,000. The term "health-related facility" does not include Christian Science sanatoriums operated, listed, and certified by the First Church of Christ Scientist, Boston, Massachusetts, or those private office facilities for the private practice of a physician or dentist, or other health care facilities licensed or to be licensed as community residence facilities.

(9) "Mayor" means the Mayor of the District of Columbia.

(10) "Minority" means Black Americans, native Americans, Asian Americans, Pacific Islander Americans, and Hispanic Americans who, by virtue of being members of the foregoing groups, are economically and socially disadvantaged because of historical discrimination practiced against these groups by institutions within the United States of America.

(11) "Minority business enterprise" means a business enterprise of which more than 50% of the ownership and control is held by individuals who are members of a minority group and of which more than 50% of the net profit or loss accrues to members of a minority group.

(12) "Minority Enterprise Small Business Investment Company" means a company approved and licensed by the Small Business Administration pursuant to § 301(d) of the Small Business Investment Act of 1958 (15 U.S.C. § 681(d)).

(13) "Project" means any commercial, industrial, real estate, business, or other economic development activity designed to reduce conditions of blight, economic depression, unemployment or widespread reliance on public assistance, or which otherwise would contribute to the revitalization and improvement of economic conditions within the District.

(14) "Small Business Investment Company" or "SBIC" means a company approved and licensed by the Small Business Administration pursuant to § 301(c) of the Small Business Investment Act of 1958 (15 U.S.C. § 681(c)).

(15) "University" means an educational institution which:

(A) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(B) Is legally authorized to provide a program of education beyond secondary education;

(C) Provides an educational program for which it awards a bachelor's degree and provides not less than a 2-year program which is acceptable for full credit toward such a degree;

(D) Is a public or nonprofit institution; and

(E) Is accredited by a nationally recognized accrediting agency or association or, if not so accredited:

(i) Is an institution with respect to which the Board has determined that there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet association standards, and the purpose for which this determination is being made, that the institution will meet the accreditation standards of such an agency or association within a reasonable time; or

(ii) Is an institution whose credits are accepted on transfer by not less than 3 institutions which are so accredited for credit on the same basis as if transferred from an institution so accredited. (June 29, 1984, D.C. Law 5-89, § 3, 31 DCR 2514; Mar. 21, 1995, D.C. Law 10-236, § 5(a), 42 DCR 33; Sept. 11, 1998, D.C. Law 12-144, § 31(b)(1), 45 DCR 3747.)

**Section references.** — This section is referred to in § 1-2218.

**Effect of amendments.** — D.C. Law 12-144 substituted "National Capital Revitalization Corporation" for "District of Columbia Economic Development Finance Corporation" in (1).

**Legislative history of Law 5-89.** — See note to § 1-2211.

**Legislative history of Law 10-236.** — Law 10-236, the "Contractors Guarantee Association Act of 1994," was introduced in Council and assigned Bill No. 10-535, which was referred to the Committee on Public Services and Youth Affairs. The Bill was adopted on first and

second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 27, 1994, it was assigned Act No. 10-379 and transmitted to both Houses of Congress for its review. D.C. Law 10-236 became effective on March 21, 1995.

**Legislative history of Law 12-144.** — Law 12-144, the "National Capital Revitalization Corporation Act of 1998," was introduced in Council and assigned Bill No. 12-514, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on March 3, 1998, and April 7, 1998, respectively. Signed by the Mayor on May 5, 1998, it was assigned Act No. 12-355 and

transmitted to both Houses of Congress for its review. D.C. Law 12-144 became effective on September 11, 1998.

**Effective date of § 31(b) of D.C. Law 12-144.** — Section 33(b)(2) of D.C. Law 12-144 provided that § 31(b) shall take effect on the latter of: (A) the effective date of this act; or (B) the date determined by the Board, but not later than one year after the initial meeting of the Board.

**Expiration of Law 10-236.** — Section 6(b) of D.C. Law 10-236 provided that the act shall expire 3 years after having taken effect. D.C. Law 10-236, which had inserted paragraphs (3A), (7A), and (14A), became effective on March 21, 1995.

**References in text.** — 15 U.S.C. § 681(d), referred to in (12), was repealed by Div. D, Title II, § 208(b)(3)(A) of the Act of September 30, 1996, Pub. L. 104-208, 110 Stat. 3009.

## § 1-2213. Economic Development Finance Corporation — Established; composition; appointment; term of office; vacancies; quorum; reimbursement for expenses.

(a) There is established the District of Columbia Economic Development Finance Corporation. The Corporation is constituted as a quasi-public, non-profit corporation organized for the purpose of stimulating economic development, business development, and job creation by assisting in the implementation of development projects within the District of Columbia and by providing financial and technical assistance to eligible businesses. The Corporation shall exercise the powers set forth in § 1-2216 for purposes that are consistent with this subchapter.

(a-1) The Corporation shall be governed by the Board.

(b) Repealed.

(c) Repealed.

(d) Repealed.

(e) Repealed.

(f) Repealed.

(g) Repealed.

(h) Repealed.

(i) Repealed. (June 29, 1984, D.C. Law 5-89, § 4, 31 DCR 2514; Mar. 16, 1985, D.C. Law 5-186, § 2, 32 DCR 870; Mar. 21, 1995, D.C. Law 10-236, § 5(b), 42 DCR 33; Sept. 11, 1998, D.C. Law 12-144, § 31(b)(2), 45 DCR 3747.)

**Section references.** — This section is referred to in §§ 1-2212 and 1-2295.29.

**Effect of amendments.** — D.C. Law 12-144 repealed (b) through (i); and inserted (a-1).

**Legislative history of Law 5-89.** — See note to § 1-2211.

**Legislative history of Law 5-186.** — Law 5-186 was introduced in Council and assigned Bill No. 5-564, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on December 4, 1984 and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-251 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 10-236.** — See note to § 1-2212.

**Legislative history of Law 12-144.** — See note to § 1-2212.

**Effective date of § 31(b) of D.C. Law 12-144.** — Section 33(b)(2) of D.C. Law 12-144 provided that § 31(b) shall take effect on the latter of: (A) the effective date of this act; or (B) the date determined by the Board, but not later than one year after the initial meeting of the Board.

**Expiration of Law 10-236.** — Section 6(b) of D.C. Law 10-236 provided that the act shall expire 3 years after having taken effect. D.C. Law 10-236, which had amended (b), became effective on March 21, 1995.

**Council determination of satisfactory commitment from private sources.** — Pursuant to Resolution 6-557, the "Economic Development Finance Corporation Commitment

Resolution of 1986," effective February 25, 1986, the Council determined that there were satisfactory commitments from private sources to warrant the expenditure of public funds for the activities of the District of Columbia Economic Development Finance Corporation.

### § 1-2214. Same — President.

The president of the Corporation shall be appointed and his or her salary established by the Board. The president shall be the chief administrative and operational officer of the Corporation and shall direct and supervise administrative affairs and the general management of the Corporation. The president may employ other employees as shall be designated by the Board, shall attend meetings of the Board, shall cause copies to be made of all minutes and other records and documents of the Corporation, and shall certify that these copies are true copies and all persons dealing with the Corporation may rely upon the certification. (June 29, 1984, D.C. Law 5-89, § 5, 31 DCR 2514.)

**Legislative history of Law 5-89.** — See note to § 1-2211.

### § 1-2215. Conflict of interest.

The Corporation may purchase from, sell to, borrow from, loan to, contract with, or transact business with any corporation or other legal entity organized to carry out the purposes of this subchapter of which any director of the Corporation is also a member or officer, if the interest of the director in the corporation or legal entity is disclosed in advance to members of the Board and recorded in the minutes of the Corporation. No director having such an interest may participate in any decision affecting the transaction. (June 29, 1984, D.C. Law 5-89, § 6, 31 DCR 2514.)

**Legislative history of Law 5-89.** — See note to § 1-2211.

### § 1-2216. Powers of Corporation.

The Corporation shall have the power to:

- (1) Adopt an official seal;
- (2) Sue and be sued in its own name;
- (3) Adopt, amend, and repeal bylaws, rules, and regulations to carry out its purposes under this subchapter;
- (4) Develop, utilize, and from time to time amend application forms for businesses which desire to conduct a project with funding from the Corporation. The application forms shall be designed to elicit information which will aid the Corporation in determining whether a project meets the general purposes of this subchapter, and whether the applicant is capable, either solely or as part of a joint venture, to meet the responsibilities associated with conducting the project;
- (5) Issue, pursuant to Chapter 15 of this title, rules and regulations consistent with this subchapter establishing criteria and standards by which the Corporation shall determine whether an applicant is an eligible business,

and whether the project meets the purposes of this subchapter. These rules and regulations shall also provide for the participation of minorities and local businesses in accordance with subchapter II of Chapter 11 of this title, and shall provide for the participation of businesses owned by women in projects funded by the Corporation;

(6) Make and execute contracts, including loans, equity investments, loan guarantees, or other forms of financial assistance, and to execute all other instruments necessary or convenient for the exercise of its powers and functions;

(7) Enter into agreements or other transactions with any agency of the federal or District government where the agreement or transaction is intended and designed to further the purposes of this subchapter;

(8) Enter into agreements with any local, state, regional, and interstate government agency where the agreements are intended and designed to further the purposes of this subchapter;

(9) Acquire, hold, and dispose of real or personal property where the action is intended and designed to further the purposes of this subchapter;

(10) Acquire real property or an interest in real property by purchase or foreclosure where such an acquisition is necessary or appropriate to protect or secure any investment or loan in which the Corporation has an interest; to sell, transfer, or convey any real property to a buyer; and, in the event the sale, transfer, or conveyance cannot be effected with reasonable promptness or at a reasonable price, to lease real property to a tenant;

(11) Invest any funds held in reserve or sinking funds, or any funds not required for immediate disbursement, in any investments that are lawful for fiduciaries in the District;

(12) Borrow money by making notes and by the issuance of bonds, and to secure the bonds by the pledge of revenues, grants, mortgages, and notes of others. Bonds, debts, and obligations of the Corporation do not constitute obligations of the District, and neither the faith and credit nor the taxing power of the District is pledged to the payment of principal or interest on such obligations. In no case shall the total indebtedness of the Corporation, excluding any indebtedness to the District, exceed 33⅓% of the total assets of the Corporation;

(13) Select, employ, and fix the compensation for a president, and for other agents and professional and business advisors as may be necessary;

(14)(A) The Board shall develop and establish a personnel system, and, pursuant to Chapter 15 of this title, issue, not later than 3 years after June 29, 1984, rules and regulations setting forth minimum standards for all employees including, but not limited to, pay, contract terms, vacations, leave, retirement, residence, health and life insurance, and employee disability and death benefits.

(B) The Board shall adopt interim personnel rules and regulations until a personnel system is established pursuant to this paragraph.

(C) Any person who applies for a position with the Corporation and who accepts appointment or is hired to fill a position with the Corporation shall become a bona fide resident of the District within 180 days of the effective date

of the appointment and shall maintain residence in the District for the duration of the employment. Failure to become a District resident or to maintain District residency shall result in the forfeiture of the position to which the person has been appointed.

(D) With the exception of subchapters V and XVIII, Chapter 6 of this title shall not apply to employees of the Corporation;

(15) Appear in its own behalf before boards, commissions, departments, or other agencies of the federal or District government;

(16) Procure insurance or self-insure against any loss in connection with its property or other assets. Whatever means the Board uses to insure its activities, the Board shall assure that the insurance is adequate to protect the interests of the District, the Board, Board members, and employees of the Corporation;

(17) Consent, subject to the provisions of any contract with noteholders, whenever it deems it necessary or desirable in the fulfillment of the purposes of this subchapter, to the modification of the rate of interest, or of any other terms of any mortgage, mortgage loan commitment, contract, or agreement of any kind to which the Corporation is a party;

(18) Receive and accept from any federal or District agency grants, loans, or advances for or in aid of the purposes of this subchapter, and to receive and accept contributions from any source of either money, property, labor, or other things of value to be held, used, and applied for these purposes;

(19) Create a wholly-owned subsidiary of the Corporation which shall be organized as a for-profit corporation. The Board of the Corporation shall sit as the board of directors of the subsidiary corporation. The subsidiary corporation may exercise any of the powers granted to the Corporation in this section and may create, issue, and sell stock. The Corporation or the subsidiary corporation may buy stock, make other capital participation investments, hold stock or other instruments, and may underwrite the creation of a capital market for these securities. Profits realized from operation of the subsidiary corporation shall be used to further the purposes of this subchapter, as determined by the board of directors of the subsidiary corporation;

(20) At the direction of the Mayor, acquire, hold, manage, and dispose of any existing assets of other quasi-public corporations which become insolvent or otherwise cease operations. Any assets so obtained shall be utilized or disposed of in a manner that furthers the purposes of this subchapter;

(21) Fix, determine, charge, and collect any fees, charges, costs, and expenses, including, by way of example, any application fees, financing charges, or publication fees in connection with financial assistance provided by the Corporation; and

(22) Do any and all things necessary or convenient to carry out the purposes of this subchapter and to exercise the powers expressly granted in this subchapter. (June 29, 1984, D.C. Law 5-89, § 7, 31 DCR 2514; Mar. 21, 1995, D.C. Law 10-236, § 5(c), 42 DCR 33.)

**Section references.** — This section is referred to in §§ 1-2213, 1-2217, and 1-2220.

**Legislative history of Law 5-89.** — See note to § 1-2211.

**Legislative history of Law 10-236.** — See note to § 1-2212.

**Expiration of Law 10-236.** — Section 6(b) of D.C. Law 10-236 provided that the act shall

expire 3 years after having taken effect. D.C. Law 10-236, which had inserted paragraph (21A), became effective on March 21, 1995.

## § 1-2217. Capitalization.

The Corporation shall be capitalized as follows:

(1) There may be appropriated out of revenues available to the District, for use of the Corporation, the sum of \$1,000,000 in each of the first 5 years of the Corporation's operation, for a total of \$5,000,000 over the 5-year period. These funds shall be in addition to all other funds received by the Corporation pursuant to this section and § 1-2216(18).

(2) The Corporation, in consultation with the Mayor, may solicit, receive, accept, and expend contributions and grants from private sources to be used as part of the Corporation's operating capital. The Corporation shall seek to obtain \$1,000,000 or more in private funds in each of the first 5 years of operation for the purpose of increasing its operating capital beyond the level provided in paragraph (1) of this section.

(3) During the 1st year of the Corporation's operation there may be appropriated any available funds, but which shall not exceed a total of \$10,000,000, to be used to provide a long-term loan, grant, or other form of assistance to the Corporation, or to purchase preferred stock in the subsidiary corporation established pursuant to § 1-2216(19).

(4) No public funds, either federal or local, may be expended on the activities of the Corporation until a commitment for funding from private sources, at levels satisfactory to the Council, has been received by the Chairman of the Council and circulated to all Council members prior to Council action on the appropriation. (June 29, 1984, D.C. Law 5-89, § 8, 31 DCR 2514.)

**Legislative history of Law 5-89.** — See note to § 1-2211.

## § 1-2218. Project criteria.

(a) Upon application for funding or assistance in connection with a specific project, the Corporation may, subject to the standards set forth in this section, agree to make capital participation investments in and provide inventory financing, venture capital, equity participation, and other forms of financial assistance or technical assistance to the applicant, if the Corporation finds that the applicant meets the following requirements:

(1) The applicant is an eligible business within the meaning of § 1-2212.

(2) The project is within the scope of this subchapter and may reasonably be expected to contribute to the redevelopment of the area in which the project is located and to the economic development of the District.

(3) The project plans will conform to all applicable environmental, zoning, building, planning, and sanitation laws.



(4) The project will be of public benefit and for a public purpose and the benefits, including increased employment and improved standards of living, shall accrue primarily to residents of the District.

(5) There is a reasonable expectation that the project will be successful.

(6) Private industry has not provided sufficient capital required for the project.

(7) The Corporation's participation is necessary to the successful completion of the proposed project because funding for the project is unavailable in the traditional capital markets, or because credit has been offered on terms that would preclude the success of the project.

(8) The proceeds of the loan or investment will be used solely in connection with the costs of the project.

(9) Provisions have been made in the contract for adequate reporting of financial data from the applicant to the Corporation throughout the course of the project; the provisions may include a requirement for an annual or other periodic audit of the project books.

(b) The Corporation shall enter into a contract or other agreement with the appropriate agency or agencies of the District of Columbia or with privately owned organizations approved by the Board to develop and provide training programs for District of Columbia residents. To the greatest extent practicable, programs shall be designed to train individuals for employment opportunities created by projects conducted with funding or assistance from the Corporation.

(c) The Corporation shall not invest or loan more than 20% of its lendable or investable resources in any 1 eligible business.

(d) The Corporation shall not own more than 49% of the voting stock of any eligible business.

(e) Should the Corporation desire to sell or otherwise dispose of stock received pursuant to a contract, the eligible business or its nominees shall have the right of first refusal with respect to the sale or disposition, 120 days in which to exercise that right, and the right to meet any subsequent bona fide offer by a 3rd party. (June 29, 1984, D.C. Law 5-89, § 9, 31 DCR 2514.)

**Legislative history of Law 5-89. —** See note to § 1-2211.

### **§ 1-2219. Rules and regulations; sponsorship of projects; application by for-profit subsidiary corporation.**

(a) The Mayor shall issue rules and regulations establishing organizational guidelines for Community Development Corporations. These guidelines shall include, but not be limited to, the following:

(1) A requirement that the articles of incorporation of each Community Development Corporation state the geographic area in which the CDC shall be authorized to operate; and

(2) A requirement that the articles of incorporation or bylaws of each Community Development Corporation provide for membership in the CDC by residents of the geographic area in which the CDC is authorized to operate.

(b) Any Community Development Corporation may sponsor a project by submitting a written statement in support of the project. The statement shall be submitted to the Board at the same time the application for the project is submitted.

(c) Nothing in this subchapter shall be construed as prohibiting a for-profit subsidiary corporation of a Community Development Corporation from applying to the Corporation for funding of a project to be conducted by the subsidiary corporation. (June 29, 1984, D.C. Law 5-89, § 10, 31 DCR 2514.)

**Section references.** — This section is referred to in § 1-2212.

**Legislative history of Law 5-89.** — See note to § 1-2211.

**Delegation of authority for District of Columbia Economic Development Finance Corporation Act of 1984.** — See Mayor's Order 84-169, September 27, 1984.

## § 1-2220. Biennial audit; report of audit; annual report of operation.

(a) The Auditor of the District of Columbia shall examine on a biennial basis, 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 accomplishments 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.)

**Legislative history of Law 5-89.** — See note to § 1-2211.

**Legislative history of Law 11-152.** — Law 11-152, the "Fiscal Year 1996 Budget Support Act of 1996," was introduced in Council and assigned Bill No. 11-655, which was referred to the Committee of the Whole. The Bill was

adopted on first and second readings on April 2, 1996, and May 7, 1996, respectively. Signed by the Mayor on May 28, 1996, it was assigned Act No. 11-279 and transmitted to both Houses of Congress for its review. D. C. Law 11-152 became effective on August 1, 1996.

### **§ 1-2221. Minority Enterprise Small Business Investment Company and Small Business Investment Company.**

(a) The Corporation may assist in the establishment of a Minority Enterprise Small Business Investment Company which shall, in accordance with federal law, invest equity capital, make loans, and provide technical assistance to minority business enterprises participating in projects funded by the Corporation.

(b) The Corporation may also assist in the establishment of a Small Business Investment Company which shall, in accordance with federal law, invest equity capital, make loans, and provide technical assistance to small businesses participating in projects funded by the Corporation. (June 29, 1984, D.C. Law 5-89, § 12, 31 DCR 2514.)

**Cross references.** — As to the Minority Business Opportunity Commission, see § 1-1143.

**Legislative history of Law 5-89.** — See note to § 1-2211.

### **§ 1-2222. Title to property upon dissolution.**

Upon dissolution of the Corporation or the subsidiary corporation, title to all property filed in the name of the entity undergoing dissolution shall vest in the District of Columbia. (June 29, 1984, D.C. Law 5-89, § 13, 31 DCR 2514.)

**Legislative history of Law 5-89.** — See note to § 1-2211.

### **§ 1-2223. Business Purchase Assistance Program.**

(a) The Corporation shall establish a Business Purchase Assistance Program with a variety of financing and development strategies which will allow District residents to acquire either an existing business or a storefront within a commercial district and which may provide funds for facade treatment, assist merchants in financing rehabilitation costs, provide design assistance, and allow the Corporation to institute other plans for redeveloping commercial districts throughout the District of Columbia.

(b) The Corporation shall issue rules to implement the provisions of this section pursuant to subchapter I of Chapter 15 of Title 1, and the rules shall be

adopted unless, within 30 days after the Corporation transmits the proposed rules to the Council, the Council, by resolution, disapproves the proposed rules. The 30-day legislative review period shall not include Saturdays, Sundays, legal holidays, and days that pass during a Council recess. (June 29, 1984, D.C. Law 5-89, § 7a, as added Dec. 21, 1985, D.C. Law 6-74, § 2, 32 DCR 6475.)

**Legislative history of Law 6-74.** — Law 6-74, the "Fiscal Year 1986 Follow-Through Act of 1985," was introduced in Council and assigned Bill No. 6-206, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on July 9, 1985 and October 8, 1985, respectively. Approved without the signature of the Mayor on October 29, 1985, it was assigned Act No. 6-98 and transmitted to both Houses of Congress for its review.

**Transfer of powers, duties, and responsibilities from Board of Directors of Economic Development Finance Corporation.** — Section 30(b) of D.C. Law 12-144 provided for the transfer of the powers, duties, and responsibilities of the Board of Directors of the Economic Development Finance Corporation to the Board of Directors of the National Capital Revitalization Corporation, and for the abolition of the Board of Directors of the Economic Development Finance Corporation.

### *Subchapter III. Business Incubator Facilitation.*

#### **§ 1-2231. Purposes.**

In enacting this subchapter, the Council of the District of Columbia supports the following statutory purposes:

- (1) To facilitate the establishment of 1 or more business incubators in the District of Columbia by offering the use of city-owned property, credit support for financing businesses in the incubator, and other incentives to ensure that tenant business costs for space and services are kept to a minimum; and
- (2) To design business incubators to assist companies through the conceptual, start-up, and early growth stages of their businesses. The business incubator is not intended to serve merely as inexpensive quarters for established businesses. (Dec. 12, 1985, D.C. Law 6-71, § 2, 32 DCR 6334.)

**Legislative history of Law 6-71.** — Law 6-71, the "Business Incubator Facilitation Act of 1985," was introduced in Council and assigned Bill No. 6-205, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second

readings on September 24, 1985 and October 8, 1985, respectively. Signed by the Mayor on October 18, 1985, it was assigned Act No. 6-95 and transmitted to both Houses of Congress for its review.

#### **§ 1-2232. Definitions.**

For the purposes of this subchapter, the term:

- (1) "Business incubator" means a building that provides low-cost space and services to eligible tenant businesses. The term "business incubator" does not mean a multi-tenant facility that offers space alone.
- (2) "Council" means the Council of the District of Columbia.
- (3) "District" means the District of Columbia.
- (4) "Mayor" means the Mayor of the District of Columbia. (Dec. 12, 1985, D.C. Law 6-71, § 3, 32 DCR 6334.)

**Legislative history of Law 6-71.** — See note to § 1-2231.

**§ 1-2233. Eligibility criteria.**

(a) The Mayor shall define eligibility criteria for business incubators receiving public support. These criteria shall be stated in terms of business and economic development objectives, including, but not limited to, consideration of the following recommendations:

(1) The Mayor shall rank the types of businesses that would be eligible tenants.

(2) The Mayor shall rank-order the District government's preferences in such a way that businesses with little job creation potential are ranked lower than those businesses which have more employment potential.

(3) The Mayor shall give priority to potential tenant businesses such as light industrial, research and development, and business services companies that are potential major contributors to job creation efforts in the District.

(b) To be an eligible tenant business for occupancy in a business incubator, a business shall be based and incorporated in the District, shall have its corporate headquarters and principal place of business located in the District, and shall not be a subsidiary of another business. (Dec. 12, 1985, D.C. Law 6-71, § 4, 32 DCR 6334.)

**Legislative history of Law 6-71.** — See note to § 1-2231.

**§ 1-2234. Admissions policy.**

(a)(1) The Mayor shall establish admissions criteria for occupancy in a business incubator.

(2) Admissions criteria may include, but not be limited to, factors such as the age, size, and financial status of the business.

(b) The Mayor shall establish screening and application procedures which will apply to all prospective tenant businesses.

(c) Submission of a business plan may be required for admission, especially for new-start businesses.

(d) Any business selected for occupancy in a business incubator shall demonstrate a potential for success and an identified market for its goods or services.

(e) Any business selected for occupancy in a business incubator must contract with the District government to maintain its principal place of business within the District for a minimum of 10 years following its move from the business incubator.

(f) Each tenant business selected for occupancy in the business incubator shall be responsible for the cost of office renovations, maintenance, and, upon departure from the business incubator, for the cost of returning its incubator space to its original condition unless other arrangements are made in advance of departure with a new tenant business.

(g) The Mayor shall establish the minimum insurance requirements of any tenant business to insure against any future liability of the District government for the business operations of the tenant. (Dec. 12, 1985, D.C. Law 6-71, § 5, 32 DCR 6334.)

**Legislative history of Law 6-71.** — See note to § 1-2231.

**§ 1-2235. Services.**

(a) Selected basic services shall be included in the rent for the business incubator; other services shall be paid for on an as-used basis.

(b) The only free services shall be those ordinarily available free of charge from participating providers.

(c) Services available elsewhere shall not be duplicated; all existing management support and services programs in the District, including financial services, shall be utilized.

(d) Both public and private resources may be made available to tenant businesses. (Dec. 12, 1985, D.C. Law 6-71, § 6, 32 DCR 6334.)

**Legislative history of Law 6-71.** — See note to § 1-2231.

**§ 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. This contractor would implement the recommendations of the Advisory Board established in § 1-2241. The selection of a contractor for this purpose shall be subject to review by the Council's Committee on Housing and Economic Development ("HED Committee"). (Dec. 12, 1985, D.C. Law 6-71, § 7, 32 DCR 6334.)

**Legislative history of Law 6-71.** — See note to § 1-2231.

**References in text.** — Section 1-2241, referred to in this section, was repealed by D.C. Law 12-86, § 401(a), 45 DCR 1172, effective April 29, 1998.

**Editor's notes.** — The reference to the "Committee on Housing and Economic Development (HED Committee)," appearing in the third sentence, should probably be to the "Committee on Economic Development," pursuant to the reorganization of the Committees.

**§ 1-2237. Priority to residents.**

Priority shall be given to tenant businesses owned by persons who are residents of the District. (Dec. 12, 1985, D.C. Law 6-71, § 8, 32 DCR 6334.)

**Legislative history of Law 6-71.** — See note to § 1-2231.

**§ 1-2238. First source employment agreement required.**

Tenant businesses chosen for occupancy in business incubators shall execute a first source employment agreement with the District government pursuant to § 1-1163. (Dec. 12, 1985, D.C. Law 6-71, § 9, 32 DCR 6334.)

**Legislative history of Law 6-71.** — See note to § 1-2231.

### **§ 1-2239. Maximum stay policy.**

The Mayor shall devise a policy that encourages tenant businesses to leave the business incubators when a certain level of development is reached, but does not arbitrarily evict a tenant business at a crucial period in its development. (Dec. 12, 1985, D.C. Law 6-71, § 10, 32 DCR 6334.)

**Legislative history of Law 6-71.** — See note to § 1-2231.

### **§ 1-2240. Location of business incubators.**

The Mayor shall locate business incubators in areas in the District appropriate to the types of businesses targeted for occupancy, based on District-determined priorities, and shall seek sites which have the least prohibitive zoning in order to allow a range of uses. (Dec. 12, 1985, D.C. Law 6-71, § 11, 32 DCR 6334.)

**Legislative history of Law 6-71.** — See note to § 1-2231.

### **§ 1-2241. Advisory Board established.**

Repealed.

(Dec. 12, 1985, D.C. Law 6-71, § 12, 32 DCR 6334; Apr. 29, 1998, D.C. Law 12-86, § 401(a), 45 DCR 1172.)

**Legislative history of Law 12-86.** — Law 12-86, the "Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-458, which was referred to the Committee on Public Works and the Environment and the Committee on Consumer and Regulatory Affairs. The Bill was

adopted on first and second readings on December 19, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 21, 1998, it was assigned Act No. 12-256 and transmitted to both Houses of Congress for its review. D.C. Law 12-86 became effective on April 29, 1998.

### **§ 1-2242. Duties of Advisory Board.**

Repealed.

(Dec. 12, 1985, D.C. Law 6-71, § 13, 32 DCR 6334; Apr. 29, 1998, D.C. Law 12-86, § 401(a), 45 DCR 1172.)

**Legislative history of Law 12-86.** — See note to § 1-2241.

### **§ 1-2243. Rules.**

Repealed.

(Dec. 12, 1985, D.C. Law 6-71, § 14, 32 DCR 6334; Apr. 29, 1998, D.C. Law 12-86, § 401(a), 45 DCR 1172.)

**Legislative history of Law 12-86.** — See note to § 1-2241.

**§ 1-2244. Annual report.**

The Office of Business and Economic Development shall annually prepare a report for the HED Committee 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.)

**Legislative history of Law 6-71.** — See note to § 1-2231.

**Editor's notes.** — The reference to "HED Committee", found in the introductory lan-

guage, should probably be to the "Committee on Economic Development" pursuant to the reorganization of the Committees.

*Subchapter IV. Enterprise Zone Study Commission.*

**§ 1-2251. Statement of purpose.**

The purpose of this subchapter is to create a commission to examine and evaluate proposals, recommendations, and studies in order to establish an enterprise zone or zones in blighted and underdeveloped areas of the District of Columbia ("District"). The commission shall submit a comprehensive plan to the Council of the District of Columbia ("Council"), consistent with historic and residential concerns, to provide for the establishment of an enterprise zone or zones in the District, which will encourage the elimination of economic problems in blighted and underdeveloped areas, foster the growth of small business, and lead to higher employment and economic development. (Feb. 24, 1987, D.C. Law 6-171, § 2, 33 DCR 7205.)

**Legislative history of Law 6-171.** — Law 6-171, the "District of Columbia Enterprise Zone Study Commission Act of 1986," was introduced in Council and assigned Bill No. 6-431, which was referred to the Committee on Housing and Economic Development. The Bill

was adopted on first and second readings on September 23, 1986 and October 7, 1986, respectively. Signed by the Mayor on October 30, 1986, it was assigned Act No. 6-220 and transmitted to both Houses of Congress for its review.



**§ 1-2252. Findings.**

The Council finds that:

- (1) Unemployment in some areas of the District exceeds 10%.
- (2) The incidence of business dislocation in the District is alarming.
- (3) Many areas of the District suffer from the overall pattern of urban blight seen in other northeastern American cities.
- (4) Blighted areas have become a haven for criminal activity and have had a detrimental effect on the residential life of surrounding areas.
- (5) Enterprise zones established in other jurisdictions have created an aggregate of over 80,000 jobs and \$3 billion in investments.
- (6) The promotion of small business growth will lead to a better climate for employment and a better life for District residents. (Feb. 24, 1987, D.C. Law 6-171, § 3, 33 DCR 7205.)

**Legislative history of Law 6-171.** — See note to § 1-2251.

**§ 1-2253. Commission established.**

(a) There is established the District of Columbia Enterprise Zone Study Commission ("Commission").

(b) The commission shall be composed of 25 members who shall be appointed as follows:

- (1) One member shall be appointed by each member of the Council; and
- (2) Twelve members shall be appointed by the Mayor of the District of Columbia ("Mayor"), 1 of whom the Mayor shall appoint as the chairperson of the commission. In making his appointments, the Mayor shall appoint at least 6 people, each with experience or expertise in 1 of the following areas:
  - (A) Real estate development;
  - (B) Banking and lending;
  - (C) Finance and taxation;
  - (D) Historic preservation;
  - (E) Housing development;
  - (F) Business and management; or
  - (G) Labor and employee interests.

(c) A majority of the members of the commission shall constitute a quorum. A quorum of the members shall be necessary for the commission to conduct its business.

(d) Vacancies in the commission shall be filled in the same manner as the original appointment. (Feb. 24, 1987, D.C. Law 6-171, § 4, 33 DCR 7205.)

**Legislative history of Law 6-171.** — See note to § 1-2251.

**§ 1-2254. Duties of commission.**

The commission shall develop a method for the evaluation of a strategy to establish and implement an enterprise zone or zones in the District. The

process shall include: The evaluation and consideration of a method to best select proposed sites for an enterprise zone or zones; tax incentives based on the number of new employees; exemptions from sales taxes on materials used in construction; abatement in real estate taxes; tax credits or deductions for capital improvements or employee training; low interest loans to help businesses get started; and reduction of business taxes to a level equal to or below that of the surrounding jurisdictions. (Feb. 24, 1987, D.C. Law 6-171, § 5, 33 DCR 7205.)

**Legislative history of Law 6-171.** — See note to § 1-2251.

## § 1-2255. Commission report.

The commission shall complete its work and submit its report with recommendations to the Council no later than 12 months following the first meeting of the commission. Upon filing its report, all authority for the commission shall expire. (Feb. 24, 1987, D.C. Law 6-171, § 6, 33 DCR 7205; July 29, 1988, D.C. Law 7-137, § 2, 35 DCR 4262.)

**Legislative history of Law 6-171.** — See note to § 1-2251.

**Legislative history of Law 7-55.** — Law 7-55 was introduced in Council and assigned Bill No. 7-294. The Bill was adopted on first and second readings on July 14, 1987 and September 29, 1987, respectively. Signed by the Mayor on October 16, 1987, it was assigned Act No. 7-88 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 7-137.** — Law 7-137 was introduced in Council and assigned Bill No. 7-282, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on May 3, 1988 and May 17, 1988, respectively. Signed by the Mayor on June 1, 1988, it was assigned Act No. 7-187 and transmitted to both Houses of Congress for its review.

## § 1-2256. Compensation; assistance from other agencies.

(a) No compensation shall be paid to the members of the commission, but commission members may be reimbursed for actual expenses incurred in the performance of their duties.

(b) The Mayor shall provide office space and an appropriate staff of professional and clerical personnel to assist the commission in carrying out the duties assigned to it under this subchapter.

(c) The Mayor shall designate at least 1 employee from each of the following District agencies to serve as a liaison to the commission for the purpose of providing any information from the agency requested by the commission and lending needed assistance to the commission in performing its duties:

- (1) The Office of Business and Economic Development;
- (2) The Department of Housing and Community Development;
- (3) The Redevelopment Land Agency;
- (4) The Department of Finance and Revenue;
- (5) The Department of Consumer and Regulatory Affairs; and
- (6) Any other agency the Mayor deems appropriate. (Feb. 24, 1987, D.C. Law 6-171, § 7, 33 DCR 7205.)

**Legislative history of Law 6-171.** — See note to § 1-2251.

### *Subchapter V. Contractors Guarantee Association.*

#### **§ 1-2261. Establishment of Technical Assistance Program.**

Expired.

(Mar. 21, 1995, D.C. Law 10-236, § 2, 42 DCR 33.)

**Legislative history of Law 10-236.** — See note to § 1-2212.

**Expiration of Law 10-236.** — Section 6(b) of D.C. Law 10-236 provided that the act shall

expire 3 years after having taken effect. D.C. Law 10-236, which added §§ 1-2261 to 1-2263, became effective on March 21, 1995.

#### **§ 1-2262. Contractor fees.**

Expired.

(Mar. 21, 1995, D.C. Law 10-236, § 3, 42 DCR 33.)

**Legislative history of Law 10-236.** — See note to § 1-2212.

**Expiration of Law 10-236.** — See note to § 1-2261.

#### **§ 1-2263. Establishment of Financial Assurance Fund.**

Expired.

(Mar. 21, 1995, D.C. Law 10-236, § 4, 42 DCR 33.)

**Legislative history of Law 10-236.** — See note to § 1-2212.

**Expiration of Law 10-236.** — See note to § 1-2261.

### *Subchapter VI. Business Improvement Districts.*

**Revision of subchapter.** — D.C. Law 12-26 revised this subchapter by renumbering former §§ 1-2271 through 1-2291 as present §§ 1-2272

through 1-2292, respectively, and by adding present § 1-2271.

#### **§ 1-2271. Findings and purpose.**

(a) The Council finds that:

(1) Business Improvement Districts will help the District to promote economic growth and employment downtown and in other areas of the District;

(2) Property owners should be encouraged to create BIDs and BID corporations to enhance their local business climate;

(3) BID corporations should be given flexibility in establishing the self-help programs most consistent with their local needs, goals and objectives; and

(4) Because additional services and improvements attendant to a BID will provide direct benefits to the real property within a BID, the most equitable method of financing such services is to levy an additional real property tax against all nonexempt properties within a BID District.

(b) The purpose of this subchapter is to provide for the creation of Business Improvement Districts the activities of which will promote the general welfare of the residents, employers, employees, property owners, commercial tenants, consumers, and the general public within a BID's geographic area by preserving, maintaining, and enhancing the economic health and vitality of a BID area as a community and business center. (May 29, 1996, D.C. Law 11-134, § 2, 43 DCR 1684, as added Oct. 8, 1997, D.C. Law 12-26, § 2, 44 DCR 4320.)

**Effect of amendments.** — D.C. Law 12-26 added this section; and redesignated former § 1-2271 as present § 1-2272.

**Temporary revision of subchapter.** — Section 2 of D.C. Law 12-23 revised this subchapter by renumbering former §§ 1-2271 through 1-2291 as present §§ 1-2272 through 1-2292, respectively, and by adding present § 1-2271.

Section 4(b) of D.C. Law 12-23 provided that this act shall expire on the 225th day of its having taken effect.

**Emergency act amendments.** — For temporary amendment of subchapter, see § 2 of the Business Improvement Districts Emergency Amendment Act of 1997 (D.C. Act 12-89, June 19, 1997, 44 DCR 3747), and § 2 of the Business Improvement Districts Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-146, August 12, 1997, 44 DCR 5054).

Section 4 of D.C. Act 12-146 provides for the application of the act.

**Legislative history of Law 11-134.** — Law 11-134, the "Business Improvement Districts Act of 1996," was introduced in Council and Assigned Bill No. 11-464, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on February 6, 1996, and March 5, 1996, respectively. Signed by the Mayor on March 25, 1996, it was assigned Act No. 11-242 and trans-

mitted to both Houses of Congress for its review. D.C. Law 11-134 became effective on May 29, 1996.

**Legislative history of Law 12-23.** — Law 12-23, the "Business Improvement Districts Temporary Amendment Act of 1997," was introduced in Council and assigned Bill No. 12-230. The Bill was adopted on first and second readings on May 20, 1997, and June 3, 1997, respectively. Signed by the Mayor on June 18, 1997, it was assigned Act No. 12-100 and transmitted to both Houses of Congress for its review. D.C. Law 12-23 became effective on September 23, 1997.

**Legislative history of Law 12-26.** — Law 12-26, the "Business Improvement Districts Amendment Act of 1997," was introduced in Council and assigned Bill No. 12-225, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on June 3, 1997, and June 17, 1997, respectively. Signed by the Mayor on July 3, 1997, it was assigned Act No. 12-109 and transmitted to both Houses of Congress for its review. D.C. Law 12-26 became effective on October 8, 1997.

**Expiration of Law 11-134.** — Section 24(b) of D.C. Law 11-134 provided that the act shall expire 20 years after its effective date. D.C. Law 11-134 was effective May 29, 1996.

## § 1-2272. Definitions.

For the purposes of this subchapter, the term:

(1) "Adjoining residential neighborhood" means any property zoned for residential use within a BID or within 800 feet of the perimeter of a BID.

(2) "Adverse impact on adjoining residential neighborhoods" means adverse impact on traffic, on-street parking, litter, trash collection, crime, noise, lighting levels, or other such factors affecting the quality of residential life.

(3) "Assessed value" means the valuation obtained by taking the assessed valuation of taxable real property as it appears on the last completed assessment roll for tax assessment purposes pursuant to § 47-801 et seq.

(4) "BID corporation" means a nonprofit corporation that is organized pursuant to the District law for nonprofit corporations and registered pursuant to the terms of this subchapter. A BID corporation shall not be deemed to be a part of the District government as that term is defined in § 47-393(5).

(5) "Block" means the properties fronting on both sides of a street that are located between 2 intersecting streets.

(6) "Business Improvement District Activity" or "BID activity" means a special service or activity conducted in a Business Improvement District designed to improve the economic development climate in the area pursuant to this subchapter, and which is designed and conducted so as to avoid any material adverse impact on adjoining residential neighborhoods and is otherwise in accordance with all applicable laws, regulations, and requirements of the District of Columbia and the United States, which services and activities may augment, but which may not replace, governmental services customarily provided in the regular course of the District's operations. This term shall include the planning, administration, and management of activities designed to provide economic stimulus, stability, or benefit to the BID or its members, including, but not limited to, the following:

(A) Seasonal promotions such as festivals and special displays;

(B) Enhanced maintenance and improvements to public space, including sidewalks, parks, and plazas;

(C) Marketing and procurement activities in support of tourism, job creation, business attraction, development, efficiency, and retention;

(D) Retail, restaurant, and arts promotions;

(E) Services to improve public safety and transportation, such as providing shuttle buses, community service representatives acting as goodwill ambassadors, and private security services;

(F) Development of special signage and storefront and commercial building facade improvement programs; and

(G) Any other service or activity consistent with the purposes of this subchapter if such service or activity is set out in the BID's business plan, as amended from time to time and as submitted to the Mayor in accordance with this subchapter.

(7) "Business Improvement District" or "BID" means a defined geographic area in the District in which the preponderance of activity carried out is commercial or industrial in nature, which does not include any part of an existing BID previously established pursuant to this subchapter, and which area consists of not less than 5 contiguous blocks (or the maximum number of contiguous blocks in cases where there are fewer than 5 contiguous blocks), or noncontiguous commercial blocks within a generally recognized single neighborhood; provided, that noncontiguous blocks are not wholly located in an area that is not part of the general BID area.

(8) "BID tax" means an additional real property tax assessed and levied by the District on, and payable by, the owners of nonexempt properties in a Business Improvement District subject to the BID certification processes of this subchapter.

(9) "CFO" means the Chief Financial Officer of the District.

(10) "Commercial tenant" means a lessee, or other lawful occupant, of nonexempt real property within a BID who is not an owner and who conducts a lawful commercial use as defined in the Zoning Regulations of the District.

(11) "Council" means the Council of the District of Columbia.

(12) "District" means the District of Columbia.

(13) "Fiscal year" means the same fiscal year as the fiscal year of the District.

(14) "Lot" means the lots described in the District tax and assessment records.

(15) "Mayor" means the Mayor of the District of Columbia or such administrative agency of the District that is designated by the Mayor to administer the provisions of this subchapter.

(16) "Member" means a member of the BID Corporation, the membership of which shall be comprised of each owner and each commercial tenant in the BID area, and each person who becomes a member pursuant to § 1-2291.

(17) "Member of record" means a member that the BID is reasonably able to identify from District of Columbia property tax records or from other reasonably available sources.

(18) "Nonexempt real property" means real property that is not exempt from paying real property taxes pursuant to § 47-1001 et seq., is not residential property, and is not the residential portion of a property used for both residential and nonresidential purposes.

(19) "Owner" means an owner of nonexempt real property.

(20) "Owner's property" means an owner's nonexempt real property located within a BID.

(21) "Person" means any individual, sole proprietorship, partnership, society, association, joint venture, stock company, corporation, limited liability company, estate, receiver, trustee, assignee, fiduciary, or any combination of any of the foregoing.

(22) "Reasonably ascertainable", "reasonably available", and "reasonably determined" mean, in relation to information, reasonably reliable information that is obtained by the BID and relied upon by the BID in good faith. (May 29, 1996, D.C. Law 11-134, § 2, 43 DCR 1684; renumbered as § 3, Oct. 8, 1997, D.C. Law 12-26, § 2, 44 DCR 4320; Mar. 24, 1998, D.C. Law 12-81, § 4, 45 DCR 745.)

**Section references.** — This section is referred to in §§ 1-2276 and 1-2279.

**Effect of amendments.** — D.C. Law 12-26 rewrote and redesignated former § 1-2271 as present § 1-2272, and redesignated former § 1-2272 as § 1-2273.

D.C. Law 12-81 validated a previously made technical correction in (3).

**Temporary revision of subchapter.** — D.C. Law 12-23 amended this subchapter. See note to § 1-2271.

Section 4(b) of D.C. Law 12-23 provided that this act shall expire on the 225th day of its having taken effect.

**Emergency act amendments.** — For temporary amendment of section, see § 2 of the Business Improvement Districts Emergency Amendment Act of 1997 (D.C. Act 12-89, June 19, 1997, 44 DCR 3747), and § 2 of the Business Improvement Districts Congressional Re-

view Emergency Amendment Act of 1997 (D.C. Act 12-146, August 12, 1997, 44 DCR 5054).

Section 4 of D.C. Act 12-146 provides for the application of the act.

**Legislative history of Law 11-134.** — See note to § 1-2271.

**Legislative history of Law 12-23.** — See note to § 1-2271.

**Legislative history of Law 12-26.** — See note to § 1-2271.

**Legislative history of Law 12-81.** — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

**Expiration of Law 11-134.** — See note to § 1-2271.

### § 1-2273. BID formation.

Each BID shall be organized as a nonprofit corporation under the laws of the District and shall be subject to all applicable District and federal laws and regulations. Each owner and each commercial tenant within a BID, whether such owner or commercial tenant is an owner or commercial tenant at the time the BID is established or at any time thereafter when the BID is in existence, shall be a member of the BID corporation from such time as the BID corporation becomes registered pursuant to this subchapter and until such time as such member's ownership or tenancy within the BID area is terminated or the BID corporation is terminated or dissolved. (May 29, 1996, D.C. Law 11-134, § 3, 43 DCR 1684; renumbered as § 4, Oct. 8, 1997, D.C. Law 12-26, § 2, 44 DCR 4320.)

**Effect of amendments.** — D.C. Law 12-26 rewrote and redesignated former § 1-2272 as present § 1-2273, and redesignated former § 1-2273 as § 1-2274.

**Temporary revision of subchapter.** — D.C. Law 12-23 amended this subchapter. See note to § 1-2271.

Section 4(b) of D.C. Law 12-23 provided that this act shall expire on the 225th day of its having taken effect.

**Emergency act amendments.** — For temporary amendment of section, see § 2 of the Business Improvement Districts Emergency Amendment Act of 1997 (D.C. Act 12-89, June

19, 1997, 44 DCR 3747), and § 2 of the Business Improvement Districts Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-146, August 12, 1997, 44 DCR 5054).

Section 4 of D.C. Act 12-146 provides for the application of the act.

**Legislative history of Law 11-134.** — See note to § 1-2271.

**Legislative history of Law 12-23.** — See note to § 1-2271.

**Legislative history of Law 12-26.** — See note to § 1-2271.

**Expiration of Law 11-134.** — See note to § 1-2271.

### § 1-2274. Establishment of Business Improvement District.

(a) To establish a BID with respect to any area, the Board of Directors of a nonprofit corporation established under District law for the purpose of forming a BID and seeking to be registered as a BID corporation shall submit an application to the Mayor for review of compliance with all BID criteria described in this section. The Mayor may designate the Deputy City Administrator for Business Services and Economic Development to perform the review functions described by this section. Each application shall be duly sworn under oath before a notary public who holds a valid license in the District, and shall contain:

(1) A statement setting forth the name and address of the nonprofit corporation seeking registration as a BID corporation; a description by lot, square, and street address of the property of each owner to the extent reasonably ascertainable; and the most recent assessed value of each nonexempt real property located in the proposed BID to the extent reasonably ascertainable from District property tax records or a final determination of the District's Board of Real Property Assessment and Appeals. The statement must be signed by the owners (or their authorized representatives) who own at

least a 51% interest in the most recent assessed value of the nonexempt real properties in the geographic area of the proposed BID as a whole, and at least 25% in number of the individual nonexempt properties of record in the BID area as a whole. For the purposes hereof, 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 this paragraph; 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;

(2) A proposed business plan ("BID plan") for at least the first 3 years of the initial 5-year term of the BID. The BID plan shall contain, at a minimum, the following:

(A) Specific goals and objectives of the BID consistent with the BID activity as defined in this subchapter, anticipated resources to be used to meet such goals and objectives, and projected timetables for undertaking and completing projects in furtherance of the goals and objectives;

(B) The annual proposed total BID taxes for the BID's common operations for the BID's first year of operation and the formula used to determine each owner's BID tax which shall be based upon either assessed value, square footage, or a uniform fixed tax per building. BID taxes may vary by class and type of property provided that they are applied fairly and equitably to all owners within the BID; and

(C) The maximum amount and the nature of any start-up costs incurred prior to the BID's registration that the BID plans to reimburse upon its registration;

(3) A tax assessor's map of the geographic area comprising the BID clearly designating the BID boundaries and each property by street address, lot, and square number to be included within the BID;

(4) A list of the initial members of the Board of the BID, which must satisfy the criteria of § 1-2277;

(5) The adopted articles of incorporation and the adopted bylaws of the nonprofit corporation seeking to be registered as the BID corporation which articles of incorporation or bylaws must include:

(A) The names and addresses of the initial directors and a provision stating that the term of the initial directors shall expire at such time as new directors are elected pursuant to § 1-2277(b). Such terms shall in no event exceed 120 days after the BID is registered by the Mayor;

(B) The procedures through which the members of the BID corporation shall propose and vote to adopt amendments to the initial bylaws, including the quorum requirements for the method of allocating votes to members for purposes of this vote which shall occur not more than 120 days after the BID is registered by the Mayor; and



(C) The number of votes allocated to each member subject to the requirements of § 1-2281(a). The adopted articles of incorporation and the adopted bylaws of the nonprofit corporation may contain any provision not inconsistent with the District nonprofit corporation law or this subchapter;

(6) A list, by street address, lot, and square number, of all nonexempt real property within the proposed BID, including the names and mailing addresses of the record owners to the extent reasonably ascertainable from the real property records of the Office of Recorder of Deeds or the real property tax and assessment records of the Office of Taxation and Revenue;

(7) A list of the names and addresses of all commercial tenants within the BID area, to the extent reasonably ascertainable; and

(8) The name of the bank and the location of the branch at which the BID will establish its bank accounts, which shall be subject to, in addition to the other approvals required by this section, the approval of the CFO.

(b) With respect to areas outside the central employment area and Georgetown, a BID may be established if the requirements of subsection (a)(2)-(8) of this section are met, if the statement is signed by at least 51% of the number of commercial tenants occupying nonexempt real properties in the geographic area of the proposed BID, and if owners who own at least 51% of the interest in the assessed value of the commercial properties within the proposed BID area and owners who own at least 51% of the individual properties within the proposed BID area agree to do so.

(c) The formation of the downtown BID, including all of the properties created by drawing a line that starts at the center of the street at the intersection of Massachusetts Avenue, N.W., and the western edge of I-395; and continues south along the western edge of I-395 to the center of D Street, N.W.; and continues east along the center of D Street, N.W., to the eastern edge of the Department of Labor Building; and continues south along the eastern edge of the Department of Labor Building to the center of C Street, N.W.; and continues west along the center of C Street, N.W., to the center of 2nd Street, N.W.; and continues south along the center of 2nd Street, N.W., to the center of Constitution Avenue, N.W.; and continues west along the center line of Constitution Avenue, N.W., to the center of 15th Street, N.W.; and continues north along the center line of 15th Street, N.W., to the center of Pennsylvania Avenue, N.W.; and continues west along the center line of Pennsylvania Avenue, N.W., to the western property line of 1503 Pennsylvania Avenue, N.W.; and continues north along the building edge of 1503 Pennsylvania Avenue, N.W., to the center of the north-south alley in Square 221; and continues north along the center line of the north-south alley in Square 221 to the center of H Street, N.W.; and continues west along the center line of H Street, N.W., to the center of 16th Street, N.W.; and continues north along the center line of 16th Street, N.W., to the southern edge of Thomas Circle; and continues counter-clockwise around the center line of Thomas Circle to the center point of Massachusetts Avenue, N.W.; and continues southeast along the center line of Massachusetts Avenue, N.W., to the center of 9th Street, N.W.; and continues north along the center line of 9th Street, N.W., to the center of N Street, N.W.; and continues east along the center line of N Street, N.W., to the center of the

north-south alley in Square 424; and continues south along the center line of the north-south alley in Square 424 to the center of M Street N.W.; and continues east along M Street N.W., to the center of 7th Street, N.W.; and continues south along the center line of 7th Street, N.W., to the center of K Street, N.W.; and continues east along the center line of K Street, N.W., to the center of 6th Street, N.W.; and continues south along the center line of 6th Street, N.W., to the center of Massachusetts Avenue, N.W.; and continues east along the center line of Massachusetts Avenue, N.W., to the center of the street at the intersection of Massachusetts Avenue and the western edge of I-395, is hereby authorized and the BID taxes specified below are hereby imposed through the expiration date of this subchapter or the earlier termination or dissolution of the BID, subject to the requirements of this subchapter, including the BID application and BID registration procedures established pursuant to subsection (a) of this section and §§ 1-2275 and 2276; provided, that any BID application for such area shall include a BID tax currently established at:

(1) Twelve cents per square foot for each net rentable square foot for improved Class 4 Properties where the Office of Taxation and Revenue has records indicating the net rentable area of the property. Net rentable square feet shall be the number of net rentable square feet reported to the District and shall be calculated by the owner using any method that is recognized generally in the District metropolitan area as an appropriate method for measuring space in agreements between landlords and tenants;

(2) Twelve cents per square foot for each equivalent net rentable square foot of improvements for improved Class 4 Properties for any property where the Office of Taxation and Revenue does not have records indicating the net rentable area of the property, and for improved Class 5 Properties. Equivalent net rentable area shall be 90% of the gross building area. For purposes of this paragraph, gross building area shall be determined using records provided by the Office of Taxation and Revenue;

(3) Fifty dollars per hotel room for Class 3 Properties; and

(4) Twelve cents per square foot of land area for all unimproved Class 4 Properties, and all improved Class 4 Properties that are surface parking lots, and all unimproved Class 5 Properties. Land area shall be determined using records provided by the Office of Taxation and Revenue;

(d) A 3% annual increase in the BID taxes over the current tax year rates specified in subsection (c) of this section is hereby authorized and imposed subject to the requirements of § 1-2278(b).

(e) The formation of the Golden Triangle BID, including Square 70, Lot 195; Square 72, Lots 75 and 76; Square 73, Lots 80, 82, 84, 800, 858, and 876; Square 74, Lots 832 and 840; all of Squares 76, 78, 78s, 85, and 86; Square 99, Lots 49, 50, 52, and 53; all of Squares 100, 105, 106, and 107; Square 115, Lots 79, 81, 82, 84, and 85; all of Squares 116, 117, 118, 126, 127, 137, 138, 139, and 140; Square 159, Lots 75, 76, 82, 84, 814, 815, 816, and 855; all of Squares 160, 161, 162, 163, 164, and 165; Square 182, Lots 827 and 828; Square 183, Lots 91, 105, 106, 107, 111, 847, 857, 879, 880, and 881; Square 184, Lots 3, 69, 71, 804, 805, 842, 845, 849, 855, and 856; all of Squares 185 and 186; and Farragut

Square is hereby authorized and the BID taxes specified below are hereby imposed through the expiration date of this subchapter or the earlier termination or dissolution of the BID, subject to the requirements of this subchapter, including the BID application and BID registration procedures established pursuant to subsection (a) of this section and §§ 1-2275 and 1-2276; provided, that any BID application for such area shall include a BID tax currently established at:

(1) Ten cents for each net rentable square foot of improved Class 4 Property, excluding parking lots and above grade parking structures, for any property where the owner is required to report net rentable area to the Office of Taxation and Revenue or where the Office of Taxation and Revenue has records indicating the net rentable area of the property. Net rentable square feet shall be the number of net rentable square feet reported to or on record with the District and shall be calculated using any method that is recognized generally in the District Metropolitan area as an appropriate method for measuring space in agreements between landlords and tenants;

(2) Ten cents for each equivalent net rentable square foot of improvements of improved Class 4 Property, excluding parking lots and parking structures for any property where the owner is not required to report net rentable area to the Office of Taxation and Revenue and where the Office of Taxation and Revenue maintains no record of net rentable area. Equivalent net rentable area shall be 90% of the gross building area. For purposes of this paragraph, gross building area shall exclude parking facilities and shall be determined using any method that is recognized generally in the District metropolitan area as an appropriate method for measuring gross building area;

(3) Seven cents for each equivalent net rentable square foot of improvements of Class 3 Property. Equivalent net rentable areas shall be calculated as set forth in paragraph (2) of this subsection;

(4) Five cents for each equivalent net rentable square foot of class 4 above-grade parking structures consisting of one or more stories. Equivalent net rentable area shall be calculated as set forth in paragraph (2) of this subsection;

(5) Five cents for each square foot of land for Class 5 Property and improved parking lots located in Class 4 Property without parking structures as defined in paragraph (4) of this subsection; and

(6) Two hundred and fifty dollars per year for each below-grade parking structure associated with above-ground improvements.

(e-1)(1) The formation of the Georgetown BID, including all nonexempt real property within those portions of the following described geographic area zoned C or W under applicable District zoning law: Along the northern boundary of M Street, N.W., between the western terminus of the Rock Creek bridge on the east and the eastern boundary of Georgetown University on the west; along 28th Street, N.W., between M Street, N.W., and Olive Street, N.W.; along 29th Street, N.W., and 30th Street, N.W., in each instance between the M Street, N.W., and Olive Street, N.W.; along 31st Street, N.W., between M Street N.W., and N Street, N.W.; along Potomac Street, N.W., 33rd Street,

N.W., Bank Street, N.W., 34th Street, N.W., and 35th Street, N.W., in each instance between M Street, N.W., and Prospect Street, N.W.; along Prospect Street, N.W., between Wisconsin Avenue, N.W., and Potomac Street, N.W.; along N Street, N.W., between 31st Street, N.W., and Potomac Street, N.W.; along O Street, N.W., between 31st Street, N.W., and Potomac Street, N.W.; along Dumbarton Street, N.W., between 31st Street, N.W., and Wisconsin Avenue, N.W.; along P Street, N.W., between 32nd Street, N.W., and 33rd Street, N.W.; along Volta Street, N.W., between Wisconsin Avenue, N.W., and 33rd Street, N.W.; along Q Street, N.W., between 32nd Street, N.W., and 33rd Street, N.W.; along 33rd Street, N.W., between Dent Place, N.W., and Wisconsin Avenue, N.W.; along Reservoir Road, N.W., between 32nd Street, N.W., and 34th Street, N.W.; along R Street, N.W., between 32nd Street, N.W., and 34th Street, N.W.; along Wisconsin Avenue, N.W., between M Street, N.W., and R Street, N.W., and within the area bounded on the north by the southern boundary of M Street, N.W., on the east by Rock Creek, on the west by Key Bridge, and on the south by the Potomac River, which area also includes that portion of Pennsylvania Avenue, N.W., between 29th Street, N.W., and Rock Creek, is hereby authorized and the BID taxes specified below are hereby imposed through the expiration date of this subchapter or the earlier termination or dissolution of the BID, subject to the requirements of this subchapter, including the BID application and BID registration procedures established pursuant to subsection (a) of this section and §§ 1-2275 and 1-2276; provided, that any BID application for such area shall include a BID tax currently established at:

(A) Fifteen cents per \$100 of the assessed value of all nonexempt properties and all nonexempt portions of mixed use properties for each Class 3, 4, 5 and 9 nonexempt property within the described geographic area, and for each Class 6, 7, 8, 10, 11, and 12 mixed use property within the described geographic area for which an assessed value for the nonexempt portion of such property reasonably is ascertainable from District tax records; and

(B) Fifteen cents per \$100 of assessed value of all nonexempt portions for Class 6, 7, 8, 10, 11, and 12 mixed use property within the described geographic area for which an assessed value for the nonexempt portion of such property reasonably is not ascertainable from District tax records, determined as follows:

(i) The aggregate square foot area for that portion of a mixed use property which is Class 3, 4, or 5 shall be adjusted in each instance by multiplying such square foot area by a factor of 2.7 (which adjusted square footage is referred to herein as the "Adjusted Nonexempt Area"); and

(ii) The nonexempt portion of a mixed use property shall be deemed to be an adjusted fraction, the numerator of which shall be the Adjusted Nonexempt Area and the denominator of which shall be the Adjusted Nonexempt Area plus the square foot area for the residential portion of such mixed use property (which fraction is referred to herein as the "Adjusted Nonexempt Portion"); and

(iii) The assessed value of each such mixed use property for purposes of the BID tax shall be deemed to be the Adjusted Nonexempt Portion thereof.

(C) Provided that for purposes of determining the BID tax in accordance with the foregoing paragraphs (A) and (B) of this subsection, the "assessed value" of each nonexempt property and each mixed use property for the entire 5-year term of the BID shall be fixed at the assessed value of each such property as it appears on the assessment roll of the District of Columbia as of the date of registration of the BID and irrespective of any subsequent reassessment, subject however, to the express exception that the "assessed value" of any nonexempt property and any mixed use property shall increase based upon and effective as of any reassessment by the District of Columbia following either (i) a sale of any property or (ii) a reclassification of any property from Class 5 (vacant land and vacant buildings) to a nonexempt property or a mixed use property or a reclassification of any exempt property, or any residential portion of any mixed use property, to a nonexempt property.

(2) A 5% annual increase in the BID taxes over the current tax year rates specified in paragraph (1) of this subsection is hereby authorized and imposed subject to the requirements of § 1-2278(b).

(f) The listing of specifically authorized BIDs in this section shall not be construed to prohibit the establishment of a BID in another area pursuant to the terms of this subchapter; provided, that any BID taxes, or BID tax increases, not authorized by this section (whether as adopted or amended by act of Council) shall not become effective until the effective date of an act of Council which makes such BID taxes effective.

(g) Nothing in this subchapter shall be construed as modifying or waiving the District's right to enact or adjust any District tax, tax rate, fee, or other assessment applicable to categories of persons or businesses that include persons or businesses subject to a BID tax under this subchapter. Nothing in this subchapter shall be used as a rationale for modifying the District's method of property tax assessment. (May 29, 1996, D.C. Law 11-134, § 4, 43 DCR 1684; renumbered as § 5, Oct. 8, 1997, D.C. Law 12-26, § 2, 44 DCR 4320; Apr. 20, 1999, D.C. Law 12-264, § 11(a), 46 DCR 2118; Apr. 27, 1999, D.C. Law 12-269, § 2, 46 DCR 1108.)

**Section references.** — This section is referred to in §§ 1-2275, 1-2276, and 1-2285.

**Effect of amendments.** — D.C. Law 12-26 rewrote and redesignated former § 1-2273 as present § 1-2274, and redesignated former § 1-2274 as § 1-2275.

D.C. Law 12-264, validated previously made technical corrections in (a)(4), (a)(5)(C), and (d); in (c), substituted "Class 4 Properties" for "class 4 properties" in (1), substituted "Class 4 Properties" and "Class 5 Properties" for "class 4 properties" and "class 5 properties," respectively, in (2) and (4), and substituted "Class 3 Properties" for "class 3 properties" in (3); and in (e), substituted "Class 4 Property" for "class 4 property" in (1) and (2), substituted "Class 3 Property" for "class 3 property" in (3), and substituted "Class 5 Property" for "class 5 property" and "parking lots located in Class 4 Property" for "class 4 parking lots" in (5).

D.C. Law 12-269 inserted (e-1).

**Temporary revision of subchapter.** — D.C. Law 12-23 amended this subchapter. See note to § 1-2271.

Section 4(b) of D.C. Law 12-23 provided that this act shall expire on the 225th day of its having taken effect.

**Temporary amendment of section.** — Section 2 of D.C. Law 12-137 inserted (e-1).

Section 4(b) of D.C. Law 12-137 provided that the act shall expire after 225 days of its having taken effect.

**Emergency act amendments.** — For temporary amendment of section, see § 2 of the Business Improvement Districts Emergency Amendment Act of 1997 (D.C. Act 12-89, June 19, 1997, 44 DCR 3747, and § 2 of the Business Improvement Districts Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-146, August 12, 1997, 44 DCR 5054).

Section 4 of D.C. Act 12-146 provides for the application of the act.

For temporary amendment of section, see § 2 of the Georgetown Business Improvement District Emergency Amendment Act of 1998 (D.C. Act. 12-325, April 14, 1998, 45 DCR 2462), § 2 of the Georgetown Business Improvement District Revision Emergency Amendment Act of 1998 (D.C. Act 12-346, May 6, 1998, 45 DCR 2986), § 2 of the Georgetown Business Improvement District Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-389, June 30, 1998, 45 DCR 4628), and § 2 of the Georgetown Business Improvement District Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-28, March 15, 1999, 46 DCR 2985).

Section 4 of D.C. Act 12-389 provides for the application of the act.

Section 4 of D.C. Act 13-28 provides for the application of the act.

**Legislative history of Law 11-134.** — See note to § 1-2271.

**Legislative history of Law 12-23.** — See note to § 1-2271.

**Legislative history of Law 12-26** — See note to § 1-2271.

**Legislative history of Law 12-137.** — Law 12-137, the "Georgetown Business Improvement District Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-577. The Bill was adopted on first and second readings on March 17, 1998, and April 7, 1998, respectively. Signed by the Mayor on April 20, 1998, it was assigned Act No. 12-338 and transmitted to both Houses of Congress for its review. D.C. Law 12-137 became effective on July 24, 1998.

**Legislative history of Law 12-264.** — Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

**Legislative history of Law 12-269.** — Law 12-269, the "Georgetown Business Improvement District Amendment Act of 1998," was introduced in Council and assigned Bill No. 1285, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 24, 1998, it was assigned Act No. 12-585 and transmitted to both Houses of Congress for its review. D.C. Law 12-269 became effective on April 27, 1999.

**Expiration of Law 11-134.** — See note to § 1-2271.

**References in text.** — As to "the expiration date of this subchapter," referred to in (e-1)(1) see the note regarding expiration of Law 11-134.

**Delegation of Authority Pursuant to D.C. Law 11-34 [D.C. Law 11-134], the "Business Improvement Districts Act of 1996."** — See Mayor's Order 97-129, July 17, 1997 (44 DCR 4543).

## § 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 preliminary 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)(1) If the Mayor determines that any of the BID criteria set forth in § 1-2274(a), except the provisions of § 1-2274(a)(1), have not been met or that the BID application is not in conformity with this subchapter, the Mayor shall specify the particular items that need to be corrected and notify the applicant that the application can be corrected and resubmitted within 30 days from the

date of this notification. If a corrected BID application is not submitted within the 30-day period, the Mayor shall enter an order rejecting the application. If the Mayor determines that the criteria set forth in § 1-2274(a)(1) have not been met, the Mayor shall notify the applicant that this standard has not been met and the applicant shall not be eligible to resubmit an application for a period of one year from the initial date of submission.

(2) Once the Mayor affirmatively determines that the BID application requirements have been met, the Mayor shall issue a notice of preliminary finding to the applicant and to Council. (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.)

**Section references.** — This section is referred to in §§ 1-2274, 1-2276, and 1-2279.

**Effect of amendments.** — D.C. Law 12-26 rewrote and redesignated former § 1-2274 as present § 1-2275, and redesignated former § 1-2275 as § 1-2276.

**Temporary revision of subchapter.** — D.C. Law 12-23 amended this subchapter. See note to § 1-2271.

Section 4(b) of D.C. Law 12-23 provided that this act shall expire on the 225th day of its having taken effect.

**Emergency act amendments.** — For temporary amendment of section, see § 2 of the Business Improvement Districts Emergency

Amendment Act of 1997 (D.C. Act 12-89, June 19, 1997, 44 DCR 3747), and § 2 of the Business Improvement Districts Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-146, August 12, 1997, 44 DCR 5054).

Section 4 of D.C. Act 12-146 provides for the application of the act.

**Legislative history of Law 11-134.** — See note to § 1-2271.

**Legislative history of Law 12-23.** — See note to § 1-2271.

**Legislative history of Law 12-26.** — See note to § 1-2271.

**Expiration of Law 11-134.** — See note to § 1-2271.

## § 1-2276. Hearing.

(a) The Mayor shall hold a public hearing within 45 days of the issuance of his findings pursuant to § 1-2275(b)(2). The Mayor may designate the Deputy City Administrator for Business Services and Economic Development to perform the functions described by this section.

(b) Notice to the public shall be made no less than 21 days prior to the hearing.

(c) The Mayor shall advertise the notice of the public hearing along with the notice of preliminary finding in the District of Columbia Register, and ensure that such notices are advertised in either The Washington Post or the Washington Times, and at least one monthly, biweekly, or weekly community newspaper serving the BID area. In the event the notice of public hearing along with the notice of preliminary findings cannot be advertised in The Washington Post and the Washington Times due to circumstances beyond the control of the Mayor, the notice shall be advertised in 2 newspapers of general circulation published in the District of Columbia, once every 2 weeks or more frequently.

(d) No less than 21 days prior to the public hearing, the applicant shall send, by first class mail, notice of the Mayor's preliminary determination; notice of the public hearing, including the date, time, and place and availability of the BID application for review; and a summary of the application stating the borders of the proposed BID, the BID plan, and the BID taxes, to:

- (1) The Council;

(2) Each owner of nonexempt real property within the proposed BID area at the address shown in the most recent real property tax assessment records of the District or, at the election of the applicant, at another address if it is reasonably determined that the information in the District's records is dated;

(3) Each commercial tenant, to the extent reasonably ascertainable;

(4) Each advisory neighborhood commission in which the proposed BID is located to the extent reasonably ascertainable; and

(5) Each major citizens association covering the area in which the proposed BID is located, to the extent reasonably ascertainable.

(e) The BID application shall be made available to the public for review during normal business hours on weekdays in at least one location in the proposed BID area designated by the applicant, and at a generally accessible District government office designated by the Mayor. The notice of the public hearing shall describe these locations.

(f) The Mayor shall use the public hearing on the proposed BID to determine whether the BID plan meets the purposes of this subchapter and the definition of BID activity in § 1-2272, and all other BID application requirements.

(g) Within 10 days after the public hearing (excluding Saturdays, Sundays, and holidays) the Mayor shall either:

(1) Register the BID and the nonprofit corporation that submitted the application under § 1-2274 as the BID corporation; or

(2) Determine that the BID application requirements have not been met or that the BID plan does not meet the purposes of this subchapter and the definition of BID activity in § 1-2272. The Mayor shall specify the particular items that need to be corrected and notify the applicant that he will have 45 days from the date of this notification within which to correct the BID application.

(A) If a corrected BID application is submitted within the 45-day period, and the Mayor affirmatively determines that the corrected application adequately addresses the items that were included in the Mayor's notification, the Mayor shall register the BID and the nonprofit corporation that submitted the application under § 1-2274 as the BID corporation.

(B) If a corrected BID application is submitted within the 45-day period, and the Mayor affirmatively determines that the corrected application does not adequately address the particular items needing correction that were included in the Mayor's notification, the Mayor shall issue an order rejecting the registration. This order shall include the findings of fact upon which it is based.

(C) If a corrected BID application is not submitted within the 45-day period, the Mayor shall issue an order rejecting the registration. This order shall include findings of fact.

(h) If an order of rejection is not issued within 60 days from the date of the public hearing, the BID and the nonprofit corporation that submitted the application under § 1-2274 shall be deemed registered by the Mayor; except that, if the corrected application under subsection (g) of this section is determined by the Mayor to contain substantial changes, the Mayor may extend the review period for 5 business days. After such time the BID and the



nonprofit corporation that submitted the application under § 1-2274 shall be deemed registered.

(i) Proceedings and determinations under the provisions of this subchapter shall not be considered contested cases under Chapter 15 of Title 1. (May 29, 1996, D.C. Law 11-134, § 6, 43 DCR 1684; renumbered as § 7, Oct. 8, 1997, D.C. Law 12-26, § 2, 44 DCR 4320; Apr. 20, 1999, D.C. Law 12-264, § 11(b), 46 DCR 2118.)

**Section references.** — This section is referred to in §§ 1-2274, 1-2275, 1-2277, 1-2285, and 1-2288.

**Effect of amendments.** — D.C. Law 12-26 rewrote and redesignated former § 1-2275 as present § 1-2276, and redesignated former § 1-2276 as § 1-2277.

D.C. Law 12-264 validated previously made technical corrections in (f) and (g).

**Temporary revision of subchapter.** — D.C. Law 12-23 amended this subchapter. See note to § 1-2271.

Section 4(b) of D.C. Law 12-23 provided that this act shall expire on the 225th day of its having taken effect.

**Emergency act amendments.** — For temporary amendment of section, see § 2 of the Business Improvement Districts Emergency Amendment Act of 1997 (D.C. Act 12-89, June 19, 1997, 44 DCR 3747), and § 2 of the Business Improvement Districts Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-146, August 12, 1997, 44 DCR 5054).

Section 4 of D.C. Act 12-146 provides for the application of the act.

**Legislative history of Law 11-134** — See note to § 1-2271.

**Legislative history of Law 12-23.** — See note to § 1-2271.

**Legislative history of Law 12-26.** — See note to § 1-2271.

**Legislative history of Law 12-264.** — See note to § 1-2274.

**Expiration of Law 11-134.** — See note to § 1-2271.

**Registration of Business Improvement District Pursuant to D.C. Law 11-134, the "Business Improvement Districts Act of 1996."** — See Mayor's Order 97-153, September 2, 1997 (44 DCR 5258).

**Registration of the Golden Triangle Business Improvement District Pursuant to D.C. Law 11-134, the "Business Improvement Districts Act of 1996."** — See Mayor's Order 97-202, December 3, 1997 (45 DCR 51).

**Registration of the Georgetown Business Improvement District Pursuant to D.C. Law 11-134, the "Business Improvement Districts Act of 1996."** — See Mayor's Order 99-33, February 8, 1999 (46 DCR 1205).

## § 1-2277. Board of Directors; officers; qualifications; expenses.

(a) The powers of each BID corporation shall be vested in a Board of Directors ("Board"). Board members shall include owners, or principals, agents, partners, managers, trustees, stockholders, officers, or directors of owners, and commercial tenants, and also may include residents, community members, and governmental officials; provided, that not less than a majority of all Board members shall represent owners.

(b) The initial Board of the BID corporation shall be the directors of the nonprofit corporation that submitted the BID application and that the Mayor designated as the BID corporation pursuant to § 1-2276. Within 120 days of the registration of the BID corporation, the members of the BID shall have the opportunity to nominate and elect the Board as provided in the BID articles of incorporation or bylaws.

(c) The Board and its officers shall have all the power and authority of nonprofit corporations established under District law, except to the extent specifically precluded by this subchapter. This power shall include, but not be limited to, the authority to accept donations or gifts of money and property, to

apply for and receive grants from public and private sources, and to borrow money or issue bonds.

(d) No Board member, officer of the BID corporation, or any member shall be paid any salary or other remuneration for serving as such, but may be reimbursed for actual and reasonable out-of-pocket expenses incurred in the performance of such person's duties in connection with the BID, except that an officer who also serves as the managing agent of the BID may receive compensation.

(e) Each Board may hire a managing agent to perform any or all of the Board's nonfiduciary duties at a commercially reasonable rate and for such terms as the Board deems advisable. A managing agent shall not be a BID member or an affiliate of a BID member, but may be a property manager or asset manager of one or more of the properties located in the BID.

(f) The Board may employ other persons to assist in carrying out the functions of the BID corporation. (May 29, 1996, D.C. Law 11-134, § 7, 43 DCR 1684; renumbered as § 8, Oct. 8, 1997, D.C. Law 12-26, § 2, 44 DCR 4320; Apr. 20, 1999, D.C. Law 12-264, § 11(c), 46 DCR 2118.)

**Section references.** — This section is referred to in § 1-2274.

**Effect of amendments.** — D.C. Law 12-26 rewrote and redesignated former § 1-2276 as present § 1-2277, and redesignated former § 1-2277 as § 1-2278.

D.C. Law 12-264 validated a previously made technical correction in (b).

**Temporary revision of subchapter.** — D.C. Law 12-23 amended this subchapter. See note to § 1-2271.

Section 4(b) of D.C. Law 12-23 provided that this act shall expire on the 225th day of its having taken effect.

**Emergency act amendments.** — For temporary amendment of section, see § 2 of the Business Improvement Districts Emergency

Amendment Act of 1997 (D.C. Act 12-89, June 19, 1997, 44 DCR 3747), and § 2 of the Business Improvement Districts Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-146, August 12, 1997, 44 DCR 5054).

Section 4 of D.C. Act 12-146 provides for the application of the act.

**Legislative history of Law 1-134.** — See note to § 1-2271.

**Legislative history of Law 12-23.** — See note to § 1-2271.

**Legislative history of Law 12-26.** — See note to § 1-2271.

**Legislative history of Law 12-264.** — See note to § 1-2274.

**Expiration of Law 11-134.** — See note to § 1-2271.

## § 1-2278. Bylaws and articles of incorporation; amendments.

(a) The Board of each BID corporation shall govern the BID corporation in accordance with the articles of incorporation and bylaws which shall be the articles of incorporation and bylaws of the nonprofit corporation that submitted the BID application. The members shall have the opportunity to be present and vote to adopt amendments to the initial bylaws at a meeting to be held within 120 days of the registration of the BID by the Mayor; provided, that members shall follow the procedures for offering such amendments as provided in the BID's articles of incorporation or bylaws. Bylaws of the BID corporation shall set forth the powers and duties of the Board and its officers, the procedures for removal and replacement of Board members and officers, the method of determining BID taxes consistent with this subchapter or other Council authorization, the calling of meetings and the requirements for a quorum, ethics and conflict of interest standards, and such other information

as is deemed advisable. In all cases the bylaws shall be consistent with the requirements imposed on nonprofit corporations under the applicable laws of the District, the provisions of this subchapter, and any regulations adopted pursuant to this subchapter.

(b) The Board, by a  $\frac{2}{3}$  vote at a meeting called for such purposes, may adopt amendments to the BID bylaws, BID plan, and BID taxes authorized by this or any other act of the Council to reflect the changing needs of the BID corporation, which shall be duly ratified by a majority vote of the members present and voting at a regularly scheduled meeting at which a quorum is present.

(1) Amendments shall comply with all applicable provisions of this subchapter and any regulation adopted pursuant to this subchapter.

(2) Adopted amendments to the BID plan, including, but not limited to, any proposed amendment to the BID taxes, shall be filed with the Mayor within 15 days of adoption. The Mayor may designate the Deputy City Administrator for Business Services and Economic Development to perform the review functions described by this section.

(A) The Mayor shall have 30 days after receipt of a revised BID plan to review such revisions and determine if they are in conformity with the terms of this subchapter.

(B) If the Mayor determines that the BID plan revisions are in conformity with the terms of this subchapter, the Mayor shall certify such revisions and notify the BID Board that the BID plan revisions have been certified.

(C) If the Mayor determines that the BID plan revisions are not in conformity with this subchapter, the Mayor shall not certify such revisions and shall notify the BID Board that the BID plan revisions have not been certified and cannot take effect. The Mayor shall specify the particular items that need to be corrected and notify the BID Board that they will have 45 days from the date of this notification within which to correct the BID plan revisions.

(i) If a corrected BID plan revision is submitted within the 45-day period and the Mayor affirmatively determines that the corrected application adequately addresses the items that were included in the Mayor's notification, the Mayor shall certify the BID plan revisions.

(ii) If a corrected BID plan revision is submitted within the 45-day period, and the Mayor affirmatively determines that the corrected plan revision does not adequately address the particular items needing correction that were included in the Mayor's notification, the Mayor shall notify the BID Board that the BID plan revisions have not been certified and cannot take effect.

(iii) If a corrected BID plan revision is not submitted within the 45-day period, the Mayor shall notify the BID Board that the BID plan revisions have not been certified and cannot take effect.

(D) If the Mayor fails to either certify the BID plan revisions or to notify the BID Board that the BID plan revisions have not been certified within 75 days of the date of their filing with the Mayor, such BID plan revisions shall be deemed to be certified by the Mayor.

(3) BID taxes can only be amended once annually. (May 29, 1996, D.C. Law 11-134, § 8, 43 DCR 1684; renumbered as § 9, Oct. 8, 1997, D.C. Law 12-26, § 2, 44 DCR 4320.)

**Section references.** — This section is referred to in § 1-2285.

**Effect of amendments.** — D.C. Law 12-26 rewrote and redesignated former § 1-2277 as present § 1-2278, and redesignated former § 1-2278 as § 1-2279.

**Temporary revision of subchapter.** — D.C. Law 12-23 amended this subchapter. See note to § 1-2271.

Section 4(b) of D.C. Law 12-23 provided that this act shall expire on the 225th day of its having taken effect.

**Emergency act amendments.** — For temporary amendment of section, see § 2 of the Business Improvement Districts Emergency

Amendment Act of 1997 (D.C. Act 12-89, June 19, 1997, 44 DCR 3747), and § 2 of the Business Improvement Districts Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-146, August 12, 1997, 44 DCR 5054).

Section 4 of D.C. Act 12-146 provides for the application of the act.

**Legislative history of Law 11-134.** — See note to § 1-2271.

**Legislative history of Law 12-23.** — See note to § 1-2271.

**Legislative history of Law 12-26.** — See note to § 1-2271.

**Expiration of Law 11-134.** — See note to § 1-2271.

## § 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 the central employment area and Georgetown, owners who own at least 51% of the interest in the assessed value of the commercial properties, owners who own at least 51% of the individual properties, and at least 51% of the number of commercial tenants 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.)

**Section references.** — This section is referred to in § 1-2285.

**Effect of amendments.** — D.C. Law 12-26 rewrote and redesignated former § 1-2278 as present § 1-2279, and redesignated former § 1-2279 as § 1-2280.

**Temporary revision of subchapter.** — D.C. Law 12-23 amended this subchapter. See note to § 1-2271.

Section 4(b) of D.C. Law 12-23 provided that this act shall expire on the 225th day of its having taken effect.

**Emergency act amendments.** — For temporary amendment of section, see § 2 of the Business Improvement Districts Emergency

Amendment Act of 1997 (D.C. Act 12-89, June 19, 1997, 44 DCR 3747), and § 2 of the Business Improvement Districts Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-146, August 12, 1997, 44 DCR 5054).

Section 4 of D.C. Act 12-146 provides for the application of the act.

**Legislative history of Law 11-134.** — See note to § 1-2271.

**Legislative history of Law 12-23.** — See note to § 1-2271.

**Legislative history of Law 12-26.** — See note to § 1-2271.

**Expiration of Law 11-134.** — See note to § 1-2271.

## § 1-2280. Meetings of members and the Board.

(a) Except as otherwise provided by this subchapter, meetings of the members shall be held in accordance with the provisions of the bylaws but shall occur at least once each year after the formation of the BID. The bylaws shall specify an officer who shall send each member notice of the time, place, and purposes of the meeting. Notice shall be given at least 21 days in advance of any annual or regularly scheduled meeting and at least 7 days in advance of any other meeting. Notice shall be sent by first class mail to all members of record at the address of their respective properties and to such other address as may have been designated to such officer. Notice may also be hand delivered by the officer, or his or her agent, provided the officer certifies in writing that notice was actually delivered to the member.

(b) All meetings of the Board shall be open to members. Minutes shall be recorded and shall be made reasonably available to all members and the Mayor and the Council. (May 29, 1996, D.C. Law 11-134, § 10, 43 DCR 1684; renumbered as § 11, Oct. 8, 1997, D.C. Law 12-26, § 2, 44 DCR 4320.)

**Effect of amendments.** — D.C. Law 12-26 rewrote and redesignated former § 1-2279 as present § 1-2280, and redesignated former § 1-2280 as § 1-2281.

**Temporary revision of subchapter.** — D.C. Law 12-23 amended this subchapter. See note to § 1-2271.

Section 4(b) of D.C. Law 12-23 provided that this act shall expire on the 225th day of its having taken effect.

**Emergency act amendments.** — For temporary amendment of section, see § 2 of the Business Improvement Districts Emergency Amendment Act of 1997 (D.C. Act 12-89, June

19, 1997, 44 DCR 3747), and § 2 of the Business Improvement Districts Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-146, August 12, 1997, 44 DCR 5054).

Section 4 of D.C. Act 12-146 provides for the application of the act.

**Legislative history of Law 11-134.** — See note to § 1-2271.

**Legislative history of Law 12-23.** — See note to § 1-2271.

**Legislative history of Law 12-26.** — See note to § 1-2271.

**Expiration of Law 11-134.** — See note to § 1-2271.

**§ 1-2281. Voting.**

(a) The articles of incorporation shall provide that each member is entitled to vote. The articles of incorporation and the bylaws may allocate to each BID member a number of votes. The number of votes allocated to each member may be based on any fair and equitable formula that ensures not less than one vote per member and may take into account certain variables, including, but not limited to, assessed value of property owned or occupied, square footage owned or occupied, street frontage owned or occupied, location of property owned or occupied within the BID, obligation to pay BID taxes in the case of property owners, voluntary contribution to the BID in the case of exempt property owners, and payment for services under contract in the case of the federal government's General Services Administration.

(b) The articles of incorporation and the bylaws may govern how members may cast multiple votes, if multiple votes are allocated, and whether and how proxy voting will be recognized.

(c) In no case shall the total number of votes assigned to any one member or to any number of members under common ownership or control exceed 33 ⅓ % of the total number of votes which may be cast. For purposes of this section, ownership or control shall mean the possession of the power to directly or indirectly cause the direction of the management and the policies of the entity in question. (May 29, 1996, D.C. Law 11-134, § 11, 43 DCR 1684; renumbered as § 12, Oct. 8, 1997, D.C. Law 12-26, § 2, 44 DCR 4320.)

**Section references.** — This section is referred to in § 1-2274.

**Effect of amendments.** — D.C. Law 12-26 rewrote and redesignated former § 1-2280 as present § 1-2281, and redesignated former § 1-2281 as § 1-2282.

**Temporary revision of subchapter.** — D.C. Law 12-23 amended this subchapter. See note to § 1-2271.

Section 4(b) of D.C. Law 12-23 provided that this act shall expire on the 225th day of its having taken effect.

**Emergency act amendments.** — For temporary amendment of section, see § 2 of the Business Improvement Districts Emergency

Amendment Act of 1997 (D.C. Act 12-89, June 19, 1997, 44 DCR 3747), and § 2 of the Business Improvement Districts Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-146, August 12, 1997, 44 DCR 5054).

Section 4 of D.C. Act 12-146 provides for the application of the act.

**Legislative history of Law 11-134.** — See note to § 1-2271.

**Legislative history of Law 12-23.** — See note to § 1-2271.

**Legislative history of Law 12-26.** — See note to § 1-2271.

**Expiration of Law 11-134.** — See note to § 1-2271.

**§ 1-2282. Books, minutes, and records; inspection; accounts; budgets.**

(a) The BID's treasurer shall keep detailed records of the receipts and expenditures affecting the operation and administration of the BID. All such records, minutes of the meetings of the BID's members and Board, and any other records pertaining to the BID, including the names and addresses of the members, shall be available for examination by all of the members, the Mayor, the CFO, and the Council at convenient hours on working days that shall be set and announced for general knowledge. Subject to the provisions of subsection (b) of this section, upon request, any member, the Mayor, the CFO, or Council shall be provided a copy of the records and minutes.

(b) Books and records kept by or on behalf of a BID may be withheld from examination or copying by members or others to the extent that the records concern:

- (1) Personnel matters;
- (2) Communications with legal counsel or attorney work product;
- (3) Transactions currently in negotiation and agreements containing confidentiality requirements;
- (4) Pending litigation;
- (5) Pending matters involving formal proceedings for enforcement of the BID articles of incorporation, bylaws, or rules and regulations promulgated pursuant thereto; or

- (6) Disclosure of information in violation of law.

(c) The BID may impose and collect a charge, reflecting its actual costs of materials and labor, prior to providing copies of any books and records to members.

(d) The Board of each BID corporation may establish such checking, savings, money market, or other depository accounts as it deems advisable; provided, that such accounts may be established only in a federally insured financial institution doing business in the District.

(e) Upon establishment of the BID and no later than September 15th of each subsequent fiscal year, the Board of each BID corporation shall deliver to all members of record by first class mail, or by personal delivery, an operating budget outlining the Board's then current projections of revenues and operating expenses for the forthcoming fiscal year or portion thereof. The Board also shall deliver to the members of record from time to time, as circumstances warrant, a supplement to the then current operating budget outlining any material changes in anticipated expenditures or income during the applicable budget year. The Board shall update each operating budget and supplement from time to time as the Board receives information requiring material changes to such operating budget or supplement. Operating budgets and supplements shall not require the prior approval of the members. Each operating budget and supplement shall be effective upon delivery to the members of record, or the later effective date set forth in the budget or supplement. For purposes of this section, a material change is a change where major programmatic activity not anticipated in a previously approved plan is undertaken or that involves a reallocation of more than 10% of the anticipated revenues in a budget year. (May 29, 1996, D.C. Law 11-134, § 12, 43 DCR 1684; renumbered as § 13, Oct. 8, 1997, D.C. Law 12-26, § 2, 44 DCR 4320.)

**Effect of amendments.** — D.C. Law 12-26 rewrote and redesignated former § 1-2281 as present § 1-2282, and redesignated former § 1-2282 as § 1-2283.

**Temporary revision of subchapter.** — D.C. Law 12-23 amended this subchapter. See note to § 1-2271.

Section 4(b) of D.C. Law 12-23 provided that this act shall expire on the 225th day of its having taken effect.

**Emergency act amendments.** — For tem-

porary amendment of section, see § 2 of the Business Improvement Districts Emergency Amendment Act of 1997 (D.C. Act 12-89, June 19, 1997, 44 DCR 3747), and § 2 of the Business Improvement Districts Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-146, August 12, 1997, 44 DCR 5054).

Section 4 of D.C. Act 12-146 provides for the application of the act.

**Legislative history of Law 11-134.** — See note to § 1-2271.

**Legislative history of Law 12-23.** — See note to § 1-2271.

**Legislative history of Law 12-26.** — See note to § 1-2271.

**Expiration of Law 11-134.** — See note to § 1-2271.

## § 1-2283. Annual report of BID corporation.

(a) The Board of each BID corporation shall file an annual report with the Mayor and the Council in compliance with subsection (b) of this section and financial statements with the CFO in compliance with subsection (c) of this section in such forms and at such times as are prescribed by regulations promulgated under this subchapter. The requirement for filing of an annual report shall commence in the first full fiscal year after BID registration.

(b) Each annual report shall include, at a minimum:

(1) A financial statement for the preceding year, including a balance sheet, statement of income and loss, and such other information as is reasonably necessary to reflect the BID's actual financial performance. Such statements shall be certified by the treasurer of the BID corporation and shall be prepared on a cash basis or an accrual basis in accordance with generally accepted accounting principles consistently applied;

(2) A proposed operating budget for the then current fiscal year; and

(3) A narrative statement or chart showing the results of operations in comparison to stated goals and objectives.

(c) Each financial statement package submitted to the CFO shall include, at a minimum, a financial statement, budget, and narrative statement in the same form as required by subsection (b) of this section.

(d) A copy of each annual report shall be sent to the Council, to any Advisory Neighborhood Commission in which any portion of the BID is located, and to all members in the BID, in each case by first class mail or by personal delivery.

(e) In connection with the filing of each annual report, each BID corporation shall allow its books and records to be open for inspection by the Mayor, the CFO, and the Council during reasonable working hours for such period of time as is prescribed by regulations promulgated under this subchapter. (May 29, 1996, D.C. Law 11-134, § 13, 43 DCR 1684; renumbered as § 14, Oct. 8, 1997, D.C. Law 12-26, § 2, 44 DCR 4320.)

**Effect of amendments.** — D.C. Law 12-26 rewrote and redesignated former § 1-2282 as present § 1-2283, and redesignated former § 1-2283 as § 1-2284.

**Temporary revision of subchapter.** — D.C. Law 12-23 amended this subchapter. See note to § 1-2271.

Section 4(b) of D.C. Law 12-23 provided that this act shall expire on the 225th day of its having taken effect.

**Emergency act amendments.** — For temporary amendment of section, see § 2 of the Business Improvement Districts Emergency Amendment Act of 1997 (D.C. Act 12-89, June

19, 1997, 44 DCR 3747), and § 2 of the Business Improvement Districts Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-146, August 12, 1997, 44 DCR 5054).

Section 4 of D.C. Act 12-146 provides for the application of the act.

**Legislative history of Law 11-134.** — See note to § 1-2271.

**Legislative history of Law 12-23.** — See note to § 1-2271.

**Legislative history of Law 12-26.** — See note to § 1-2271.

**Expiration of Law 11-134.** — See note to § 1-2271.



**§ 1-2284. Liability.**

(a) The District shall not be liable or responsible in any manner for any debts incurred, or for any acts or inactions, by the Board or by any agent, employee, or member of the BID corporation. The BID shall reimburse the District for any legal fees or any other legal expenses related thereto, that it may incur as a result of defending against any claim brought against it, or its agents, or officers, as a result of carrying out any actions under this subchapter; provided that the BID shall not be required to reimburse the District for any legal fees or any other expenses related thereto, that the District incurs as a result of defending against any claim brought against it, or its agents, or officers, by the BID if the BID is the substantially prevailing party.

(b) Neither a director, officer, or member nor any affiliate of a director, officer, or member, nor any shareholder, officer, director, employee, partner, agent, or advisor of a director, officer, or member nor an affiliate of any director, officer, or member of the BID shall be personally liable to the BID corporation or to any owner or member for loss or damage caused by any act or omission in such capacity, except for losses or damages caused by such party's fraudulent, willful, or wanton conduct or misconduct, breach of the BID instruments, or gross negligence. The BID corporation shall indemnify (only to the extent of BID corporation assets without recourse to any owner or member) any person who was or is a party or threatened to be made a party to any threatened, pending, or completed action, suit or proceeding (other than an action by or on behalf of the BID corporation), which action, suit, or proceeding arises out of or relates to any claim, issue, or matter involving or affecting the BID corporation, by reason of the fact that such party is or was a director, officer, or member, an affiliate of a director, officer, or member, or an officer, shareholder, director, employee, partner, agent, or advisor of a director, officer, or member or an affiliate of any director, officer, or member, or is or was serving at the request of the BID corporation as an officer, shareholder, director, employee, agent, or advisor of another partnership, corporation, joint venture, trust, or other enterprise, against all expenses, including attorneys' fees, judgments, fines, and amounts paid in settlement, actually and reasonably incurred by such party in connection with such action, suit, or proceeding, so long as such party acted in good faith in a manner reasonably believed to be in or not opposed to the best interest of the BID corporation; provided, that no indemnification shall be made in respect of any claim, issue, or matter as to which a party has been adjudged to be liable for fraudulent, willful, or wanton conduct or misconduct, breach of the BID instruments, or gross negligence, or with respect to any criminal action or proceeding.

(c) The BID corporation may maintain insurance on behalf of any person who is or was a director or officer or the shareholder, employee, partner, agent, or advisor of a director or officer for a liability asserted against it and incurred by such party in any such capacity or arising out of such party's status as such, whether or not the BID corporation would have the power to indemnify such party against such liability under this section. (May 29, 1996, D.C. Law 11-134, § 14, 43 DCR 1684; renumbered as § 15, Oct. 8, 1997, D.C. Law 12-26, § 2, 44 DCR 4320.)

**Effect of amendments.** — D.C. Law 12-26 rewrote and redesignated former § 1-2283 as present § 1-2284, and redesignated former § 1-2284 as § 1-2285.

**Temporary revision of subchapter.** — D.C. Law 12-23 amended this subchapter. See note to § 1-2271.

Section 4(b) of D.C. Law 12-23 provided that this act shall expire on the 225th day of its having taken effect.

**Emergency act amendments.** — For temporary amendment of section, see § 2 of the Business Improvement Districts Emergency Amendment Act of 1997 (D.C. Act 12-89, June

19, 1997, 44 DCR 3747), and § 2 of the Business Improvement Districts Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-146, August 12, 1997, 44 DCR 5054).

Section 4 of D.C. Act 12-146 provides for the application of the act.

**Legislative history of Law 11-134.** — See note to § 1-2271.

**Legislative history of Law 12-23.** — See note to § 1-2271.

**Legislative history of Law 12-26.** — See note to § 1-2271.

**Expiration of Law 11-134.** — See note to § 1-2271.

## § 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 § 47-1304.4, §§ 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 § 47-1304.4(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.)

**Section references.** — This section is referred to in §§ 1-2279 and 1-2287.

**Effect of amendments.** — D.C. Law 12-26 rewrote and redesignated former § 1-2284 as present § 1-2285, and redesignated former § 1-2285 as § 1-2286.

**Temporary revision of subchapter.** — D.C. Law 12-23 amended this subchapter. See note to § 1-2271.

Section 4(b) of D.C. Law 12-23 provided that this act shall expire on the 225th day of its having taken effect.

**Emergency act amendments.** — For temporary amendment of section, see § 2 of the Business Improvement Districts Emergency Amendment Act of 1997 (D.C. Act 12-89, June

19, 1997, 44 DCR 3747), and § 2 of the Business Improvement Districts Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-146, August 12, 1997, 44 DCR 5054).

Section 4 of D.C. Act 12-146 provides for the application of the act.

**Legislative history of Law 11-134.** — See note to § 1-2271.

**Legislative history of Law 12-23.** — See note to § 1-2271.

**Legislative history of Law 12-26.** — See note to § 1-2271.

**References in text.** — Section 47-1304.4, referred to in (g) and (h)(3), does not exist. The reference should probably be to § 47-1303.4.

## § 1-2286. Additional authority and duties of BIDs; dispute resolution.

(a) A BID's authority shall include any powers possessed by a nonprofit corporation organized pursuant to District law, including, but not limited to, the authority to accept donations or gifts of money and property, to apply for and receive grants from public and private sources, to carry over funds from one fiscal year to the next, and to borrow money or issue bonds. Any agency or independent agency of the District, as those terms are defined in § 1-603.1, shall acknowledge and recognize the unique characteristics of a BID corporation.

(b) A BID shall make a payment to the District to cover any reasonable marginal costs the District documents to the BID it has incurred in collecting the BID tax associated with such BID. If the District is unable to allocate a marginal cost to a particular BID, the District may allocate such costs between the BIDs associated with such marginal costs; provided, that any such allocation shall be based, to the extent practicable, on the equitable benefit received by each BID from such costs.

(c) In addition to the obligation to pay the BID tax, if any owner requests a special capital improvement or service of a nature above the level of improvements or services provided generally by the BID within the BID area, such owner shall be specially charged, in accordance with such reasonable provisions as the BID Board may determine, to reflect the benefit received by such owner from such special capital improvement or service. Such special charge shall constitute the personal obligation of the property owner involved and shall be payable directly to the BID and may be deposited directly into a bank account established by the BID. Such special charges shall not be construed as a BID tax. The contract for any such special capital improvement or service valued in excess of \$1,000 shall be approved by a majority vote of the disinterested members of the Board.

(d) In the event disputes arise with respect to any charge pursuant to this section or any activity conducted by a BID, such disputes shall be resolved through mediation, or, if mediation is unsuccessful, arbitration in accordance with the rules of the American Arbitration Association or such other reputable organization as is generally recognized as providing arbitration services as determined by the BID bylaws. Any party to such arbitration shall have the right to initiate judicial proceedings to enforce any award or decision made pursuant to arbitration, but no person shall be authorized to institute judicial proceedings with respect to the matters referred to in this subsection except to enforce an arbitration award. Residents of a residential neighborhood adjoining a BID and citizens associations covering an area in which a BID is located shall be entitled to seek relief under this section.

(e) A BID shall have a lien on any property on which a capital improvement is made pursuant to subsection (c) of this section and such lien shall be enforced and shall have the same priority as a mechanics lien provided that the BID complies with the procedural mechanisms governing mechanics liens under District law.

(f) The Mayor shall charge a reasonable fee to the proposed BID applicant to cover costs incurred by the District Government associated with processing BID applications and holding administrative hearings. (May 29, 1996, D.C. Law 11-134, § 16, 43 DCR 1684; renumbered as § 17, Oct. 8, 1997, D.C. Law 12-26, § 2, 44 DCR 4320.)

**Effect of amendments.** — D.C. Law 12-26 rewrote and redesignated former § 1-2285 as present § 1-2286, and redesignated former § 1-2286 as § 1-2287.

**Temporary revision of subchapter.** — D.C. Law 12-23 amended this subchapter. See note to § 1-2271.

Section 4(b) of D.C. Law 12-23 provided that this act shall expire on the 225th day of its having taken effect.

**Emergency act amendments.** — For temporary amendment of section, see § 2 of the Business Improvement Districts Emergency Amendment Act of 1997 (D.C. Act 12-89, June

19, 1997, 44 DCR 3747), and § 2 of the Business Improvement Districts Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-146, August 12, 1997, 44 DCR 5054).

Section 4 of D.C. Act 12-146 provides for the application of the act.

**Legislative history of Law 11-134.** — See note to § 1-2271.

**Legislative history of Law 12-23.** — See note to § 1-2271.

**Legislative history of Law 12-26.** — See note to § 1-2271.

**Expiration of Law 11-134.** — See note to § 1-2271.

## § 1-2287. Civil action for BID taxes.

(a) The BID corporation through its counsel may file suit in the Superior Court of the District of Columbia against any property owner with delinquent BID taxes that are at least 120 days overdue. Such a suit may seek as damages any delinquent BID taxes, including penalties and interest owed to the District under § 1-2285(e) and the BID's reasonable attorneys fees. Such a suit shall be brought in the name of the District of Columbia.

(b) Any judgment obtained pursuant to subsection (a) of this section may not be waived or reduced by the District and may only be satisfied by the payment to the District of the full amount of the judgment or by the sale of the relevant property at a tax sale.

(c) A BID obtaining a judgment in a suit filed pursuant to subsection (a) of this section shall have the authority to execute this judgment in the name of the District using any method of execution authorized by District law, including, but not limited to, the authority to record such judgment with the Recorder of Deeds of the District, file a creditor's bill to sell real estate to satisfy a judgment, seek any writ of attachment, fieri facias, distringas, or replevin, and seek condemnation under such writs.

(d) Any funds obtained by the BID as a result of subsection (e) of this section shall be turned over to the Treasurer of the District within 3 business days. The Treasurer shall disburse such funds in accordance with the priorities and procedures set forth in § 1-2285(g).

(e) An action pursuant to this section shall not be construed as a bar to action by the District to collect a delinquent BID tax under § 1-2285(g).

(f) An action pursuant to this section shall be dismissed by the Superior Court if notice and evidence thereof is provided to the Court that the District has sold the subject property at a tax sale. (May 29, 1996, D.C. Law 11-134, § 17, 43 DCR 1684; renumbered as § 18, Oct. 8, 1997, D.C. Law 12-26, § 2, 44 DCR 4320.)

**Section references.** — This section is referred to in § 1-2285.

**Effect of amendments.** — D.C. Law 12-26 rewrote and redesignated former § 1-2286 as present § 1-2287, and redesignated former § 1-2287 as § 1-2288.

**Temporary revision of subchapter.** — D.C. Law 12-23 amended this subchapter. See note to § 1-2271.

Section 4(b) of D.C. Law 12-23 provided that this act shall expire on the 225th day of its having taken effect.

**Emergency act amendments.** — For tem-

porary amendment of section, see § 2 of the Business Improvement Districts Emergency Amendment Act of 1997 (D.C. Act 12-89, June 19, 1997, 44 DCR 3747), and § 2 of the Business Improvement Districts Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-146, August 12, 1997, 44 DCR 5054).

Section 4 of D.C. Act 12-146 provides for the application of the act.

**Legislative history of Law 11-134.** — See note to § 1-2271.

**Legislative history of Law 12-23.** — See note to § 1-2271.

Legislative history of Law 12-26. — See note to § 1-2271. Expiration of Law 11-134. — See note to § 1-2271.

**§ 1-2288. Term of BID; extension; termination and dissolution.**

(a) Each BID shall have an initial term which shall end on the last day of the fifth full fiscal year of the District during which the BID has been registered pursuant to § 1-2276. A BID may be extended for successive 5-year terms after the Mayor issues a notice or re-registration after holding a public hearing pursuant to the provisions of § 1-2276. In order to request an extension, the BID shall notify the Mayor at least 180 days prior to the end of the BID's term that it desires to extend its status as a registered BID for a 5-year term. The Mayor shall hold such public hearing no earlier than 120 days prior to the end of such fiscal year, and no later than 30 days prior to the end of such fiscal year. If, at the end of the fiscal year, the BID has requested an extension and the Mayor has not issued an order revoking registration or denying an extension, then the BID shall be deemed to be re-registered for a subsequent 5-year term.

(b) The Mayor shall issue an order revoking the registration of a BID at any time if:

(1) By a  $\frac{2}{3}$  majority vote of the Board, the Board elects not to seek re-registration of the BID;

(2) Not more than one year and not less than 90 days before the end of each 5-year period, the owners of at least 51% in assessed value of nonexempt real property and at least 25% in number of nonexempt real properties within the BID elect to dissolve the BID effective as of the last day of the then applicable 5-year term;

(3) The Mayor determines that there has been unlawful conduct by the management or Board of the BID, which conduct has not been remedied within 30 days of notice thereof;

(4) The Mayor determines that the conduct of the BID has jeopardized the ability of the BID to carry out the purposes of this subchapter, which conduct has not been remedied within 30 days of notice thereof;

(5) The BID corporation is voluntarily or involuntarily dissolved in accordance with law;

(6) The operations of the BID cease for any reason for at least 60 consecutive days at any time after the initial organizational period of 120 days; or

(7) A BID corporation voluntarily files for bankruptcy protection, becomes insolvent, or has a receiver appointed for all or substantially all of its assets, or any such proceeding is instituted against the BID corporation and is not discharged within 60 days.

(c) Within 60 days of dissolution, the Board shall adopt a plan to timely distribute funds and dispose of assets to satisfy all creditors in the order of their priority, if any. Any surplus funds, including the proceeds of the sale of all real and personal property, shall be returned to the owners in proportion to their obligation to pay BID taxes within 30 days of adoption of the plan of



distribution. (May 29, 1996, D.C. Law 11-134, § 18, 43 DCR 1684; renumbered as § 19, Oct. 8, 1997, D.C. Law 12-26, § 2, 44 DCR 4320.)

**Effect of amendments.** — D.C. Law 12-26 rewrote and redesignated former § 1-2287 as present § 1-2288, and redesignated former § 1-2288 as § 1-2289.

**Temporary revision of subchapter.** — D.C. Law 12-23 amended this subchapter. See note to § 1-2271.

Section 4(b) of D.C. Law 12-23 provided that this act shall expire on the 225th day of its having taken effect.

**Emergency act amendments.** — For temporary amendment of section, see § 2 of the Business Improvement Districts Emergency Amendment Act of 1997 (D.C. Act 12-89, June

19, 1997, 44 DCR 3747), and § 2 of the Business Improvement Districts Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-146, August 12, 1997, 44 DCR 5054).

Section 4 of D.C. Act 12-146 provides for the application of the act.

**Legislative history of Law 11-134.** — See note to § 1-2271.

**Legislative history of Law 12-23.** — See note to § 1-2271.

**Legislative history of Law 12-26.** — See note to § 1-2271.

**Expiration of Law 11-134.** — See note to § 1-2271.

## § 1-2289. Prohibited acts.

No BID corporation shall engage in the financial support of political activities and candidates, lobbying on legislative or administrative actions with respect to any property or area, or the promotion of one business to the exclusion of others. Nothing contained within this subchapter shall be construed as modifying the terms of any lease or occupancy agreement between an owner and commercial tenant. (May 29, 1996, D.C. Law 11-134, § 19, 43 DCR 1684; renumbered as § 20, Oct. 8, 1997, D.C. Law 12-26, § 2, 44 DCR 4320.)

**Effect of amendments.** — D.C. Law 12-26 rewrote and redesignated former § 1-2288 as present § 1-2289, and redesignated former § 1-2289 as § 1-2290.

**Temporary revision of subchapter.** — D.C. Law 12-23 amended this subchapter. See note to § 1-2271.

Section 4(b) of D.C. Law 12-23 provided that this act shall expire on the 225th day of its having taken effect.

**Emergency act amendments.** — For temporary amendment of section, see § 2 of the Business Improvement Districts Emergency Amendment Act of 1997 (D.C. Act 12-89, June

19, 1997, 44 DCR 3747), and § 2 of the Business Improvement Districts Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-146, August 12, 1997, 44 DCR 5054).

Section 4 of D.C. Act 12-146 provides for the application of the act.

**Legislative history of Law 11-134.** — See note to § 1-2271.

**Legislative history of Law 12-23.** — See note to § 1-2271.

**Legislative history of Law 12-26.** — See note to § 1-2271.

**Expiration of Law 11-134.** — See note to § 1-2271.

## § 1-2290. Maintenance of base level of city services.

The District government shall not eliminate or reduce the level of any services customarily provided in the District to any similar geographic area because such area is subject to a BID, and shall continue to provide its customary services and levels of each service to such area notwithstanding that such area is or may be encompassed in a BID unless a reduction in service is part of a District-wide pro rata reduction in services necessitated by fiscal considerations or budgetary priorities. (May 29, 1996, D.C. Law 11-134, § 20, 43 DCR 1684; renumbered as § 21, Oct. 8, 1997, D.C. Law 12-26, § 2, 44 DCR 4320.)

**Effect of amendments.** — D.C. Law 12-26 rewrote and redesignated former § 1-2289 as present § 1-2290, and redesignated former § 1-2290 as § 1-2291.

**Temporary revision of subchapter.** — D.C. Law 12-23 amended this subchapter. See note to § 1-2271.

Section 4(b) of D.C. Law 12-23 provided that this act shall expire on the 225th day of its having taken effect.

**Emergency act amendments.** — For temporary amendment of section, see § 2 of the Business Improvement Districts Emergency Amendment Act of 1997 (D.C. Act 12-89, June

19, 1997, 44 DCR 3747), and § 2 of the Business Improvement Districts Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-146, August 12, 1997, 44 DCR 5054).

Section 4 of D.C. Act 12-146 provides for the application of the act.

**Legislative history of Law 11-134.** — See note to § 1-2271.

**Legislative history of Law 12-23.** — See note to § 1-2271.

**Legislative history of Law 12-26.** — See note to § 1-2271.

**Expiration of Law 11-134.** — See note to § 1-2271.

## § 1-2291. Exempt property owners; BID membership.

The District government, the federal government, or any property owner owning exempt real property located in the BID may, at their sole discretion, contribute money to the BID. Such exempt real property owners who voluntarily make a payment to the BID in lieu of a BID tax shall be entitled to membership in the BID and services provided to the properties in the BID. Nothing in this subchapter shall either compel or prohibit such exempt real property owners from contributing BID taxes, becoming BID members, or receiving BID services. (May 29, 1996, D.C. Law 11-134, § 21, 43 DCR 1684; renumbered as § 22, Oct. 8, 1997, D.C. Law 12-26, § 2, 44 DCR 4320.)

**Section references.** — This section is referred to in § 1-2272.

**Effect of amendments.** — D.C. Law 12-26 rewrote and redesignated former § 1-2290 as present § 1-2291, and redesignated former § 1-2291 as § 1-2292.

**Temporary revision of subchapter.** — D.C. Law 12-23 amended this subchapter. See note to § 1-2271.

Section 4(b) of D.C. Law 12-23 provided that this act shall expire on the 225th day of its having taken effect.

**Emergency act amendments.** — For temporary amendment of section, see § 2 of the Business Improvement Districts Emergency

Amendment Act of 1997 (D.C. Act 12-89, June 19, 1997, 44 DCR 3747), and § 2 of the Business Improvement Districts Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-146, August 12, 1997, 44 DCR 5054).

Section 4 of D.C. Act 12-146 provides for the application of the act.

**Legislative history of Law 11-134.** — See note to § 1-2271.

**Legislative history of Law 12-23.** — See note to § 1-2271.

**Legislative history of Law 12-26.** — See note to § 1-2271.

**Expiration of Law 11-134.** — See note to § 1-2271.

## § 1-2292. Rulemaking.

Pursuant to Chapter 15 of Title 1, the Mayor is authorized to issue any rules that may be necessary to implement the provisions of this subchapter, which shall include a fee to cover the administrative costs of processing a BID application and holding a public hearing. No delay in issuing any rules beyond 120 days after May 29, 1996, shall prevent an applicant from filing an application with the Mayor, or prevent the Mayor from registering a BID. (May 29, 1996, D.C. Law 11-134, § 22, 43 DCR 1684; renumbered as § 23, Oct. 8, 1997, D.C. Law 12-26, § 2, 44 DCR 4320.)

**Effect of amendments.** — D.C. Law 12-26 rewrote and redesignated former § 1-2291 as

present § 1-2292, and redesignated former § 1-2292 as § 1-2293.

**Temporary revision of subchapter.** — D.C. Law 12-23 amended this subchapter. See note to § 1-2271.

Section 4(b) of D.C. Law 12-23 provided that this act shall expire on the 225th day of its having taken effect.

**Emergency act amendments.** — For temporary amendment of section, see § 2 of the Business Improvement Districts Emergency Amendment Act of 1997 (D.C. Act 12-89, June 19, 1997, 44 DCR 3747), and § 2 of the Business Improvement Districts Congressional Re-

view Emergency Amendment Act of 1997 (D.C. Act 12-146, August 12, 1997, 44 DCR 5054).

Section 4 of D.C. Act 12-146 provides for the application of the act.

**Legislative history of Law 11-134.** — See note to § 1-2271.

**Legislative history of Law 12-23.** — See note to § 1-2271.

**Legislative history of Law 12-26.** — See note to § 1-2271.

**Expiration of Law 11-134.** — See note to § 1-2271.

## *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.; and the Division Avenue area from Eads Street, N.E., to Hayes Street, N.E.

(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.)

**Effect of amendments.** — D.C. Law 12-271 deleted "and the portion thereof required to be deposited in the Metrorail/Metrobus Account pursuant to § 1-2466(b)(2)(A)" from the end of (4).

**Emergency act amendments.** — For temporary addition of §§ 1-2293.1 to 1-2293.11, see §§ 2-12 of the Tax Increment Financing Authorization Emergency Act of 1998 (D.C. Act 12-353, May 29, 1998, 45 DCR 3701).

For temporary amendment of section, see § 2(a) of the Tax Increment Financing Emergency Amendment Act of 1998 (D.C. Act 12-562, January 22, 1999, 46 DCR 2104).

Section 5 of D.C. Act 12-562 provides that the provisions of the act shall apply to any project approved by the Council after September 11, 1998.

**Legislative history of Law 12-143.** — Law 12-143, the "Tax Increment Financing Authorization Act of 1998," was introduced in Council and assigned Bill No. 12-498, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on March 3, 1998, and April 7, 1998, respectively. Signed by the Mayor on May 4, 1998, it was assigned Act No. 12-354 and transmitted to both Houses of Congress for its re-

view. D.C. Law 12-143 became effective on September 11, 1998.

**Legislative history of Law 12-271.** — Law 12-271, the "Tax Increment Financing Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-829, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 24, 1998, it was assigned Act No. 12-590 and transmitted to both Houses of Congress for its review. D.C. Law 12-271 became effective on April 27, 1999.

**Transfer of powers, duties, and responsibilities from Chief Financial Officer of the District.** — Section 30(e)(1) of D.C. Law 12-144 provided that the provisions of this subchapter shall continue in full force and effect provided that the Board of Directors of the National Capital Revitalization Corporation shall exercise all functions of the Chief Financial Officer of the District except the duties under § 1-2293.5 and after the date of notice from the Board to the Chief Financial Officer that the Board is ready to assume such functions.

### § 1-2293.2. TIF bond authorization and forward commitment.

(a) Pursuant to § 47-334, the Council authorizes the issuance of TIF bonds. The portions of property tax increment revenues and the portions of the sales tax increment revenues that are declared to be dedicated pursuant to this subchapter, to the payment of debt service on TIF bonds, the provision and maintenance of reserves, and the payment of development costs, shall constitute tax increments as defined in § 47-334(m)(6).

(b) TIF bonds may be issued to finance development costs of eligible projects approved pursuant to this subchapter. Refunding bonds may be issued to refund bonds issued pursuant to this subchapter. The aggregate principal amount of TIF bonds, other than refunding bonds shall not exceed \$300 million. All TIF bonds issued pursuant to this subchapter shall be issued before January 1, 2003.

(c) The CFO is authorized to enter into such financing documents as may be necessary or appropriate for the issuance, security, and administration of the TIF bonds, investment of proceeds and moneys in the accounts provided for in, or pursuant to this subchapter, and the application of the proceeds of the TIF bonds and the moneys and investments in such accounts, and for the purposes provided in § 1-2293.7, including financing documents with development sponsors. The CFO is authorized to execute and deliver in the name of the District, and on its behalf, any financing documents and any closing documents to which the District is a party, including each trust agreement, trust indenture, secured loan agreement or other instrument entered into by the District pursuant to this subchapter.

(d) The requirements for a project to comply with the applicable eligibility requirements pursuant to § 1-2293.3 shall be set forth in an agreement between the District and the development sponsor. The agreement shall obligate the development sponsor to develop the specified eligible project.

(e) TIF bonds may qualify as tax-exempt enterprise zone facility bonds if the bonds satisfy the applicable requirements of the Internal Revenue Code of 1986, as amended, and applicable laws of the District. (Sept. 11, 1998, D.C. Law 12-143, § 3, 45 DCR 3724.)

**Emergency act amendments.** — For temporary addition of §§ 1-2293.1 to 1-2293.11, see note to § 1-2293.1.

**Legislative history of Law 12-143.** — See note to § 1-2293.1.

**References in text.** — The Internal Revenue Code of 1986, referred to in (e), is codified as Title 26 of the United States Code.

### § 1-2293.3. Certification of development project.

(a) In order to be eligible for TIF, a development sponsor of any project located in a priority development area shall apply to the CFO for certification that the project complies with the requirements of this subchapter. The application shall consist of a development plan for the project, which shall consist of the following:

- (1) A delineation of the proposed TIF area;

- (2) A description of the proposed land uses of the project;
- (3) The use of the financing proceeds made available pursuant to this subchapter;
- (4) A pro forma projection of the revenues and expenses of the project;
- (5) An assessment of the financial feasibility of the project;
- (6) A general description of the timing and phasing of the project;
- (7) A description of the compatibility of the project with the Comprehensive Plan;
- (8) A description of the project's compliance with the zoning regulations of the District; and
- (9) An analysis of the projected tax revenue and benefits to be generated by the project.

(b) Not later than 120 days after the receipt of an application which meets the criteria set forth in subsection (a) of this section the CFO shall certify or reject the project. In determining whether to certify the project, the CFO shall consider the following criteria:

- (1) Whether the project is financially feasible;
- (2) Whether the project will likely result in a net increase in the taxes payable to the District, taking into consideration income taxes, franchise taxes, real property taxes, without regard to the real property tax increment revenues to be applied to payment of the TIF bonds, sales taxes, without regard to the sales tax increment revenues to be applied to payment of the TIF bonds, parking taxes, use taxes, and other taxes, over the amount that would have been payable to the District in the absence of the project;
- (3) Whether the project is consistent with the Comprehensive Plan and will achieve development priorities identified in the Comprehensive Plan for the priority development area in which the project is located;
- (4) Whether the project's total anticipated benefits to the District, including public benefits as well as financial benefits, exceed the total anticipated costs to the District;
- (5) Whether an allocation of the project's real property tax increment revenues and sales tax increment revenues will compete with or supplant benefits from other sources or by other means which are otherwise available for the project on reasonable terms and conditions; and
- (6) Whether the project is one of special merits and there is a reasonable probability that the special merits of the project will not be achieved without the TIF allocation.

(c) In addition to the criteria enumerated in subsection (b) of this section, for projects located in the Downtown Area, the CFO shall consider whether the project will achieve development priorities identified in the Downtown Report that are consistent with the Comprehensive Plan and that satisfy one of the following:

- (1) If located within a Housing Priority Area, whether the project, for the proposed term of the TIF bonds, commits to:
  - (A) Providing on-site at least 65% of the residential gross floor area required by the DD Regulations for the applicable Housing Priority Area; or
  - (B) Providing on-site at least 65% of the residential gross floor area required by the DD Regulations for the applicable Housing Priority Area



utilizing not less than 90% of the leasable area of the floor at street level, and not less than 75% of the leasable area of the floor immediately above or immediately below the floor at the street level, for one or more of the preferred uses set forth in §§ 1710 or 1711 of the DD Regulations with the preferred use space having a clear ceiling height of not less than 13 feet (unless the project is subject to the HPRB review in which case such 13 feet ceiling height shall not apply).

(2) If not located within a Housing Priority Area, whether the project, for the proposed term of the TIF bonds, commits to:

(A) Making residential housing as its primary use; or

(B) Utilizing not less than 90% of the leasable space on the floor at street level, and not less than 75% of the leasable space on the floor immediately above or below the floor at street level, for one or more of the preferred uses set forth in §§ 1710 and 1711 of the DD Regulations, with all the preferred use space (unless the project is subject to HPRB review) having a clear ceiling height of not less than 13 feet.

(3) Whether located in a housing priority area or in other parts of the downtown area, if a project fails to meet the criteria enumerated in paragraphs (1) or (2) of this subsection, the CFO shall determine whether the project is one of special merits and there is a reasonable probability that the special merits of the project will not be achieved without the TIF allocation.

(d) If, upon consideration of the criteria set forth in subsections (b) and (c) of this section, the CFO determines to certify the project for Council approval, the Mayor shall enter into negotiations with the development sponsor to determine the boundaries of the TIF area for the project, the amount of tax increment allocation, the type of tax to be allocated, the terms and conditions of the agreement between the District and the development sponsor, and the termination dates for the tax increment revenues to be allocated to the project. Upon completion of negotiations, the CFO shall certify the project, and prepare a proposed resolution for the approval of the Council consistent with the results of the negotiations and with § 1-2293.4. If the project does not comply with the criteria, the CFO shall so notify the development sponsor in writing stating in what areas the project fails to meet the criteria. The CFO shall allow the development sponsor up to 60 days to comply and cure any defects.

(e) The Zoning Administrator; the Director, Office of Planning; the Corporation Counsel; the Director, Department of Housing and Community Development; and any other relevant agency of the District government shall furnish to the CFO information and certificates as may be required by the CFO to confirm a project's compliance with the criteria enumerated in subsections (b) and (c) of this section.

(f) Subject to the consent of each development sponsor of a project within the affected TIF areas and the rights of the holders of its TIF bonds, the CFO may abolish a TIF area, merge TIF areas or alter the boundaries of a TIF area.

(g) The CFO shall impose reasonable fees in connection with the issuance of the TIF bonds to defray administrative costs or burdens incurred as a result of the determination of the tax increment allocation and the issuance of such TIF bonds.

(h) The Mayor, pursuant to subchapter I of Chapter 15 of Title 1, may issue rules to implement the provisions of this section. (Sept. 11, 1998, D.C. Law 12-143, § 4, 45 DCR 3724; Apr. 27, 1999, D.C. Law 12-271, § 2(b), 46 DCR 3615.)

**Effect of amendments.** — D.C. Law 12-271, in (d), substituted "Mayor" for "CFO" in the first sentence; and added (h).

**Emergency act amendments.** — For temporary amendment of section, see § 2(b) of the Tax Increment Financing Emergency Amendment Act of 1998 (D.C. Act 12-562, January 22, 1999, 46 DCR 2104).

Section 5 of D.C. Act 12-562 provides that the provisions of the act shall apply to any project

approved by the Council pursuant to § 5 of the Tax Increment Financing Authorization Act of 1998, effective September 11, 1998 (§ 1-2293.4), after the effective date of the act.

For temporary addition of §§ 1-2293.1 to 1-2293.11, see note to § 1-2293.1.

**Legislative history of Law 12-143.** — See note to § 1-2293.1.

**Legislative history of Law 12-271.** — See note to § 1-2293.1.

## § 1-2293.4. Approval by the Council.

Upon completion of negotiations with the development sponsor, the CFO may certify the project and submit such certification and the proposed resolution referred to in § 1-2293.3(d) to the Mayor. If the Mayor determines that the resolution is consistent with the requirements of this section, the Mayor shall transmit to the Council a proposed resolution to approve the project, the TIF area, the development agreement, and the amount to be financed. The proposed resolution shall define the TIF area for the eligible project, a summary description of the eligible project and its compliance with the criteria, a listing of the public benefits to be derived from the eligible project, portion of real property tax or sales revenues increment to be allocated to the project; and a summary of the terms of the TIF bonds to be issued with respect to the project. The Council shall approve or disapprove the proposed resolution within 45 days. (Sept. 11, 1998, D.C. Law 12-143, § 5, 45 DCR 3724.)

**Emergency act amendments.** — For temporary addition of §§ 1-2293.1 to 1-2293.11, see note to § 1-2293.1.

For temporary approval of projects by the Council pursuant to this section, see § 5 of the Tax Increment Financing Emergency Amendment Act of 1998 (D.C. Act 12-562, January 22, 1999, 46 DCR 2104).

**Legislative history of Law 12-143.** — See note to § 1-2293.1.

**Application of Law 12-271.** — Section 5 of D.C. Law 12-271 provided that the provisions of the act shall apply to any project approved by the Council pursuant to this section after September 11, 1998.

## § 1-2293.5. Allocation of tax increments.

(a) When a TIF area for a project is established pursuant to §§ 1-2293.3 and 1-2293.4, the Assessor shall promptly determine and certify the initial assessed value of each lot of taxable property within the TIF area and the Collector shall determine and certify the initial sales tax amount for the TIF area.

(b) Within 60 days after the approval of a project by resolution of the Council, the CFO shall provide for the allocation of property tax increment revenues or sales tax increment revenues, or both, within each TIF area. The CFO shall establish one or more separate tax increment allocation accounts

within the General Fund for the deposit and application of property tax increment revenues and sales tax increment revenues from each tax increment area. Monies shall be transferred from such accounts at the times and in the amounts required pursuant to financing documents under §§ 1-2293.2 and 1-2293.7 to any fund or account established under such documents for the purpose specified in those documents or may, as provided in the bond documents, be transferred directly from the collector to such funds and accounts. Pursuant to subsections (c), (d), and (e) of this section, monies held or to be held in a tax allocation account or such funds and accounts established under financing documents may be used to pay development costs associated with projects in the applicable tax increment area, to pay the principal of and interest on the TIF bonds issued with respect to such tax increment area, and otherwise applied as indicated in subsection (e) of this section consistent with the applicable bond documents. Monies in a tax allocation account or in any fund or account established under the financing documents may be pledged as security for the payment of TIF bonds issued to finance development costs with respect to the applicable tax increment area and to related purposes referred to in subsection (e) of this section.

(c) Notwithstanding any other law, available real property tax revenues from so much of that portion of taxes levied within a TIF area, from the date of the approval of the TIF area, that are attributable to the difference between the current assessed value and the initial assessed value of each lot of taxable real property within the TIF area as have been approved for such allocation by resolution of the Council shall be paid by the Collector to the CFO for deposit into one or more of the tax increment accounts established by the CFO pursuant to subsection (b) of this section.

(d) Notwithstanding any other law, so much of that portion of available sales tax revenues that results from the sales tax levied within a TIF area, from the date of the approval of the TIF area, that are in excess of the initial sales tax amount as have been approved for such allocation by resolution of the Council shall be paid by the Collector to the CFO for deposit into one or more of the tax increment accounts established by the CFO pursuant to subsection (b) of this section.

(e) The amounts, if any, remaining in the tax increment accounts for a TIF area at the end of each tax year, after provision for the payment of principal or interest on TIF bonds, any costs of credit or liquidity enhancement and other costs, fees, and expenses of administering, carrying, and paying the bonds and the funds, trusts, and escrows pertaining to them, and providing for reasonably required reserves, all as provided in the bond documents, shall revert to the General Fund. (Sept. 11, 1998, D.C. Law 12-143, § 6, 45 DCR 3724.)

**Emergency act amendments.** — For temporary addition of §§ 1-2293.1 to 1-2293.11, see note to § 1-2293.1.

**Legislative history of Law 12-143.** — See note to § 1-2293.1.

**§ 1-2293.6. TIF bond issuance.**

The CFO shall issue the District's TIF bonds for the purposes authorized by this subchapter. The CFO shall exercise such power to authorize and provide for the issuance of TIF bonds by signing financing documents, including those referred to in § 1-2293.7, which shall describe in brief and general terms sufficient for reasonable identification the development costs to be financed or the TIF bonds that are to be funded or refunded and the property tax increment revenues, the sales tax increment revenues and the other revenues, assets and funds that are to be pledged to secure the repayment of such TIF bonds. The TIF bonds may be issued in more than one series, may be executed in such manner, and may bear such date or dates, mature at such time or times (provided, however, that the final maturity date of any TIF bonds payable from property tax increment revenues or sales tax increment revenues derived from a TIF area may not be later than the termination date of that TIF area), bear interest at any fixed or variable rate, be subject to redemption upon such terms and have such other terms and provisions as the financing documents, including any supplemental thereto, a trust agreement or a trust indenture may provide. The CFO may charge a reasonable fee to cover administrative costs. (Sept. 11, 1998, D.C. Law 12-143, § 7, 45 DCR 3724.)

**Emergency act amendments.** — For temporary addition of §§ 1-2293.1 to 1-2293.11, see note to § 1-2293.1.

**Legislative history of Law 12-143.** — See note to § 1-2293.1.

**§ 1-2293.7. TIF bond security.**

(a) A series of TIF bonds may be secured by a trust agreement or trust indenture between the District and a corporate trustee having trust powers, or by a secured loan agreement or other instrument giving power to a corporate trustee by means of which the District may do the following:

(1) Make and enter into any and all covenants and agreements with the trustee or the holders of the TIF bonds that the District may determine to be necessary or desirable including, without limitation, covenants and agreements as to:

(A) The application, investment, deposit, use and disposition of the proceeds of TIF bonds and the other monies, securities, and property of the District;

(B) The terms and conditions of any agreement with any other person concerning the development of the downtown area;

(C) The assignment by the District of its rights in any agreement;

(D) Terms and conditions upon which additional TIF bonds of the District may be issued;

(E) Providing for the appointment of a trustee to act on behalf of bondholders and abrogating or limiting the rights of the bondholders to appoint a trustee; and

(F) Vesting in a trustee, for the benefit of the holders of TIF bonds, or in the bondholders directly, such rights and remedies as the District shall determine;

(2) Pledge, mortgage or assign monies, agreements, property or other assets of the District, either presently in hand or to be received in the future, or both;

(3) Provide for bond insurance and letters of credit, or otherwise enhance the credit of and security for the payment of its TIF bonds; and

(4) Provide for any other matters of like or different character that in any way affect the security for or payment of the TIF bonds.

(b) TIF bonds issued pursuant to this subchapter are declared to be issued for an essential public and governmental purposes. The TIF bonds and the interest thereon and the income therefrom, and all monies pledged or available to pay or secure the payment of the bonds shall at all times be exempt from taxation by the District except for estate, inheritance, and gift taxes.

(c) The District does hereby pledge to and covenant and agree with the holders of any TIF bonds issued pursuant to this subchapter that, subject to the provisions of the financing documents, the District will not limit or alter the basis upon which available real property taxes and available sales taxes are received, allocated, applied and pledged pursuant to this subchapter; will not impair the contractual obligations of the District to fulfill the terms of any agreement made with the holders of the TIF bonds, will not in any way impair the rights or remedies of the holders, and will not modify in any way the exemptions from taxation provided for in this subchapter, until the bonds, together with interest thereon, with interest on any unpaid installment of interest and all costs and expenses in connection with any suit, action or proceeding by or on behalf of the holders, are fully met and discharged. The CFO is authorized to include this pledge and agreement of the District as part of the contract with the holders of any of its bonds. This subchapter shall constitute a contract between the District and the holders of the TIF bonds authorized by this subchapter. To the extent that any acts or resolutions of the Council may be in conflict with this subchapter, this subchapter shall be controlling.

(d) It is the intention of the Council that a pledge made in respect of its TIF bonds shall be valid and binding from the time the pledge is made; that the money or property so pledged and thereafter received shall immediately be subject to the lien of the pledge without physical delivery or further act; and that the lien of the pledge shall be valid and binding as against all parties having any claim of any kind in tort, contract or otherwise against the District irrespective of whether the parties have notice. Neither the bond order, trust agreement, nor any other instrument by which a pledge is created need be recorded or filed under the provisions of the Uniform Commercial Code to be valid, binding, and effective against the parties. (Sept. 11, 1998, D.C. Law 12-143, § 8, 45 DCR 3724.)

**Emergency act amendments.** — For temporary addition of §§ 1-2293.1 to 1-2293.11, see note to § 1-2293.1.

**Legislative history of Law 12-143.** — See note to § 1-2293.1.

**§ 1-2293.8. Default.**

If there shall be a default in the payment of the principal of or interest on any TIF bonds of a series after the principal or interest shall become due and payable, whether at maturity or upon call for redemption, or if the District government shall fail or refuse to carry out and perform the terms of any agreement with the holders of any of the TIF bonds; then the holders of the TIF bonds, or the trustee appointed to act on behalf of the holders, may, subject to the provisions of the financing documents, do the following:

(1) By action, writ, or other proceeding enforce all rights of the holders of the TIF bonds, including the right to require the District government to carry out and perform the terms of any agreement with the holders of the TIF bonds or its duties under this subchapter;

(2) By action, require the District government to account as if it were the trustee of an express trust;

(3) By action, petition to enjoin any acts or things that may be unlawful or in violation of the rights of the holders of the TIF bonds; and

(4) Declare all the TIF bonds due and payable, whether or not in advance of maturity and, if all the defaults be made good, annul the declaration and its consequences. (Sept. 11, 1998, D.C. Law 12-143, § 9, 45 DCR 3724.)

**Emergency act amendments.** — For temporary addition of §§ 1-2293.1 to 1-2293.11, see note to § 1-2293.1. **Legislative history of Law 12-143.** — See note to § 1-2293.1.

**§ 1-2293.9. Public inspection.**

The CFO may cause any bond order to be filed for public inspection and cause to be published in a newspaper of general circulation in the District a notice stating the fact and date of such bond order and the place where such bond order has been filed for public inspection and also the date of the first publication of such notice. The publication also shall contain a notice that any suit, action, or proceeding of any kind or nature in any court questioning the validity of this subchapter or the validity or proper authorization of TIF bonds provided for by the bond order or the validity of any covenants or agreements provided for by said bond order or any financing document securing the TIF bonds authorized by said bond order shall be commenced within 20 days after the first publication of said notice. If any such notice shall at any time be published and if no suit, action, or proceeding questioning the validity of this subchapter or the validity or proper authorization of TIF bonds provided for by the bond order referred to in said notice, or the validity of any covenants or agreements provided for by said bond order or any financing documents securing the TIF bonds authorized by said bond order shall be commenced or instituted within 20 days after the first publication of said notice, then all residents, taxpayers, and owners of property in the District and all other persons whatsoever shall be forever barred and foreclosed from instituting or commencing any proceeding, questioning the validity of this subchapter, or the validity or proper authorization of such TIF bonds, or the validity of any such covenants, and agreements, and this subchapter shall be conclusively deemed

to have been validly enacted by the District and the CFO shall be conclusively deemed to have been authorized to exercise the powers delegated to the CFO under this subchapter, and said TIF bonds, covenants, and agreements shall be conclusively deemed to be valid and binding obligations of the District as provided in this subchapter. (Sept. 11, 1998, D.C. Law 12-143, § 10, 45 DCR 3724.)

**Emergency act amendments.** — For temporary addition of §§ 1-2293.1 to 1-2293.11, see note to § 1-2293.1.

**Legislative history of Law 12-143.** — See note to § 1-2293.1.

### § 1-2293.10. Liability.

(a) Neither the members of the Council nor any person executing TIF bonds issued pursuant to this subchapter shall be liable personally on the TIF bonds by reason of the issuance thereof.

(b) Notwithstanding any other provision of this subchapter, TIF bonds issued pursuant to this subchapter are not general obligations of the District and shall not be in any way a debt or liability of the District within the meaning of any debt or other limit prescribed by law. Neither the full faith and credit nor the taxing power of the District (other than property tax increment revenues and sales tax increment revenues) may be pledged to secure the payment of any TIF bonds issued pursuant to this subchapter. (Sept. 11, 1998, D.C. Law 12-143, § 11, 45 DCR 3724.)

**Emergency act amendments.** — For temporary addition of §§ 1-2293.1 to 1-2293.11, see note to § 1-2293.1.

**Legislative history of Law 12-143.** — See note to § 1-2293.1.

### § 1-2293.11. Transfer of authority.

All the authority of the CFO under this subchapter, except the duties of the CFO under § 1-2293.5 shall be transferred to the Board of Directors of the National Capital Revitalization Corporation ("Board") in accordance with subchapter VIII of this chapter, upon notification to the CFO that the Board is ready to assume the functions. (Sept. 11, 1998, D.C. Law 12-143, § 12, 45 DCR 3724; Oct. 16, 1998, D.C. Law 12-169, § 201, 45 DCR 5187.)

**Effect of amendments.** — D.C. Law 12-169 substituted "§ 1-2293.5" for "§ 1-2293.5(b)", with respect to providing for the allocation of tax increment revenues pursuant to the resolution under § 1-2293.4, and establishing accounts."

**Emergency act amendments.** — For temporary addition of §§ 1-2293.1 to 1-2293.11, see note to § 1-2293.1.

**Legislative history of Law 12-143.** — See note to § 1-2293.1.

**Legislative history of Law 12-169.** — Law 12-169, the "Bethea-Welch Post 7284, Veterans of Foreign Wars Real Property Tax Exemption and Equitable Real Property Tax Relief Act of 1998, and Tax Increment Financing Authoriza-

tion and National Capital Revitalization Corporation Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-531, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 2, 1998, and June 16, 1998, respectively. Signed by the Mayor on July 8, 1998, it was assigned Act No. 12-412 and transmitted to both Houses of Congress for its review. D.C. Law 12-169 became effective on October 16, 1998.

**Transfer of powers, duties, and responsibilities from Chief Financial Officer of the District.** — Section 30(e)(1) of D.C. Law 12-144 provided that the provisions of this subchapter shall continue in full force and

effect provided that the Board of Directors of the National Capital Revitalization Corporation shall exercise all functions of the Chief Financial Officer of the District except the

duties under § 1-2293.5 and after the date of notice from the Board to the Chief Financial Officer that the Board is ready to assume such functions.

*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 preparation 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 subchapter 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, includ-

ing 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.)

**Effect of amendments.** — D.C. Law 12-169, in (29A), inserted "determined under § 1-2295.22(b)(1)," substituted "applicable" for "1 or more," deleted "any" preceding "special real property," and added "levied under § 47-331" at the end.

D.C. Law 12-175 inserted "limited liability partnership" in (1); inserted "improvement" following "expansion" in (2); inserted "purchase/sale/leaseback" in (2)(B); added "as in effect from time to time and any successor thereto" at the end of (11); in (21), inserted "financing" following "protection," and inserted "or liquidity" following "or similar credit"; substituted "the Tax Increment Financing Authorization Act of 1998, effective September 11, 1998 (D.C. Law 12-143)" for "any other laws of the District of Columbia" in (25); added (29A); substituted "may contain" for "includes" in (32); and deleted "such" in (33)(G).

**Emergency act amendments.** — For temporary amendment of section, see § 2001(a) of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and see § 2001(a) of the

Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

Section 2101 of D.C. Act 12-564 provides for the application of the act.

**Legislative history of Law 12-144.** — Law 12-144, the "National Capital Revitalization Corporation Act of 1998," was introduced in Council and assigned Bill No. 12-514, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on March 3, 1998, and April 7, 1998, respectively. Signed by the Mayor on May 5, 1998, it was assigned Act No. 12-355 and transmitted to both Houses of Congress for its review. D.C. Law 12-144 became effective on September 11, 1998.

**Legislative history of Law 12-169.** — See note to § 1-2293.11.

**Legislative history of Law 12-175.** — See note to § 1-2207.1.

**References in text.** — The Internal Revenue Code of 1986, referred to in (11), is codified as Title 26 of the United States Code.

## § 1-2295.2. Establishment of the Corporation; purposes; fiscal year.

(a) The National Capital Revitalization Corporation is established as a body corporate and an independent instrumentality of the District, created to effectuate public purposes provided for in this subchapter, but with a legal existence separate from that of the District government.

(b) The general purposes of the Corporation are to retain and expand businesses located within the District, attract new businesses to the District, and induce economic development and job creation by developing and updating a strategic economic development plan for the District; providing incentives and assistance; removing slum and blight; and coordinating the District's efforts toward these ends.

(c) The fiscal year of the Corporation shall be the fiscal year of the District government. (Sept. 11, 1998, D.C. Law 12-144, § 3, 45 DCR 3747.)

**Legislative history of Law 12-144.** — See note to § 1-2295.1.

**Restriction on Use of Funds.** — Section 166 of Pub. L. 105-277, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, provided that no funds made available pursuant to any provision of this Act or any other Act now or hereafter enacted shall be used to capitalize the National Capital Re-

vitalization Corporation or for the purpose of implementing the National Capital Revitalization Act of 1998 (D.C. Act 12-355) until at least 30 days after the District of Columbia Financial Responsibility and Management Assistance Authority submits to the appropriate committees of Congress an economic development strategy.

### § 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) Five public citizen Board members, appointed by the Mayor with the advice and consent of the Council. The fifth Board member shall serve only during control years. 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 City Administrator. During a control year, the City Administrator shall not vote. During a control year, the Chief Management Officer, who shall not vote, shall serve as a third ex-officio Board member.

(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 terms of 2 such members shall expire 5 years after the date of appointment, the terms of 2 such other members shall expire 4 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) Notwithstanding paragraph (2) of this subsection, the term of the fifth public citizen Board member shall end after a period of 4 years, or upon January 1st of the first year following the end of a control year, whichever event shall first occur.

(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; \_\_\_\_\_, 1999, D.C. Law 12-(Act 12-380), §§ 3(a)-(c), 45 DCR 4471; Oct. 16, 1998, D.C. Law 12-169, § 301(b), 45 DCR 5187; \_\_\_\_\_, 1999, D.C. Law 12-(Act 12-622), § 4(c), 46 DCR 1355; Apr. 20, 1999, D.C. Law 12-264, § 12, 46 DCR 2118.)

**Section references.** — This section is referred to in § 1-633.7.

**Effect of amendments.** — D.C. Law 12-(D.C. Act 12-380) substituted "who shall become Board members on the dates that the designations from the President are filed with the Secretary of the District of Columbia" for "who shall become voting Board members on the date when at least \$50 million in federal funds are appropriated by Congress for the Corporation" in (b)(1); in (b)(3), substituted "not vote during a control year" for "be represented by," and added "shall serve as a third ex-officio Board member" to the end; and rewrote the last sentence in (c)(2).

D.C. Law 12-169 substituted "the terms of 2 such other members" for "the term of 1 such member" in the first sentence of (c)(2).

D.C. Law 12-(D.C. Act 12-622) rewrote (b)(2)(A).

D.C. Law 12-264 substituted semicolons for periods at the end of (b)(2)(A) and (b)(2)(B)(ii).

**Emergency act amendments.** — For temporary amendment of section, see § 4(c) of the Confirmation Emergency Amendment Act of 1999 (D.C. Act 13-25, March 15, 1999, 46 DCR 2971).

Section 6 of D.C. Act 13-25 provides for the application of the act.



**Legislative history of Law 12-144.** — See note to § 1-2295.1.

**Legislative history of Law 12-(D.C. Act 12-380).** — Law 12-(D.C. Act 12-380), the "Assault on an Inspector or Investigator and Revitalization Corporation Amendment Act of 1998," was introduced in Council and assigned Bill No. \_\_\_\_\_, which was referred to the Committee on \_\_\_\_\_. The Bill was adopted on first and second readings on \_\_\_\_\_, and \_\_\_\_\_, respectively. Signed by the Mayor on \_\_\_\_\_, it was assigned Act No. 12-380 and transmitted to both Houses of Congress for its review. D.C. Law 12-(D.C. Act 12-380) became effective on \_\_\_\_\_.

**Legislative history of Law 12-169.** — See note to § 1-2293.11.

**Legislative history of Law 12-(D.C. Act 12-622).** — Law 12-(D.C. Act 12-622), the "Confirmation Amendment Act of 1998," was introduced in Council and assigned Bill No. \_\_\_\_\_, which was referred to the Committee on \_\_\_\_\_. The Bill was adopted on first and second readings on \_\_\_\_\_, and \_\_\_\_\_, respectively. Signed by the Mayor on \_\_\_\_\_, it was assigned Act No. 12-622 and transmitted to both Houses of Congress for its review. D.C. Law 12-(D.C. Act 12-622) became effective on \_\_\_\_\_.

**Legislative history of Law 12-264.** — See note to § 1-2276.

## § 1-2295.4. Meetings of the Board.

(a) All meetings of the Board at which official action is to be taken shall be open to the public, except when the Board is considering matters described in subsection (c) of this section.

(b) Minutes shall be recorded and shall be made reasonably available to all Board members and the Mayor and the Council. All records and minutes of the meetings of the Board shall be available for examination by all Board members, the Mayor, the CFO, and the Council at convenient hours on business days that shall be set and announced for general knowledge. Subject to the provisions of subsection (c) of this section, upon request, any Board member, the Mayor, the CFO, or Council shall be provided a copy of the records and minutes.

(c) Books and records kept by or on behalf of the Board may be withheld from examination or copying by Board members or others to the extent that the records concern:

- (1) Personnel matters;
- (2) Communications with legal counsel or attorney work-product;
- (3) Transactions currently in negotiation and agreements containing confidentiality requirements;
- (4) Pending litigation;
- (5) Pending matters involving formal proceedings for enforcement of the Board's bylaws, rules, and regulations promulgated pursuant thereto; or
- (6) Disclosure of information in violation of law. (Sept. 11, 1998, D.C. Law 12-144, § 5, 45 DCR 3747.)

**Legislative history of Law 12-144.** — See note to § 1-2295.1.

## § 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. The Council shall adopt a resolution approving or disapproving the rules and procedures within a 45-day period of review excluding days of Council recess. If the Council does not adopt a resolution within a 45-day period, the rules and procedures shall be deemed disapproved.

(c) Not 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 shall, with the approval of the Board, appoint a chief financial officer of the Corporation, a general counsel, an inspector general, and 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, the chief financial officer, the general counsel, the inspector general, 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 of the District.

(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 §§ 1-622.1 through 1-622.15, 1-623.1 through 1-623.14, and 1-627.1 through 1-627.14, 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.)

**Legislative history of Law 12-144.** — See note to § 1-2295.1.

### § 1-2295.6. Limitations of actions.

Any legal action arising from the application of any rule or procedure adopted by or prescribed by, or with respect to any determination of, the Board pursuant to this subchapter, or after the date that notice of the adoption or prescription of the rule or procedure that is the subject of the action appears in the District of Columbia Register, shall be filed within 90 days after the date of the occurrence of the event that is the subject of the legal proceeding. In any such legal action arising from actions of the Corporation, or from the Corporation's failure to act, the Corporation shall be represented by the counsel of its choosing. Nothing in this section shall be interpreted as authorizing actions or as making a justiciable issue of any action by the Board or Corporation taken within the discretion vested in it by this subchapter. (Sept. 11, 1998, D.C. Law 12-144, § 7, 45 DCR 3747.)

**Legislative history of Law 12-144.** — See note to § 1-2295.1.

### § 1-2295.7. Relation to other laws.

(a) No District laws, rules, or orders governing procurement or administrative procedures shall apply to the Corporation, or any subsidiary thereof, its activities, Board members, or officers or employees of the Corporation, or any subsidiary thereof, except as otherwise provided for in this subchapter.

(b) All disposition of real property by the Corporation, or any subsidiary thereof, shall be conducted pursuant to § 5-806.

(c) Real and personal property owned by the Corporation, or any subsidiary thereof, and the transfer thereof shall be exempt from taxation, provided that when the property is sold or leased by the Corporation, or any subsidiary thereof, it shall be subject to taxation from the date of its conveyance by the Corporation, or any subsidiary thereof.

(d) The Corporation, any not-for-profit subsidiary of the Corporation, and their income, property, transactions, and right to do business shall be exempt from any taxation, direct or indirect, within the District, including, without limitation, any sales, use, franchise, gross sales or receipts, income, personal property, transfer, or excise tax.

(e) The Corporation, its subsidiaries, and contractors shall comply with historic preservation, zoning laws, and permitting processes and procedures.

(f) The Corporation and all subsidiaries of the Corporation shall comply with § 1-261(d). (Sept. 11, 1998, D.C. Law 12-144, § 8, 45 DCR 3747; Oct. 16, 1998, D.C. Law 12-169, § 301(c), 45 DCR 5187; Mar. 26, 1999, D.C. Law 12-175, § 2401(b), 45 DCR 7193.)

**Effect of amendments.** — D.C. Law 12-169 inserted "or any subsidiary thereof" following each occurrence of "Corporation" in (a), (b) and (c).

D.C. Law 12-175 inserted "and personal" following "Real" in (c).

**Emergency act amendments.** — For tem-

porary amendment of section, see § 2001(b) of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and see § 2001(b) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

Section 2101 of D.C. Act 12-564 provides for the application of the act.

**Legislative history of Law 12-144.** — See note to § 1-2295.1.

**Legislative history of Law 12-169.** — See note to § 1-2293.11.

**Legislative history of Law 12-175.** — See note to § 1-2207.1.

### **§ 1-2295.8. Establishment of Enterprise Fund.**

(a) There is established the National Capital Revitalization Corporation Enterprise Fund ("Fund") which shall be operated by the Corporation in accordance with generally accepted accounting principles.

(b) Subject to the provisions made by the Corporation pursuant to this subchapter for security of revenue bonds, all revenues, proceeds, and moneys from whatever source derived which are collected or received by the Corporation shall be credited to the Fund and shall not, at any time, be transferred to, lapse into, or be commingled with the General Fund of the District of Columbia, the Cash Management Pool, or any other funds or accounts of the District of Columbia. (Sept. 11, 1998, D.C. Law 12-144, § 9, 45 DCR 3747.)

**Legislative history of Law 12-144.** — See note to § 1-2295.1.

### **§ 1-2295.9. Prohibition on political activity.**

The Corporation may not expend any funds to influence legislation, other than in connection with testimony by a Board member or an officer or employee of the Corporation before a committee of the Congress or of the Council, or in responding to a written request from a member of Congress of the United States or the Council, or a committee of the Congress or of the Council. This prohibition shall not apply to legislation proffered by, or specifically applicable to, the Corporation. The Corporation shall not expend any funds in connection with political entities of any kind or to support the lobbying efforts of any nonprofit charitable group. (Sept. 11, 1998, D.C. Law 12-144, § 10, 45 DCR 3747.)

**Legislative history of Law 12-144.** — See note to § 1-2295.1.

### **§ 1-2295.10. Rules with respect to gifts, procurement of goods and services, property disposition, conflict of interest.**

(a) The Corporation shall adopt written guidelines or rules and procedures pertaining to the:

(1) Solicitation, acceptance, holding, investment, administration, use, and disposition of gifts, grants, or subsidies of money by the Corporation;

(2) Procurement of goods and services by the Corporation; and

(3) Disposition of property by the Corporation.

(b) Repealed.

(c) The guidelines or rules and procedures shall be designed to ensure that any activity described in subsection (a) of this section will not:

(1) Negatively impact upon the ability of the Corporation, or of any officer or employee of the Corporation, to carry out the functions and official duties of the Corporation in a fair and objective manner; or

(2) Compromise the integrity of the Corporation or any officer or employee of the Corporation, and in the case of any procurement of goods or services or any disposition of property, will produce reasonable value or results for the Corporation in the judgment of the Corporation.

(d) The Board shall transmit the written guidelines, rules, or procedures to the Council for a period of Council review. The Council shall, by resolution, approve or disapprove the guidelines, rules, or procedures within 45 days, excluding days of Council recess. If the Council does not adopt a resolution within a 45-day period, the written guidelines, rules, and procedures shall be deemed disapproved.

(e) Nothing in this section shall prohibit the Board from soliciting or accepting grants, gifts, or appropriations from the federal government or the district government, or from others, prior to adoption of any such guidelines, rules, or procedures.

(f) In no event shall the Corporation dispose of assets or funds of the Corporation for the purpose of providing gifts or gratuities, or any purpose that could be construed to be a gift or a gratuity, to individuals or entities in an amount greater than \$100 in any fiscal year. (Sept. 11, 1998, D.C. Law 12-144, § 11, 45 DCR 3747; Oct. 16, 1998, D.C. Law 12-169, § 301(d), 45 DCR 3747.)

**Effect of amendments.** — D.C. Law 12-169 repealed (b).

**Legislative history of Law 12-169.** — See note to § 1-2293.11.

**Legislative history of Law 12-144.** — See note to § 1-2295.1.

## **§ 1-2295.11. Conflict of interest; disclosure; waiver of bar against participation by interested party.**

(a) Any member, officer, or employee of the Corporation who is interested either directly or indirectly, or who is an officer or employee of, or has an ownership interest in any firm or agency interested directly or indirectly in any transaction with the Corporation including, but not limited to, any bond issuance or financial assistance allowed under this subchapter to any sponsor, builder, or developer, shall disclose this interest to the Corporation. This interest shall be set forth in the minutes of the Corporation, and the member, officer, or employee having the interest shall not participate on behalf of the Corporation in the authorization or implementation of any such interested transaction. The Board shall not be allowed to waive a member, officer's, or employee's inability to participate in circumstances where the interest falls within guidelines adopted as rules promulgated by the Board.

(b) Members of the Board who hold that position by reason of being an officer or employee in another position in the District government (ex-officio) shall be considered public officials. Any effort to realize personal gain through conduct as an ex-officio Board member shall be a violation of the public trust. Activities of ex officio Board members shall be governed by §§ 1-1461 and 1-1462. (Sept. 11, 1998, D.C. Law 12-144, § 12, 45 DCR 3747.)

Legislative history of Law 12-144. — See note to § 1-2295.1.

## § 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, 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 Revitalization Plan 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 Revitalization Plan shall be deemed disapproved. The Corporation may, from time to time, amend the Revitalization Plan, subject to Council approval by resolution.

(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, redevelopment 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) Where redevelopment activity is proposed within an area subject to a small area action plan, pursuant to § 1-247, the Corporation, in cooperation with the Office of Planning and NCPC, shall prepare and submit to the Council for adoption small area action plans pursuant to the Comprehensive Plan Act. The Corporation shall provide in the Revitalization Plan a list of areas proposed for such redevelopment and a schedule for preparation and submission of small area action plans. (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.)

**Effect of amendments.** — D.C. Law 12-169 in the first sentence of (a), substituted "not inconsistent" for "consistent"; inserted "subject to its discretion" in the first sentence of (b)(7); and inserted "action" after the phrase "small area" three times in (c).

D.C. Law 12-175 rewrote the last 2 sentences in (a); and substituted "proposed within an area subject to a small area plan, pursuant to § 1-247" for "more extensive" in (c).

**Emergency act amendments.** — For temporary amendment of section, see § 2001(c) of

the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and see § 2001(c) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

Section 2101 of D.C. Act 12-564 provides for the application of the act.

**Legislative history of Law 12-144.** — See note to § 1-2295.1.

**Legislative history of Law 12-169.** — See note to § 1-2293.11.



**Legislative history of Law 12-175.** — See Chapter 1 of the Internal Revenue Code of 1986, referred to in (b)(5), is codified at 26 U.S.C. § 1400 et seq.

**References in text.** — Subchapter W of

### **§ 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 operations 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 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.)

**Legislative history of Law 12-144.** — See note to § 1-2295.1.

### **§ 1-2295.14. Criteria for assistance.**

(a) Not later than 90 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. The Corporation may, from time to time, amend the criteria for assistance, subject to Council approval by resolution.

(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.)

**Effect of amendments.** — D.C. Law 12-175 rewrote the last sentence in (a); and, in (c), substituted "may" for "shall," and substituted

"any annual determination required" for "the annual determination."

**Emergency act amendments.** — For tem-

porary amendment of section, see § 2001(d) of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and see § 2001(d) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

Section 2101 of D.C. Act 12-564 provides for the application of the act.

**Legislative history of Law 12-144.** — See note to § 1-2295.1.

**Legislative history of Law 12-175.** — See note to § 1-2207.1.

## § 1-2295.15. General powers.

(a) Notwithstanding any other provision of District law, the Corporation shall have power to:

- (1) Have succession until dissolved as provided in § 1-2295.28;
- (2) Sue and be sued, and to complain and defend, in its own name;
- (3) Adopt, amend, repeal, and enforce bylaws, rules, regulations, and procedures as it determines appropriate for the governance of its affairs and the conduct of its business;
- (4) Adopt, alter, and use a corporate seal, which shall be judicially noticed, provided that the absence of such seal on any contract or other document shall not affect its validity;
- (5) Execute and perform contracts, agreements, and commitments with persons and governmental entities;
- (6) Appoint and employ officers, attorneys, and employees as it determines appropriate, to define their duties, and to fix, adjust, and administer their compensation (including benefits) as it determines appropriate, subject to § 1-2295.5;
- (7) Engage experts, including, without limitation, advisers, consultants, legal counsel, accountants, general agents, and fiscal agents to aid the Corporation in carrying out the purposes of this subchapter, and to fix and adjust their compensation;
- (8) Make use of personnel, services, facilities, and property of any board, commission, independent establishment, or executive department or agency of the federal government or the District government in carrying out the purposes of this subchapter, on a reimbursable or other basis, all with the approval of the District government or the federal government, as appropriate;
- (9) Maintain offices at the place or places in the District as it determines appropriate;
- (10) Determine its necessary expenditures and the manner in which they shall be incurred, allowed, and paid;
- (11) Settle, adjust, and compromise, and with or without consideration or benefit to the Corporation, release or waive in whole or in part, in advance or otherwise, any claim, demand, or right of, by, or against the Corporation;
- (12) Indemnify or insure Board members and officers of the Corporation as it determines appropriate;
- (13) Purchase insurance or self-insure against any loss in connection with its property and other assets or other risks, in such amounts and from such insurers as it determines appropriate;
- (14) Issue revenue bonds in accordance with §§ 1-2295.18 and 1-2295.23;

(15) Lease, purchase, or acquire, own, hold, or manage, clear, repair, improve, construct, or deal in connection with any property (real, personal, or mixed), or any interest therein, wherever situated;

(16) Proceed with foreclosure action, to acquire property instead of foreclosure, and to take assignments of leases and rentals;

(17) Sell, at a public or private sale, with or without bidding, convey, mortgage, pledge, lease, exchange, and dispose of its property and assets, or any interest therein;

(18) Make and perform contracts, agreements, and commitments for assistance;

(19) Charge and collect fees or charges as determined by the Corporation to be appropriate in connection with assistance and enhanced services provided by the Corporation;

(20) Establish subsidiary corporations in accordance with § 1-2295.16 and consistent with the purposes of this subchapter;

(21) Establish revolving funds, reserve funds, and other funds, and accounts and subaccounts within such funds, consistent with the purposes of this subchapter;

(22) Establish advisory committees or working task groups of Board members, professionals, and citizens to aid the Corporation in carrying out the purposes of this subchapter;

(23) Exercise the right of eminent domain in furtherance of the purposes of this subchapter and subject to provisions of § 1-2295.19;

(24) Solicit, apply for, accept, receive, hold, administer, use, and dispose of gifts, bequests, donations, grants, trusts, or subsidies of money, services, or property (real, personal, or mixed) from any source to aid the Corporation in carrying out the purposes of this subchapter;

(25) Provide assistance to the District government through the provision of information, advice, guidelines, and suggestions for implementing, reorganizing, realigning, or improving programs and services of the District government;

(26) Prepare, publish, and distribute, with or without charge, studies, reports, bulletins, manuals, maps, data, solicitations, promotional products, management software, and other materials as it determines appropriate;

(27) Form or join associations, partnerships, or joint ventures;

(28) Provide enhanced services within the redevelopment districts;

(29) Provide, by vote of the Board, assistance in connection with development costs of eligible projects directly or in participation with any applicant, financial institution, fund, person, or other source of financing, private or public, including any department, agency, establishment, or instrumentality of the federal or District government, and enter into any contract, agreement, or commitment assistance that the Board determines appropriate;

(30) Take all actions and do all things that it determines necessary or convenient to carry out the functions of the Corporation under this subchapter that are not inconsistent with applicable federal or District laws; and

(31) Exercise any other power usually possessed by, and incident to, public enterprises performing similar functions or private corporations orga-

nized under the business corporation law of the District, respectively, to the extent that the exercise of such powers is not inconsistent with applicable federal or District law or the purposes of this subchapter.

(b) The powers conferred by this subchapter are for public uses and purposes for which public powers may be employed, public funds may be expended, and the power of eminent domain and the police power may be exercised. The granting of such powers are necessary and in the public interest.

(c) Pursuant to subchapter III of Chapter 11 of this title, the Corporation shall ensure that projects or applicants receiving Corporation assistance shall utilize their best efforts to ensure that at least 51% of the jobs created as a result of that assistance be reserved for District of Columbia residents. (Sept. 11, 1998, D.C. Law 12-144, § 16, 45 DCR 3747.)

**Legislative history of Law 12-144.** — See note to § 1-2295.1.

### § 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 required to be submitted to the Council for approval.

(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.)

**Effect of amendments.** — D.C. Law 12-169 added (b).

**Legislative history of Law 12-144.** — See note to § 1-2295.1.

**Legislative history of Law 12-169.** — See note to § 1-2293.11.

**References in text.** — "Section 501 of the Code", referred to in (b), is codified at 26 U.S.C. § 501.

"Section 103 of the Code", referred to in (b), is codified at 26 U.S.C. § 103.

### § 1-2295.17. Revolving funds.

(a) The Corporation may establish one or more revolving funds 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.

(b) Payments received by the Corporation as returns on investment from assistance provided by the Corporation from any revolving fund may be deposited into the revolving fund from which assistance was made or into any other revolving fund established by the Corporation as the Corporation determines appropriate, and may be transferred between revolving funds as the Board determines appropriate. Funds received by the Corporation from any other source which are not required to be otherwise disposed of may be deposited into any revolving fund established by the Corporation and transferred between revolving funds as the Board determines appropriate. Funds deposited into any revolving fund established by the Corporation shall be available to the Corporation for assistance under this subchapter, including the involvement of the Corporation in partnerships, joint ventures, or other equity arrangements, and to pay all expenses of the Corporation necessary and incident to furthering the purposes of this subchapter.

(c) The Corporation may establish one or more special or reserve funds in furtherance of its authority under this subchapter. The Corporation may manage its special or reserve funds.

(d) All authority with respect to funds, revolving funds, and accounts shall be subject to any special provisions made in documents pertaining to outstanding bonds of the Corporation.

(e) Subject to provisions contained in the financing documents pertaining to bonds issued by the Corporation and, notwithstanding other laws, all funds and revenues of the Corporation received by the Corporation from any source that is not required to be disposed of shall be held, administered, and invested by the Corporation as the Board shall direct, or deposited with, and invested by, an institution, trustee, fiduciary, or other custodian designated by the Corporation and disbursed as the Corporation shall direct.

(f) The Corporation shall have the power to contract with the holders of its bonds as to the custody, collection, security, investment, and payment of any monies of the Corporation and of any monies held in trust or otherwise for the payment of bonds. (Sept. 11, 1998, D.C. Law 12-144, § 18, 45 DCR 3747.)

**Legislative history of Law 12-144.** — See note to § 1-2295.1.

## **§ 1-2295.18. Revenue bonds, notes, or other obligations.**

(a) In accordance with § 47-334(a)(6)(A), the Council authorizes the Corporation to approve, by resolution of the Board, the issuance of taxable and tax-exempt revenue bonds, including refunding revenue bonds at or before maturity, to provide assistance in financing, refinancing, and reimbursing development costs of eligible projects, and all undertakings authorized pursuant to § 47-334(a)(1), that are in furtherance of, and not inconsistent with, the purposes of this subchapter. The proceeds of bonds may not be used to make monetary grants, but this prohibition shall not be considered to preclude use of bond proceeds to acquire property that is disposed of for less than its cost or value in consideration of its development, redevelopment, restoration, or rehabilitation in accordance with a development agreement. For those autho-

rized purposes, the Council delegates to the Corporation its authority to issue revenue bonds, notes, or other obligations under § 47-334, including the powers thereunder to provide for the authorization, security, sale, and issuance of such bonds, consistent with this subchapter. This delegation is not exclusive and does not restrict, impair, or supersede the authority otherwise vested by law in any District instrumentality. A Board resolution authorizing assistance of the Corporation, including the issuance of revenue bonds under this subchapter, shall require the affirmative vote of a majority of the Board. A Board resolution authorizing assistance of the Corporation through the issuance of tax increment revenue bonds pursuant to § 1-2295.23, shall require the affirmative vote of a majority of the Board, including the Chief Financial Officer. Any such resolution of the Board shall not be considered to be an act of the Council.

(b)(1) Notwithstanding any other provision of this subchapter, for bonds authorized by the Corporation that are not payable from, or secured by, dedicated taxes and fees, the Corporation shall submit to the Council a resolution of project approval accompanied by a summary description of the proposed project and a listing of the public purpose benefits to be derived from the proposed undertaking for a 45-day period of Council review. The Council shall approve or disapprove a proposed project by resolution within 45 days after the Corporation transmits to the Council the information set forth in this subsection.

(2) Notwithstanding any other provision of this subchapter, for bonds authorized by the Corporation that are payable from, or secured by, dedicated taxes and fees, the Corporation shall submit to the Council a resolution of project approval accompanied by a summary description of the proposed project, a listing of the public purpose benefits to be derived from the proposed undertaking, and the information set forth in § 1-2295.23. The Council shall approve or disapprove the proposed resolution within 45 days of the date the proposed resolution is transmitted to the Council, excluding days of Council recess. The Council shall transmit to the Corporation notice of expiration of the review period under this subsection.

(c) The Corporation may issue revenue bonds to refund, advance refund, or refinance any of its bonds then outstanding, including the payment of any redemption premium and any interest accrued or to accrue to the earliest date or any subsequent date of redemption, purchase, or maturity of the bonds.

(d) Notwithstanding any other provisions of this subchapter, no bonds or other borrowing of the Corporation may be payable from, or secured by, any dedicated taxes and fees, except pursuant to approval by the Council under subsection (b)(2) of this section, and no bonds or other borrowings of the Corporation payable from, or secured by, dedicated taxes and fees may be issued for purposes other than those permitted pursuant to such resolution of the Council.

(e) The Corporation may stipulate by resolution the terms for sale of its bonds in accordance with this subchapter including the following:

(1) The date a bond bears;

(2) The date a bond matures; provided that tax supported bonds shall not mature later than 21 years from the original date of issuance;

(3) Whether bonds are issued as serial bonds, term bonds, or as a combination of the two;

(4) The denomination;

(5) The interest rate or rates, or variable rate or rates changing from time to time as provided in, or determined pursuant to, authorization under the resolution;

(6) The method of sale;

(7) The method for payment; and

(8) The terms of redemption.

(f) The resolution may include provisions with respect to:

(1) Revenues sufficient to cover debt service on the bonds, by such ratios or measures as may be provided;

(2) Custody, security, expenditure, or application of proceeds of the sale of bonds of the Corporation (hereinafter "proceeds"), a pledge of the proceeds to secure payment, and the rank or priority of the pledge, subject to preexisting agreements with holders of the bonds;

(3) Whether and to what extent the issue of bonds and other bond issues of the Corporation shall have parity interests in security and sources of payment;

(4) The pledge of available revenues of the Corporation, provided that the pledge of dedicated taxes and fees shall be subject to prior approval as provided in § 1-2295.21;

(5) The pledge of revenue from the undertaking financed by the Corporation to secure payment and the rank or priority of the pledge, subject to preexisting agreements with holders of the bonds;

(6) The pledge of assets of the Corporation, including mortgages and obligations securing mortgages, to secure payment, and the rank or priority of the pledge, subject to preexisting agreements with holders of the bonds;

(7) The use of gross income from mortgages owned by the Corporation and payment of principal of mortgages owned by the Corporation;

(8) The use of reserves or sinking funds;

(9) Use of proceeds from the sale of bonds and a pledge of proceeds to secure payment;

(10) Limitations on issuance of additional bonds, including terms of issuance and security, and the refunding, advance refunding, or refinancing of outstanding or other bonds;

(11) Procedures for amendment or abrogation of a contract with holders of bonds, the amount of bonds, who must consent to such amendment or abrogation, and the manner in which consent may be given;

(12) Vesting in a trustee property, power, and duties, which may include the powers and duties of a trustee appointed for the holders of bonds;

(13) Limitation or abrogation of the right of holders of bonds to appoint a trustee;

(14) The nature of default in the obligations of the Corporation and providing rights and remedies of holders of bonds in the event of default, including the right to appointment of a receiver, in accordance with this subchapter and the laws of the District;



(15) Providing for guarantees, pledges of property, letters of credit, or other security, or insurance for the benefit of the holders of the bonds; and

(16) Any other provisions of like or different character which affect the security of holders of bonds.

(g) The Board may delegate to the chief executive officer, chief financial officer, or any one or more officers of the Corporation the authority to prescribe the terms and conditions of the bonds, including those referred to in subsection (c) of this section, but the Board by its resolution shall provide for the available revenues to be pledged to secure the bonds.

(h) A pledge by the Corporation of available revenues collected by or on behalf of the Corporation as security for an issue of bonds shall be valid and binding from the time such pledge is made. The available revenues and receipts pledged shall immediately be subject to the lien of the pledge without physical delivery or further act, and the lien of any pledge shall be valid and binding against any person having any claim of any kind in tort, contract, or otherwise against the Corporation or the District government irrespective of whether the person has notice. Notwithstanding any other law, the filing or recording of any resolution, trust, agreement, management agreement, financing statement, continuation statement, or other instrument adopted or entered into by the Corporation in any public record is not required in order to perfect the lien against third persons.

(i) Bonds which are being paid or retired or for which funds have been deposited with the paying agent, trustee, or escrow agent, which funds, together with interest thereon from investments in obligations of or guaranteed by the United States of America or other instruments, permitted for the purpose under the bond authorizing documents will be sufficient to provide for payment of principal and interest thereon, and any redemption premium, as provided in the authorizing resolution, shall not be considered outstanding for the purposes of this subchapter.

(j) The signature of any officer of the Corporation that appears on a bond, including bonds not yet issued or delivered, shall remain valid notwithstanding that person has ceased to hold that office.

(k) The Corporation may secure bonds by a trust agreement between the Corporation and a corporate trustee having the powers of a trust company within the District. A trust agreement of the Corporation may contain provisions for protecting and enforcing the rights and remedies of holders of bonds in accordance with the provisions of the resolution authorizing the sale of bonds, and any other provision which may be included in the bond authorizing resolution under this section.

(l) Subject to preexisting agreements with the holders of bonds, the Corporation may redeem or purchase its own bonds which may then be canceled or reissued.

(m) No member of the Board, officer or employee of the Corporation shall be personally liable by reason of the issuance of bonds.

(n) The Corporation may enter into agreements with agents, banks, insurers, or others for the purpose of enhancing the marketability of or security for its bonds.

(o) Bonds of the Corporation are legal investments in which public officers and public bodies of the District, insurance companies and associations and other persons carrying on an insurance business, banks, bankers, banking institutions, including savings and loan associations, investment companies and other persons carrying on a banking business, administrators, guardians, executors, trustees and other fiduciaries, and other persons authorized to invest in bonds or in other obligations of the District, may legally invest funds, including capital, in their control. The bonds are also securities which legally may be deposited with and received by public officers and public bodies of the District or any agency of the District for any purpose for which the deposit of bonds or other obligations of the District is authorized by law.

(p) Bonds of the Corporation shall not constitute an indebtedness of the District. The bonds of the Corporation are not general obligations of the District and are not secured by a pledge of the full faith and credit of the District and the holders of the Corporation's bonds may not require the levy or imposition by the District of any taxes or, except as provided in this subchapter, the application of any District tax receipts, revenues or funds to the payment of those bonds. All bonds issued by the Corporation shall contain on their faces a statement setting forth the qualifications of this subsection.

(q) Revenue bonds issued pursuant to this subchapter, as it may be amended from time to time, shall be special obligations of the Corporation payable and secured solely from and by the sources, property, and assets provided for the purpose pursuant to this subchapter and to the extent provided for in the financing documents relating to the bonds.

(r) Nothing contained in such bonds, or in the related financing or closing documents shall create any obligation on the part of the Corporation or the District to make payments with respect to such bonds from sources other than those provided for in accordance with this subchapter.

(s) Regardless of their form or character, bonds of the Corporation are negotiable instruments for all purposes of subtitle I of Title 28 of the District of Columbia Code, subject only to the provisions of the bonds for registration.

(t) The Corporation may, in acting through its authorized officer, sell its bonds at public or private sale and may determine the price for sale.

(u) The issuance of bonds by the Corporation as contemplated in this section and the adoption of resolutions authorizing such bonds, and other obligations shall be done in compliance with the requirements of this subchapter, but shall not be subject to Chapter 15 of this title, and, except as otherwise provided in this subchapter, shall be exempt from District laws. No notice (except as provided in this section), proceeding, consent, or approval shall be required for the issuance of any bond of the Corporation or the execution of any instruments relating thereto or to the security therefor, except as provided in this subchapter.

(v) Bonds issued by the Corporation and the interest thereon are exempt from District taxation except, estate, inheritance, and gift taxes.

(w) The Corporation may cause any resolution of the Board authorizing bonds referred to in this subsection as bond resolution, to be filed for public inspection and may thereupon cause to be published in a newspaper of general

circulation in the District a notice stating the fact and date of such bond resolution and the place where such bond resolution has been filed for public inspection and also the date of the first publication of such notice. The notice shall also state that any suit, action, or proceeding of any kind or nature in any court questioning the validity or proper authorization of bonds provided for by the bond resolution or the validity of any covenants or agreements provided for by said bond resolution or any financing document securing the bond authorized by said bond resolution shall be commenced within 20 days after the first publication of such notice. If after the notice is published no suit, action, or proceeding is brought questioning the validity or proper authorization of bonds provided for by the bond resolution referred to in said notice, or the validity of any covenants or agreements provided for by said bond resolution or any financing documents securing the bonds authorized by said notice, then all persons shall be forever barred and foreclosed from instituting or commencing any proceeding questioning the validity or proper authorization of such bonds, or the validity of any such covenants and agreements, and the Corporation shall be conclusively deemed to have been authorized to exercise the powers delegated to the Corporation under this subchapter, and said bonds, covenants, and agreements shall be conclusively deemed to be valid and binding obligations of the Corporation as provided in this subchapter. (Sept. 11, 1998, D.C. Law 12-144, § 19, 45 DCR 3747.)

**Legislative history of Law 12-144.** — See note to § 1-2295.1.

## **§ 1-2295.19. Eminent domain.**

(a) The Corporation may acquire and assemble land, real property, easements, and other interests in real property through condemnation of property by eminent domain in furtherance of the public purposes of this subchapter, in accordance with the provisions of subchapter II of Chapter 13 of Title 16 and §§ 16-1314 to 16-1316. Any exercise of eminent domain powers by the Corporation shall require the affirmative vote of at least 2/3rds of the authorized number of Board members. The condemnation proceedings shall be brought in the name of the Corporation, and title to the properties shall be taken in the name of the Corporation. The Corporation may not delegate the power of eminent domain to any subsidiary. Any property acquired through eminent domain under this section must be situated within an area determined by the Board to be a:

(1) Redevelopment district or community development area under § 5-902, subject to an urban renewal or redevelopment plan or a neighborhood development plan area under §§ 5-801 through 5-820 ("Redevelopment Act") or under § 144(c)(4) of the Code;

(2) Project area subject to an urban renewal or redevelopment plan under the Redevelopment Act;

(3) Blighted area within the meaning of this subchapter; or

(4) Slum or blighted or substandard area within the meaning of the Redevelopment Act.

(b) Before condemnation proceedings may be brought by the Corporation, any exercise of eminent domain powers that is approved by an affirmative vote of the Corporation shall be submitted to the Council for a 30-day period of review excluding days of Council recess. The Council shall approve or disapprove the exercise of eminent domain powers by the Corporation by resolution within 30 days of the date it is transmitted to the Council. (Sept. 11, 1998, D.C. Law 12-144, § 20, 45 DCR 3747.)

**Legislative history of Law 12-144.** — See the Code, referred to in (a)(1), is codified as 26 note to § 1-2295.1. U.S.C. § 144(c)(4).

**References in text.** — Section 144(c)(4) of

## § 1-2295.20. Priority development areas.

(a) The following geographic areas of the District shall be priority development areas:

(1) The Downtown East Area which shall consist of land within the boundary descriptions beginning at the intersection of Pennsylvania Avenue, N.W., and New Jersey Avenue, N.W., to Massachusetts Avenue, N.W.; west on Massachusetts Avenue, N.W., to 15th Street, N.W.; south on 15th Street, N.W., to Pennsylvania Avenue, N.W.; and east on Pennsylvania Avenue, N.W., to New Jersey Avenue N.W.;

(2) The Capital City Business and Industrial Area which shall consist of land within the boundary descriptions 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.; and south on 9th Street, N.E., to New York Avenue, N.E.;

(3) The Capital City Market Area which shall consist of land within the boundary descriptions 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., and north on 9th Street, N.E., to Florida Avenue, N.E.;

(4) The Georgia Avenue Area which shall consist of any square located on or abutting Georgia Avenue, N.W., beginning at the intersection of Florida Avenue, N. W., and north on Georgia Avenue, N.W., to Eastern Avenue, N.W.;

(5) The Southeast Federal Center/Navy Yard Area which shall consist of land within the boundary description beginning at the intersection of Interstate 395/295 (SW/SE Freeway), and the Anacostia River Waterfront, S.W.; northwest to 14th St., S.W.; south on 14th St. S.W., to the Washington Channel Waterway; east along Washington Channel to the Anacostia River eastern banks; adjacent areas encompassing the public housing and residential parcels adjacent to the Navy Yard, 8th Street commercial corridor, Marine Barracks, Buzzards 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;

(6) Any District-designated Foreign Trade Zone or Free Trade Zone pursuant to 19 U.S.C. § 81a et seq;

(7) Any federally-approved enterprise zone or empowerment zone;

(8) Any federally-approved enterprise community, including, but not limited to, Target Area 1: New York Avenue/Northwest; Target Area 2: Marshall Heights; and Target Area 3: Buzzard Point/Anacostia/Congress Heights;

(9) Any area designated as Development Zone Areas pursuant to Chapter 14 of Title 5, including, but not limited to, Alabama Avenue, D.C. Village, and Anacostia;

(10) Any housing opportunity area, development opportunity 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;

(11) The Transit Impact Area which shall consist of any area located within 1500 feet of a Metrorail station in any of the areas set forth in paragraphs (1) through (12) of this subsection, or within 1500 feet of a Metrorail station at a designated Metrorail Station Development Opportunity Area, as defined in the District Elements of the Comprehensive Plan of the District of Columbia; and

(12) 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.; 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.; and the Division Avenue area from Eads Street, N.E., to Hayes Street, N.E.

(b) Before the Corporation creates a Revitalization Plan pursuant to § 1-2295.12 or otherwise describes or presents the Priority Development Areas designated in subsection (a)(1) through (12) of this section or any additional Priority Development Areas designated in subsection (c) of this section, it shall present readable maps with a minimum scale of 1" to 600" of each of these areas in relation to all the others, including the designated Economic Development Zones and Opportunity Areas adopted by the Council and any federally-approved enterprise zones, empowerment zone, or enterprise community.

(c) Additional areas may be designated Priority Development Areas by amendments to the Revitalization Plan made by the Council in its action approving the Revitalization Plan. (Sept. 11, 1998, D.C. Law 12-144, § 21, 45 DCR 3747.)

**Legislative history of Law 12-144.** — See note to § 1-2295.1.

**§ 1-2295.21. Redevelopment districts; allocation of tax increment revenues.**

(a) The Board may, by resolution adopted by at least 2/3rds of its members, propose the establishment of one or more redevelopment districts within any Priority Development Area in order to allocate tax increment revenues collected pursuant to § 1-2295.22(c) within the redevelopment districts. Tax increment revenues shall only be used for the following purposes within or benefiting the redevelopment district:

- (1) Enhanced services;
- (2) Redevelopment purposes;
- (3) Secure debt service on, bonds issued by the Corporation;
- (4) Secure debt service on, financial obligations incurred by sponsors of eligible projects for redevelopment purposes that benefit a particular redevelopment district; and

- (5) To provide funds for related administration costs incurred by the Corporation and for amounts to be deposited to the account provided for in subsection (i) of this section.

(b) A redevelopment district near the boundary of a Priority Development Area may extend into another Priority Development Area.

(c) A parcel of land to which a single assessed valuation pertains shall be completely within a redevelopment district.

(d) In proposing the establishment of a redevelopment district, the Board shall determine the following:

- (1) The establishment will be consistent with the Revitalization Plan adopted pursuant to § 1-2295.12;

- (2) The allocation of tax increment revenues will foster and not impair development of other portions of the Priority Development Area in which the redevelopment district is situated or of any other Priority Development Area; and

- (3) The allocation of tax increment revenues will be sufficient to provide for the redevelopment purposes and debt service for which the allocation is intended.

(e) The Board shall insure that a project located within a housing priority area established pursuant to DD Regulations shall commit to the provision of the on-site and buy-out components of the residential gross floor area as required by the DD Regulations for the term of any bonds issued pursuant to § 1-2295.23.

(f) A resolution of the Board proposing the establishment of a redevelopment district shall provide the following:

- (1) Set forth the determinations required by subsections (a) through (e) of this section;

- (2) Clearly describe the perimeters of the redevelopment district and any excluded areas within those perimeters, so that land and improvements to land within the redevelopment district are readily identifiable by the tax assessor; and

- (3) Set forth the amount, percentage, duration, and respective uses of the tax increment revenues to be allocated from revenues collected within the

redevelopment district; including, as applicable, the amount or percentage of the tax increment revenues that will be allocated to enhanced services, redevelopment purposes, debt service on bonds issued for redevelopment purposes, and any account provided for under subsection (i) of this section.

(g) Before the Board may adopt a resolution proposing the establishment of a redevelopment district, the Board shall complete the following actions:

(1) Conduct a public hearing upon advance public notice given in a newspaper of general circulation in the District setting forth a summary of the resolution and the intention of the Board to submit the resolution for Council approval in accordance with this section;

(2) Submit certified proposed resolutions to the Council containing, or accompanied by, the information as follows:

(A) A description of the enhanced services, redevelopment purposes, and eligible projects within or benefiting the redevelopment district;

(B) The tax increment revenues expected to be collected within the redevelopment district, a statement of whether an account is to be established or supplemented as provided in subsection (i) of this section and the amounts of tax increment revenues to be credited to the account, and any bond financing to which tax increment revenues are expected to be pledged;

(C) A feasibility analysis of the redevelopment district;

(D) The amount, percentage, duration, and respective uses of the tax increment revenues to be allocated from the revenues collected within the redevelopment district, including, as applicable, the amount or percentage of the tax increment revenues to be allocated to enhanced services, redevelopment purposes, debt service on the bonds issued for such redevelopment purposes, and amounts to be deposited in any account provided for under subsection (i) of this section; and

(E) A summary report of the hearing conducted, pursuant to subsection (g)(1) of this section.

(h) A redevelopment district shall be established upon the adoption by the Council of a resolution approving the establishment of the redevelopment district and the allocation of tax increment revenues from the redevelopment district, and the adoption by the Board, within 60 days thereafter, of the Board's resolution in the form certified to the Council pursuant to subsection (g) of this section with such modifications as may be necessary to make it consistent with the approval by the Council. If the Council does not adopt a resolution approving the establishment of a redevelopment district within a 45-day period of review excluding days of Council recess, the certified proposed resolution of the Board shall be deemed disapproved.

(i) The Board may, before submitting its certified resolution to the Council pursuant to subsection (g)(2) of this section, establish or supplement an account to which there shall be credited tax increment revenues from revenues collected within one or more redevelopment districts in amounts as determined by the Board. The funds in the account shall be available to the Board in fulfilling its purposes pursuant to this subchapter.

(j) Redevelopment districts may be enlarged, contracted, divided, merged, or their boundaries otherwise modified with the approval of Council pursuant to

the procedure set forth in subsections (a) through (i) of this section for establishing a redevelopment district, subject only to the rights of bondholders under the bond documents.

(k) The aggregate of dedicated property tax increments in all redevelopment districts shall not exceed 25% of the total real property taxes, exclusive of the special property tax imposed pursuant to § 47-331, imposed on all real property in the District in the tax year. Prior to the approval of any tax increment revenue bonds, the Chief Financial Officer shall determine by estimate that the limitation of this subsection will not be exceeded by the allocation of property tax increment revenues securing such bonds, where added to all other allocations of property tax increments. Such determination shall be conclusive for purposes of this subsection, and this subsection shall not impair the efficacy of the pledge of property tax increments to the bonds at any time after they are issued. (Sept. 11, 1998, D.C. Law 12-144, § 22, 45 DCR 3747; Oct. 16, 1998, D.C. Law 12-169, § 301(g), 45 DCR 5187; Mar. 26, 1999, D.C. Law 12-175, § 2401(e), 45 DCR 7193.)

**Effect of amendments.** — D.C. Law 12-169 substituted “tax increment revenues” for “available revenues” throughout the section; deleted “except for nongovernmental projects based on revenue bonds” from the end of (d)(1); and deleted “or project as appropriate” and “or projects as appropriate” following “redevelopment district” and “redevelopment districts,” respectively, in the introductory language of (a) and (d) and in (a)(4), (b), and (c).

D.C. Law 12-175 substituted “purposes” for “projects” in (a)(2).

**Emergency act amendments.** — For temporary amendment of section, see § 2001(e) of

the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and see § 2001(e) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

Section 2101 of D.C. Act 12-564 provides for the application of the act.

**Legislative history of Law 12-144.** — See note to § 1-2295.1.

**Legislative history of Law 12-169.** — See note to § 1-2293.11.

**Legislative history of Law 12-175.** — See note to § 1-2207.1.

## § 1-2295.22. Determination, publication, collection, and deposit of tax increment revenues.

(a) Not later than 60 days after the establishment of a redevelopment district, the Mayor or his or her authorized delegate shall determine and publish in the District of Columbia Register the original taxable value of the redevelopment district. On January 2nd of each year following the establishment of the first redevelopment district pursuant to this subchapter, the Mayor shall record in the land records of the District the current taxable value of each redevelopment district.

(b)(1) Not later than 60 days after the end of the tax year in which approval by the Council is given for the allocation of sales and use tax increment revenues to a redevelopment district, the Mayor or his or her authorized delegate shall, with the benefit of studies and advice from the collector of the taxes, determine the amount of gross sales and use tax receipts that were derived from sales in that redevelopment district in that tax year, and shall publish that determination in the District of Columbia Register.

(2) Not more than 60 days following the end of each succeeding year, while an allocation of sales and use tax increment revenues is in effect, the Mayor or



his or her authorized delegate shall determine and publish the amount of tax receipts derived under §§ 47-2002 and 47-2202 from the sales and uses in that redevelopment district in that tax year.

(3) The Mayor or his or her authorized delegate may develop and apply formulas for determining the amount of tax increment revenues collected in the District.

(c) The allocation of tax increment revenues authorized and approved by the Council pursuant to § 1-2295.21 shall be collected in the same manner, at the same times and with the same rights of priority and enforcement as is applicable under the laws of the District government for real property and sales and use tax receipts, as applicable, by the collector of taxes or collecting agent, and shall be distributed and credited to such trust funds, funds, accounts, or escrows, as directed by the Corporation in the amounts and for uses consistent with the resolutions of the Council approving the establishment of any redevelopment district and providing for the allocation of tax increment revenues under this subchapter. (Sept. 11, 1998, D.C. Law 12-144, § 23, 45 DCR 3747.)

**Legislative history of Law 12-144.** — See note to § 1-2295.1.

### **§ 1-2295.23. Tax increment revenue bonds.**

(a) Upon notification by the Corporation that it is ready to assume tax increment financing function, all the authority of the CFO under subchapter VII of this chapter, except the duties of the CFO under § 1-2293.5, shall be transferred to the Corporation; provided that this transfer of functions is limited to the CFO's functions under subchapter VII of this chapter and does not transfer any function of the CFO under the Home Rule Act. The Corporation shall administer and issue tax increment finance bonds as provided by subchapter VII of this chapter; provided that (1) the duties imposed by § 1-2293.3(d) shall be carried out by the Corporation and the CFO and the CFO's certification of any project to be submitted to the Council shall be required in addition to the certification of the Corporation pursuant to §§ 1-2293.3(d) and 1-2293.4, and (2) no action described in § 1-2293.3(f) shall be taken by the Corporation without the prior written consent of the CFO. In addition to the requirements of that subchapter, the Corporation's tax increment finance bond issuance resolution transmitted to the Council shall include a certification that the CFO has voted for the resolution.

(b) The Corporation shall not issue bonds secured in whole or in part by the allocation of tax increment revenues pursuant to § 1-2295.21 when the Chief Financial Officer opposes the issuance after making a finding that this action is inconsistent with the District's financial plan and budget, and does not vote with the majority of the Board to authorize such issuance.

(c) The resolutions of the Corporation providing for the establishment of one or more redevelopment districts and for issuance of tax revenue supported bonds, and the resolutions of the Council approving such establishment and approving the project, may be concurrently adopted or consolidated into a

single resolution of the Board or single resolution of the Council. (Sept. 11, 1998, D.C. Law 12-144, § 24, 45 DCR 3747; Oct. 16, 1998, D.C. Law 12-169, § 301(h), 45 DCR 5187.)

**Effect of amendments.** — D.C. Law 12-169, added the provisos to the end of the first and second sentences in (a).

**Legislative history of Law 12-144.** — See note to § 1-2295.1.

**Legislative history of Law 12-169.** — See note to § 1-2293.11.

**References in text.** — The “Home Rule Act,” referred to in (a), is the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973, 87 Stat. 774, Pub. L. 93-198, and is set out in Volume 1.

## § 1-2295.24. Certification of borrowings.

Before any revenue bonds may be issued by the Corporation during a control year, the Authority shall have certified that the contemplated borrowing and the obligations to be incurred thereby are consistent with the District’s financial plan and budget for the fiscal year. (Sept. 11, 1998, D.C. Law 12-144, § 25, 45 DCR 3747.)

**Legislative history of Law 12-144.** — See note to § 1-2295.1.

## § 1-2295.25. District pledges.

The District pledges to the holders of outstanding bonds issued by the Corporation that the District will not limit or alter the rights in the Corporation to fulfill agreements made with holders of the bonds, or in any way impair the rights and remedies of the holders of the bonds until the bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of the holders of the bonds are fully met and discharged or fully provided for. The Corporation is authorized to include this pledge of the District in any agreement with the holders of the bonds. (Sept. 11, 1998, D.C. Law 12-144, § 26, 45 DCR 3747.)

**Legislative history of Law 12-144.** — See note to § 1-2295.1.

## § 1-2295.26. No taxing power.

Notwithstanding any other provision of this subchapter, the Corporation shall not have any power to impose, assess and levy any taxes. (Sept. 11, 1998, D.C. Law 12-144, § 27, 45 DCR 3747.)

**Legislative history of Law 12-144.** — See note to § 1-2295.1.

## § 1-2295.27. Intragovernmental cooperation.

(a) The annual preparation of community development programs required to be developed by the Department of Housing and Community Development

under § 5-902, the annual preparation of workforce development programs required to be developed by the Department of Employment Services, under § 104 of the Job Training Partnership Act, approved October 13, 1982 (96 Stat. 1322; 29 U.S.C. § 1501 et seq.), or Private Industry Council, the annual preparation of housing plans required to be developed by the Housing Finance Agency under § 45-2153, and the annual preparation of real property asset management plans required to be developed by the proposed Office of Real Property Asset Management (or any successor or similar agency with District asset management responsibilities) shall be undertaken in cooperation with the Corporation and in furtherance of the Corporation's Revitalization Plan.

(b) To the extent practicable and as pertaining to the economic enhancement of the District of Columbia, the Corporation shall work cooperatively with the development of annual workplans and budgets for the following:

- (1) Neighborhood Economic Development Corporation;
- (2) Small Business Administration;
- (3) Washington Convention and Visitors Association;
- (4) District of Columbia Chamber of Commerce;
- (5) D.C. Committee to Promote Washington;
- (5A) Greater Washington Ibero American Chamber of Commerce;
- (6) Board of Trade committees such as the Greater Washington Initiative, the Community Business Partnership and Workforce Preparation;
- (7) Metropolitan Washington Council of Governments;
- (8) National Capital Planning Commission;
- (9) Office of Motion Pictures and Television Development;
- (10) Community Development Corporations;
- (11) Business Improvement Districts;
- (12) Department of Housing and Community Development; and
- (13) The District of Columbia agency, department, office or instrumentality responsible for real property assets management and disposition.

(c) The Mayor, the departments, commissions, agencies and offices of the District government, and the boards of independent District agencies, commissions, establishments, and instrumentalities shall give expedited consideration to applications for licenses, permits, financing and other approvals of eligible projects to which the Corporation has provided or proposes to provide assistance. Approvals of such licenses, permits, financing, and other applications shall not be denied, withheld or delayed unreasonably. If, in the judgment of the Corporation, such approvals are unreasonably denied, withheld, or delayed, the Corporation, by vote of the Board, may cause the issuance to the Mayor, the Council, or, during a control year, the Authority of a request that such agency, commission, establishment, or instrumentality be compelled to demonstrate good cause for such delay, withholding, or denial, and if good cause not be shown, to act expeditiously with respect thereto or as directed by the Mayor, Council, or Authority. (Sept. 11, 1998, D.C. Law 12-144, § 28, 45 DCR 3747; Mar. 26, 1999, D.C. Law 12-175, § 2401(f), 45 DCR 7193.)

**Effect of amendments.** — D.C. Law 12-175 inserted (b)(5A).

**Emergency act amendments.** — For tem-

porary amendment of section, see § 2001(f) of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13,

1998, 45 DCR 4794), and see § 2001(f) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

Section 2101 of D.C. Act 12-564 provides for the application of the act.

**Legislative history of Law 12-144.** — See note to § 1-2295.1.

**Legislative history of Law 12-175.** — See note to § 1-2207.1.

## § 1-2295.28. Dissolution; termination of affairs.

(a) Upon dissolution of the Corporation or any subsidiary of the Corporation, title to property filed in the name of the Corporation and its subsidiaries, and all property under the control of the Board shall vest in the District. No property assets or earnings of the Corporation shall at any time inure to any private person or entity.

(b) The Corporation may be dissolved by vote of a majority of the Board and approval by act of the Council provided that all bonds of the Corporation have been discharged or their discharge has been provided for fully, and adequate provision has been made for all other debts and obligations of the Corporation. (Sept. 11, 1998, D.C. Law 12-144, § 29, 45 DCR 3747.)

**Legislative history of Law 12-144.** — See note to § 1-2295.1.

## § 1-2295.29. Transfer; assignment; assumption of other powers; duties.

(a)(1) Pursuant to § 5-803(b), the Council determines that it is necessary and appropriate that the Board shall succeed to the powers, duties, and responsibilities of the Board of Directors of the Redevelopment Land Agency under the Redevelopment Act as of the date provided in paragraph (2) of this subsection. On that date the Board of Directors of the Redevelopment Land Agency shall be abolished.

(2) Paragraph (1) of this subsection shall take effect on a date to be determined by the Council, not prior to January 1, 1999, but not later than 1 year after the initial meeting of the Board.

(b)(1) Pursuant to § 1-227, the Council determines that the Board shall succeed to the powers, duties, and responsibilities of the Board of Directors of the Economic Development Finance Corporation under §§ 1-2213 through 1-2218, as of the date provided in paragraph (2) of this subsection. On that date, the Board of Directors of the Economic Development Finance Corporation, established by § 1-2213, shall be abolished.

(2) Paragraph (1) of this subsection shall take effect on a date to be determined by the Board, but not later than one year after the initial meeting of the Board.

(c) Within one year from September 11, 1998, the Council shall determine whether the Board shall receive from the Department of Housing and Community Development any of its assets, liabilities, and authorities.

(d)(1) In accordance with § 1-227(b), all authorities, responsibilities, and functions of the Office of Economic Development, established pursuant to Reorganization Plan No. 4 of 1993, approved October 7, 1993, are transferred

to the Board of the Corporation, and the Office of Economic Development is abolished.

(2) Paragraph (1) of this subsection shall take effect on a date to be determined by the Board, but not later than one year after the initial meeting of the Board.

(e)(1) All provisions of subchapter VII of this chapter ("TIF Act"), shall continue in full force and effect following the enactment of this subchapter, including without limitation the criteria for the eligibility of projects for the tax increment financing pursuant to the TIF Act, provided that the Board shall exercise all functions of the CFO under the TIF Act except the duties of the CFO under § 1-2293.5 from and after the date of notice from the Board to the CFO that the Board is already to assume such functions.

(2) At the time specified by the Board pursuant to paragraph (1) of this subsection, the Corporation shall also succeed to all of the rights, powers, and duties, and obligations of the CFO under the TIF Act with respect to any agreement, covenant, or pledge of, or by, the CFO under the TIF Act regarding real property tax increment revenues and sales tax increment revenues, and any bonds issued under that act to finance development costs of an approved project, and any other obligations and instruments duly entered into by the CFO under the TIF Act shall become rights, powers, duties, and obligations of the Corporation, and the CFO shall be relieved of all such duties and obligations at that time.

(3) For purposes of this subsection, the terms "real property tax increment revenues," "sales tax increment revenues," "development costs," and "project" shall have the same meanings given those terms in the TIF Act.

(f) Nothing in this section shall in any way impair the obligations, commitments, pledges or covenants, or the security therefor, made or provided by the Redevelopment Land Agency, Economic Development Finance Corporation, the Chief Financial Officer, or Department of Housing and Community Development. (Sept. 11, 1998, D.C. Law 12-144, § 30, 45 DCR 3747; \_\_\_\_\_, 1999, D.C. Law 12-(Act 12-380), § 3(d), 45 DCR 4471.)

**Effect of amendments.** — D.C. Law 12-(D.C. Act 12-380), in (a)(2), substituted "by the Council" for "by the Board," and inserted "not prior to January 1, 1999."

**Legislative history of Law 12-144.** — See note to § 1-2295.1.

**Legislative history of Law 12-(D.C. Act 12-380).** — See note to § 1-2295.3.

**Effective date of subsection (a)(1) of this section.** — Section 33(b)(1) of D.C. Law 12-144

provided that § 30(a)(1) shall take effect on the latter of: (A) September 11, 1998; or (B) the date determined by the Board, but not later than one year after the initial meeting of the Board.

**Effective date of subsection (b)(1) of this section.** — Section 33(b)(2) of D.C. Law 12-144 provided that § 30(b)(1) shall take effect on the latter of: (A) September 11, 1998; or (B) the date determined by the Board, but not later than one year after the initial meeting of the Board.

## CHAPTER 23. LATINO COMMUNITY DEVELOPMENT.

### *Subchapter I. General Provisions.*

#### Sec.

1-2301. Intent of Council.

1-2302. Definitions.

### *Subchapter II. Office on Latino Affairs.*

1-2311. Established.

1-2312. Appointment of Executive Director; compensation; staff.

1-2313. Functions of Director.

1-2314. Spanish Program Coordinators.

### *Subchapter III. Commission on Latino Community Development.*

1-2321. Established.

1-2322. Composition.

1-2323. Qualifications for membership.

1-2324. Term of office.

1-2325. Appointments to vacancies.

#### Sec.

1-2326. Rules of procedure.

1-2327. Election of Chairperson.

1-2328. Compensation.

1-2329. Staff assistance.

1-2330. Functions.

### *Subchapter IV. Miscellaneous Provisions.*

1-2341. Appropriation.

1-2342. Spanish translations of District publications relating to health, safety and welfare.

1-2343. Spanish translations of agreements or contracts with District.

1-2344. Record of translations.

1-2345. Regulations to implement translation program.

1-2346. Appropriation for translation program.

### *Subchapter I. General Provisions.*

## § 1-2301. Intent of Council.

It is the intent of the Council of the District of Columbia that the District government shall ensure that a full range of health, education, employment, and social services shall be available to the Latino community in the District of Columbia. The planning and monitoring of programs undertaken by the Office on Latino Affairs and the Commission in partnership with members of the Latino community, families, community leaders, private agencies, and the District of Columbia government shall serve as an impetus to making the Latino community an integral part of the District of Columbia community. (1973 Ed., § 6-1901; Sept. 29, 1976, D.C. Law 1-86, title I, § 101, 23 DCR 2543.)

**Section references.** — This section is referred to in § 1-2314.

**Legislative history of Law 1-86.** — Law 1-86 was introduced in Council and assigned Bill No. 1-198, which was referred to the Committee on Government Operations. The Bill was adopted on first, amended first and second readings, and reconsideration of second reading, on April 20, 1976, June 15, 1976, May 18,

1976 and June 20, 1976, respectively. Signed by the Mayor on July 19, 1976, it was assigned Act No. 1-141 and transmitted to both Houses of Congress for its review.

**Office of Spanish Affairs abolished.** — The Office of Spanish Affairs was abolished by the Act of September 29, 1976, D.C. Law 1-86, which Act established the Office on Latino Affairs.

## § 1-2302. Definitions.

For the purposes of this chapter, the term:

(1) "Office" means the Office on Latino Affairs created by § 1-2311.

(2) "Director" means the Executive Director of the Office on Latino Affairs.

(3) "Commission" means the Commission on Latino Community Development created by § 1-2321.

(4) "Latino" or "Latino community" shall mean the people of Spanish origin who are residents of the District of Columbia.

(5) "Services to the Latino community" means those services designed to provide assistance, including but not limited to, nutritional programs, transportation services, health and financial assistance, employment and housing programs, recreational opportunities, information, referral, and counseling services.

(6) "Council" means the Council of the District of Columbia. (1973 Ed., § 6-1902; Sept. 29, 1976, D.C. Law 1-86, title II, § 201, 23 DCR 2543.)

**Legislative history of Law 1-86.** — See note to § 1-2301.

### *Subchapter II. Office on Latino Affairs.*

#### **§ 1-2311. Established.**

There is established an Office on Latino Affairs. The Office shall provide within the District of Columbia government a single administrative unit, responsible to the Mayor, to administer such programs as shall be delegated to it by the Mayor, the Council, and the Commission, to promote the welfare of the Latino community. (1973 Ed., § 6-1911; Sept. 29, 1976, D.C. Law 1-86, title III, § 301, 23 DCR 2543; Oct. 17, 1981, D.C. Law 4-42, § 9(c)(1), 28 DCR 3425.)

**Section references.** — This section is referred to in §§ 1-603.1 and 1-2302.

**Legislative history of Law 1-86.** — See note to § 1-2301.

**Legislative history of Law 4-42.** — Law 4-42 was introduced in Council and assigned Bill No. 4-197, which was referred to the Com-

mittee on Government Operations. The Bill was adopted on first and second readings on June 16, 1981 and June 30, 1981, respectively. Signed by the Mayor on July 23, 1981, it was assigned Act No. 4-71 and transmitted to both Houses of Congress for its review.

#### **§ 1-2312. Appointment of Executive Director; compensation; staff.**

The Office shall be headed by an Executive Director, who shall be appointed by the Mayor from a list of 3 or more names submitted to him or her by the Commission. The Director shall devote his or her full time to the duties of the Office. His or her annual compensation shall be fixed in accordance with Chapter 51 of Title 5, United States Code (relating to the classification of government employees and related matters), but shall be not lower than a GS 15, step 1 or equivalent compensation pursuant to the provisions of subchapter XII of Chapter 6 of this title. He or she shall have such staff as is approved in the District of Columbia budget and federal or private grants, plus any temporary staff approved by the Office of Budget and Resource Development. (1973 Ed., § 6-1912; Sept. 29, 1976, D.C. Law 1-86, title III, § 302, 23 DCR 2543; Mar. 3, 1979, D.C. Law 2-139, § 3205(u), 25 DCR 5740.)

**Cross references.** — As to effective date of D.C. Law 2-139, see § 1-637.1.

**Section references.** — This section is referred to in § 1-637.1.

**Legislative history of Law 1-86.** — See note to § 1-2301.

**Legislative history of Law 2-139.** — Law 2-139 was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respec-

tively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

**References in text.** — “GS 15, step 1,” referred to in the third sentence of this section, is contained in the General Schedule set out under § 5332 of Title 5, United States Code.

## § 1-2313. Functions of Director.

In order to carry out the purpose of this chapter, the Director shall:

(1) Serve as an advocate for the Latino community in the District of Columbia;

(2) Assist community organizations and the Commission in developing and submitting grant applications;

(3) Provide information and technical assistance with respect to programs and services for the Latino community to the Mayor, the Commission on Latino Community Development, the Council, other District of Columbia agencies and departments, and the community;

(4) Respond to recommendations and policy statements from the Commission within 30 days of written submission unless extended by mutual agreement of the Commission and the Office;

(5) File an annual report on the operation of the Office with the Mayor, the Council, and the Commission;

(6) Identify areas of need for service or improvement of service and bring them to the attention of the Mayor and Commission, with suggestions for meeting such needs, including conducting or funding research and demonstration projects to test such suggestions;

(7) Carry responsibility for assuring necessary control, evaluation, audit, and reporting on programs funded through the Office;

(8) Accept volunteer services and funds from public and private sector to supplement the budget in carrying out the planning duties and responsibilities of the Office; and

(9) Meet with the Spanish Program Coordinators within each department and agency of the District of Columbia government having such offices as a group, at least once a month to coordinate activities within the government involving the Latino community. (1973 Ed., § 6-1913; Sept. 29, 1976, D.C. Law 1-86, title III, § 303, 23 DCR 2543.)

**Section references.** — This section is referred to in § 1-2329.

**Legislative history of Law 1-86.** — See note to § 1-2301.

## § 1-2314. Spanish Program Coordinators.

All District of Columbia government agencies with at least 500 employees shall have a Spanish Program Coordinator who shall devote at least one-fourth of his or her time to developing and implementing policies and programs in their agencies that insure that the intent of this chapter as set forth in § 1-2301 is carried out. The Spanish Program Coordinator shall meet with the Director of the Office on Latino Affairs at least once a month to assist the



Director in coordinating plans and policies which are beneficial to the Latino community of the District of Columbia. (1973 Ed., § 6-1914; Sept. 29, 1976, D.C. Law 1-86, title III, § 304, 23 DCR 2543.)

**Legislative history of Law 1-86.** — See note to § 1-2301.

### *Subchapter III. Commission on Latino Community Development.*

#### **§ 1-2321. Established.**

There is hereby established a Commission on Latino Community Development to advise the Mayor, the Director of the Office on Latino Affairs, the Council, and the public concerning the views and needs of the Latino community in the District of Columbia. (1973 Ed., § 6-1921; Sept. 29, 1976, D.C. Law 1-86, title IV, § 401, 23 DCR 2543; Oct. 17, 1981, D.C. Law 4-42, § 9(c)(2), 28 DCR 3425.)

**Section references.** — This section is referred to in § 1-2302.

**Legislative history of Law 1-86.** — See note to § 1-2301.

**Legislative history of Law 4-42.** — See note to § 1-2311.

#### **§ 1-2322. Composition.**

The Commission shall consist of 15 public (voting) members appointed by the Mayor. There shall also be the following ex-officio nonvoting members: The Directors of the Department of Human Services, Department of Housing and Community Development, Department of Recreation, Department of Transportation, Department of Manpower, the librarian of the District of Columbia Public Library, the Chief of the Metropolitan Police Department, and the Director of the Department of Licenses, Investigation and Inspections. (1973 Ed., § 6-1922; Sept. 29, 1976, D.C. Law 1-86, title IV, § 402, 23 DCR 2543; \_\_\_\_\_, 1999, D.C. Law 12-(Act 12-622), § 4(j), 46 DCR 1355.)

**Effect of amendments.** — D.C. Law 12-(D.C. Act 12-622) deleted "with the advice and consent of the Council" from the end of the first sentence.

**Emergency act amendments.** — For temporary amendment of section, see § 4(j) of the Confirmation Emergency Amendment Act of 1999 (D.C. Act 13-25, March 15, 1999, 46 DCR 2971).

Section 6 of D.C. Act 13-25 provides for the application of the act.

**Legislative history of Law 1-86.** — See note to § 1-2301.

**Legislative history of Law 12-(D.C. Act 12-622).** — Law 12-(D.C. Act 12-622), the "Confirmation Amendment Act of 1998," was intro-

duced in Council and assigned Bill No. \_\_\_\_\_, which was referred to the Committee on \_\_\_\_\_. The Bill was adopted on first and second readings on \_\_\_\_\_ and \_\_\_\_\_, respectively. Signed by the Mayor on \_\_\_\_\_, it was assigned Act No. 12-622 and transmitted to both Houses of Congress for its review. D.C. Law 12-(D.C. Act 12-622) became effective on \_\_\_\_\_.

**Transfer of functions.** — The functions of the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

The functions of the Department of Licenses,

Investigations, and Inspections were transferred to the Department of Consumer and Regulatory Affairs, by Reorganization Plan No. 1 of 1983, effective March 31, 1983.

### § 1-2323. Qualifications for membership.

Members shall be appointed with due consideration for representation from established public, nonprofit, and voluntary community organizations and agencies concerned with the Latino community and members of the general public who have given evidence of particular dedication to, and knowledge of, the needs of the Latino community. The membership of the Commission shall have at least 2 resident aliens. (1973 Ed., § 6-1923; Sept. 29, 1976, D.C. Law 1-86, title IV, § 403, 23 DCR 2543.)

**Legislative history of Law 1-86.** — See note to § 1-2301.

### § 1-2324. Term of office.

Members of the Commission shall serve terms of 3 years except that, of the initial membership, 5 shall be appointed for a term of 3 years, 5 for a term of 2 years, and 5 for 1 year. Members may be reappointed but may serve no more than 2 consecutive terms. A member may continue to serve until a successor is appointed. (1973 Ed., § 6-1924; Sept. 29, 1976, D.C. Law 1-86, title IV, § 404, 23 DCR 2543; Mar. 16, 1982, D.C. Law 4-88, § 5(a), 29 DCR 458; Sept. 29, 1988, D.C. Law 7-171, § 2, 35 DCR 5754.)

**Legislative history of Law 1-86.** — See note to § 1-2301.

**Legislative history of Law 4-88.** — Law 4-88 was introduced in Council and assigned Bill No. 4-271, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 24, 1981 and December 8, 1981, respectively. Signed by the Mayor on January 20, 1982, it was assigned Act No. 4-142 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 7-171.** — Law 7-171 was introduced in Council and assigned Bill No. 7-362, which was referred to the Committee on Public Services. The Bill was adopted on first and second readings on June 28, 1988 and July 12, 1988, respectively. Signed by the Mayor on July 15, 1988, it was assigned Act No. 7-227 and transmitted to both Houses of Congress for its review.

### § 1-2325. Appointments to vacancies.

When a vacancy develops on the Commission, the Mayor shall appoint a successor, with the advice and consent of the Council, to complete the unexpired term. (1973 Ed., § 6-1925; Sept. 29, 1976, D.C. Law 1-86, title IV, § 405, 23 DCR 2543; Mar. 16, 1982, D.C. Law 4-88, § 5(b), 29 DCR 458.)

**Legislative history of Law 1-86.** — See note to § 1-2301.

**Legislative history of Law 4-88.** — See note to § 1-2324.

### § 1-2326. Rules of procedure.

The Commission shall develop its own rules of procedure, except they shall provide the Commission shall meet at least every other month. The meetings shall be held in those areas of the District of Columbia with the largest

concentration of Latino residents. All meetings shall be open to the public. A quorum to transact business shall consist of a majority plus 1 of the voting members. (1973 Ed., § 6-1926; Sept. 29, 1976, D.C. Law 1-86, title IV, § 406, 23 DCR 2543.)

**Legislative history of Law 1-86.** — See note to § 1-2301.

### § 1-2327. Election of Chairperson.

The Commission shall elect its own Chairperson. (1973 Ed., § 6-1927; Sept. 29, 1976, D.C. Law 1-86, title IV, § 407, 23 DCR 2543.)

**Legislative history of Law 1-86.** — See note to § 1-2301.

### § 1-2328. Compensation.

All members shall serve without compensation, but expenses incurred by the Commission as a whole, or by its individual members, when duly authorized by the Chairperson, will become an obligation against appropriated District of Columbia and federal funds designated for that purpose. (1973 Ed., § 6-1928; Sept. 29, 1976, D.C. Law 1-86, title IV, § 408, 23 DCR 2543.)

**Legislative history of Law 1-86.** — See note to § 1-2301.

### § 1-2329. Staff assistance.

The Commission shall have 1 paid staff person. In addition, the Director of the Office on Latino Affairs shall provide information and technical assistance as required under § 1-2313. (1973 Ed., § 6-1929; Sept. 29, 1976, D.C. Law 1-86, title IV, § 409, 23 DCR 2543.)

**Temporary repeal of section.** — Section 809 of D.C. Law 10-253 repealed this section.

Section 1301(b) of D.C. Law 10-253 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Multiyear Budget Spending Reduction and Support Act of 1995, whichever occurs first.

For temporary repeal of § 809 of D.C. Law

10-253, see § 813 of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Section 813 of D.C. Law 11-52 repealed § 809 of D.C. Law 10-253.

**Legislative history of Law 1-86.** — See note to § 1-2301.

### § 1-2330. Functions.

(a) The Commission shall:

- (1) Serve as an advocate for Latino persons in the District of Columbia;
- (2) Review and submit to the Mayor, the Council, the Office on Latino Affairs, and the community an annual report including analysis of the needs of the Latino community in the District of Columbia;
- (3) Cooperate with other agencies (federal, state, private) concerned with activities pertaining to the Latino community;

(4) Develop a list of at least 3 persons the Commission recommends for the position of Director of the Office on Latino Affairs and submit that list to the Mayor;

(5) Conduct or participate in public hearings and other forums to determine views of the Latino community and other members of the public on matters affecting the health, safety, and welfare of the Latino community in the District of Columbia;

(6) Bring to the attention of the Mayor and the Office on Latino Affairs cases of neglect, abuse, and incidents of bias against the Latino community in the administration of the laws of the District of Columbia;

(7) Review and comment on proposed District and federal legislation, regulations, policies, and programs and make policy recommendations on issues affecting the health, safety, and welfare of the Latino community; and

(8) Develop policy and provide continuing review of the planning undertaken by the Office.

(b) The Commission is authorized to make any reasonable request for information necessary to aid the Commission in the discharge of its responsibilities. (1973 Ed., § 6-1930; Sept. 29, 1976, D.C. Law 1-86, title IV, § 410, 23 DCR 2543; Apr. 23, 1977, D.C. Law 1-126, title I, § 101, 24 DCR 2372.)

**Legislative history of Law 1-86.** — See note to § 1-2301.

**Legislative history of Law 1-126.** — Law 1-126 was introduced in Council and assigned Bill No. 1-364, which was referred to the Committee on Government Operations. The Bill

was adopted on first and second readings on November 22, 1976 and December 7, 1976, respectively. Enacted without signature by the Mayor on January 25, 1977, it was assigned Act No. 1-225 and transmitted to both Houses of Congress for its review.

#### *Subchapter IV. Miscellaneous Provisions.*

### **§ 1-2341. Appropriation.**

There is hereby authorized to be appropriated from the general operating budget of the District of Columbia the sum of \$200,000 to carry out the purpose of this chapter. This sum does not include monies spent on existing programs for the Latino community. (1973 Ed., § 6-1941; Sept. 29, 1976, D.C. Law 1-86, title V, § 501, 23 DCR 2543.)

**Legislative history of Law 1-86.** — See note to § 1-2301.

### **§ 1-2342. Spanish translations of District publications relating to health, safety and welfare.**

The Mayor shall make available to persons whose primary language of communication is Spanish a Spanish text version of any District of Columbia government published application, informational brochure or pamphlet which is essential to the obtaining of services relating to the health, safety, and welfare of Latino residents of the District of Columbia. The Mayor, not later than 60 days after October 26, 1977, and in consultation with the Commission on Latino Community Development, with each Spanish Program Coordinator,

and with the Office on Latino Affairs, shall by regulation designate such applications, brochures, and pamphlets. (1973 Ed., § 6-1942; Oct. 26, 1977, D.C. Law 2-31, § 2, 24 DCR 3724.)

**Section references.** — This section is referred to in §§ 1-2344 to 1-2346.

**Legislative history of Law 2-31.** — Law 2-31 was introduced in Council and assigned Bill No. 2-116, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on

July 12, 1977 and July 26, 1977, respectively. Signed by the Mayor on August 16, 1977, it was assigned Act No. 2-77 and transmitted to both Houses of Congress for its review.

**Delegation of Authority pursuant to Law 2-31.** — See Mayor's Order 86-67, May 2, 1986.

## **§ 1-2343. Spanish translations of agreements or contracts with District.**

The Mayor shall provide, if requested by an individual whose primary language of communication is Spanish, a written Spanish translation of any agreement or contract with the District of Columbia government requiring the signature of the individual. (1973 Ed., § 6-1943; Oct. 26, 1977, D.C. Law 2-31, § 3, 24 DCR 3724.)

**Section references.** — This section is referred to in §§ 1-2344 to 1-2346.

**Legislative history of Law 2-31.** — See note to § 1-2342.

## **§ 1-2344. Record of translations.**

The Mayor shall maintain a statistical record of the distribution and use of materials provided to the public pursuant to §§ 1-2342 and 1-2343. (1973 Ed., § 6-1944; Oct. 26, 1977, D.C. Law 2-31, § 4, 24 DCR 3724.)

**Section references.** — This section is referred to in §§ 1-2345 and 1-2346.

**Legislative history of Law 2-31.** — See note to § 1-2342.

## **§ 1-2345. Regulations to implement translation program.**

The Mayor may issue regulations to implement §§ 1-2342 to 1-2346 in accordance with the provisions of the District of Columbia Administrative Procedure Act (D.C. Code, § 1-1501 et seq.). (1973 Ed., § 6-1945; Oct. 26, 1977, D.C. Law 2-31, § 5, 24 DCR 3724.)

**Section references.** — This section is referred to in § 1-2346.

**Legislative history of Law 2-31.** — See note to § 1-2342.

## **§ 1-2346. Appropriation for translation program.**

There is hereby authorized to be expended, for the purposes of §§ 1-2342 to 1-2346, a sum in an amount not to exceed \$50,000 in each fiscal year. (1973 Ed., § 6-1946; Oct. 26, 1977, D.C. Law 2-31, § 6, 24 DCR 3724.)

**Section references.** — This section is referred to in § 1-2345.

**Legislative history of Law 2-31.** — See note to § 1-2342.

## ADMINISTRATION

### CHAPTER 24. NATIONAL CAPITAL REGION TRANSPORTATION.

#### *Subchapter I. National Capital Transportation Program.*

Sec.

- 1-2401. Agreements with Maryland and Virginia to develop continuing comprehensive transportation planning process.

#### *Subchapter II. Compact for Mass Transportation.*

- 1-2411. Congressional consent given for Virginia, Maryland and District of Columbia to enter into Compact.  
1-2412. Congressional consent given to effectuate amendments to Compact.  
1-2413. Duties of Mayor; appropriations authorized; Congressional approval required for Compact amendments.  
1-2414. Effect of Compact on other laws.  
1-2415. Congressional consent conditioned on nonuse of Compact to break a lawful strike.  
1-2416. Jurisdiction to review orders of Washington Metropolitan Area Transit Commission and to enforce Compact.  
1-2417. Reservation of right to alter, amend, or repeal subchapter; submission of periodic reports to Congress; scope of Congressional inquiry.

#### *Subchapter III. Rail Rapid Transit.*

- 1-2421. Statement of findings and purpose.  
1-2422. Appropriations authorized.  
1-2423. Severability.

#### *Subchapter IV. Washington Metropolitan Area Transit Authority Compact.*

- 1-2431. Congressional consent given to Compact amendment.  
1-2432. Authority of Council to enact acts adopting Compact amendments.  
1-2433. Consent of Council to Compact amendments.  
1-2434. Congressional consent to amendments — Articles I, III, VII, IX, XI, XIV, and XVI of Title III.  
1-2435. Same — Articles XII and XVI of Title III.  
1-2436. Same — Articles I and XVI of Title III.  
1-2437. Mayor directed to execute Compact amendments; appropriations.  
1-2437.1. Mayor to enter agreements to make certain technical amendments; effective date of technical amendments.  
1-2438. Transfer of functions, duties, property,

Sec.

and records of National Capital Transportation Agency to Washington Metropolitan Area Transit Authority.

- 1-2439. Jurisdiction of courts; removal of actions.  
1-2440. Amendment of laws and reorganization plans.  
1-2441. Reservation of right to alter, amend or repeal subchapter; submission of reports; scope of Presidential and Congressional inquiry; audits.

#### *Subchapter IV-A. Washington Metropolitan Area Transit Authority Safety Regulation.*

- 1-2445.1. Definitions.  
1-2445.2. Authorization for interstate agreement.  
1-2445.3. Appointment of District representatives.  
1-2445.4. Requirements for agreement.  
1-2445.5. Amendments to agreement.  
1-2445.6. Procurement law inapplicable.  
1-2445.7. Authorization for a District program.

#### *Subchapter V. Adopted Regional System.*

- 1-2451. Definitions.  
1-2452. Federal contributions.  
1-2453. Funding of facilities for the handicapped.  
1-2454. District of Columbia contributions.  
1-2455. Financing of District contributions by general obligation bonds [Charter Provision].  
1-2456. Approval for construction required.  
1-2457. Disposal of excess revenues.  
1-2458. Guarantee of obligations.  
1-2459. [Repealed].  
1-2460. Authorization of appropriations.  
1-2461. Obligations as lawful investments.  
1-2462. Appropriation for Arlington Cemetery and Smithsonian transit stations.  
1-2463. Authorization of additional federal contributions for construction.  
1-2464. Payment of bonds.  
1-2465. Requirement that local participating governments have stable and reliable source of revenue for contributions.  
1-2465.1. Authorization of additional federal contributions for construction.  
1-2466. Establishment of Metrorail/Metrobus Account.  
1-2467. Annual report of Account.

#### *Subchapter VI. Acquisition of Mass Transit Bus Systems.*

- 1-2471. Acquisition of bus companies; franchise cancelled; charter bus ser-

Sec.

vice by Authority; corporate status of D.C. Transit System, Inc.

1-2472. Payment by Mayor of District's share of acquisition cost authorized.

1-2473. Capital grant assistance.

1-2474. Immediate grants.

1-2475. Repayment of advances.

1-2476. Jurisdiction for condemnation proceedings.

1-2477. Authority of Comptroller General.

*Subchapter VII. Woodrow Wilson Bridge and Tunnel Compact.*

Sec.

1-2481. Authority to enter into Compact.

1-2482. Preamble to Compact.

1-2483. Woodrow Wilson Bridge and Tunnel Compact.

1-2484. Compact provisions as law.

### *Subchapter I. National Capital Transportation Program.*

## **§ 1-2401. Agreements with Maryland and Virginia to develop continuing comprehensive transportation planning process.**

The Mayor is authorized to enter into such agreements with the States of Maryland and Virginia and with political subdivisions of such States as may be necessary to develop a continuing comprehensive transportation planning process for the National Capital region for the purpose of complying with the requirements of § 134 of Title 23, United States Code, except that no such agreement shall require the District of Columbia to pay more than its pro rata share of the costs of such planning process. In developing such transportation planning process the Mayor shall consult and cooperate with the National Capital Planning Commission and the National Capital Regional Planning Council. For the purpose of this section, the term "National Capital region" shall have the same meaning as is given it in § 1-1401. (Sept. 30, 1966, 80 Stat. 859, Pub. L. 89-610, title X, § 1006; 1973 Ed., § 1-1401a.)

**References in text.** — Section 1-1401, referred to at the end of the last sentence of the section, refers to former § 1-1401 which was repealed by the Act of December 9, 1969, 83 Stat. 322, Pub. L. 91-143, § 8(a)(1).

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Cited in** *Hughes v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 498 A.2d 567 (1985); *Keenan v. Washington Metro. Area Transit Auth.*, 643 F. Supp. 324 (D.D.C. 1986).

*Subchapter II. Compact for Mass Transportation.*

**§ 1-2411. Congressional consent given for Virginia, Maryland and District of Columbia to enter into Compact.**

The consent and approval of Congress is hereby given to the States of Virginia and Maryland and to the District of Columbia to enter into a Compact, substantially as follows, for the regulation and improvement of mass transit in the Washington metropolitan area, which Compact, known as the Washington Metropolitan Area Transit Regulation Compact, has been negotiated by representatives of the States and the District of Columbia and has been adopted by the State of Virginia (Ch. 627, 1958 Acts of Assembly), and in substance by the State of Maryland.

The States of Maryland and Virginia and the District of Columbia, hereinafter referred to as signatories, do hereby covenant and agree as follows:

**TITLE I**

**GENERAL COMPACT PROVISIONS**

**ARTICLE I**

There is hereby created the Washington Metropolitan Transit District, hereinafter referred to as the Metropolitan District, which shall embrace the District of Columbia, the cities of Alexandria, Falls Church, and Fairfax, the counties of Arlington, Fairfax, and Loudoun, and political subdivisions of the Commonwealth of Virginia located within those counties, and the counties of Montgomery and Prince George's in the State of Maryland and political subdivisions of the State of Maryland located within those counties.

**ARTICLE II**

1. The signatories hereby create the "Washington Metropolitan Area Transit Commission," hereafter called the "Commission," which shall be an instrumentality of the District of Columbia, the Commonwealth of Virginia, and the State of Maryland, and shall have the powers and duties set forth in the Compact and those additional powers and duties conferred upon it by subsequent action of the signatories.

2. The Commission shall have jurisdiction coextensive with the Metropolitan District for the regulation of passenger transportation within the Metropolitan District on a coordinated basis, without regard to political boundaries within the Metropolitan District, as set forth in this Compact.

**ARTICLE III**

1.(a) The Commission shall be composed of three members, one member appointed by the Governor of Virginia from the State Corporation Commission of the Commonwealth of Virginia, one member appointed by the Governor of Maryland from the Maryland Public Service Commission, and one member



appointed by the Mayor of the District of Columbia from the Public Service Commission of the District of Columbia.

(b) A member appointed shall serve for a term coincident with the term of that member on the agency of the signatory, and a member may be removed or suspended from office as the law of the appointing signatory provides.

(c) Vacancies shall be filled for an unexpired term in the same manner as an original appointment.

2. A person in the employment of or holding an official relation to a person or company subject to the jurisdiction of the Commission or having an interest of any nature in a person or company or affiliate or associate thereof, may not hold the office of Commissioner or serve as an employee of the Commission or have any power or duty or receive any compensation in relation to the Commission.

3.(a) The Commission shall select a chairman from among its members.

(b) The chairman shall be responsible for the Commission's work and shall have all powers to discharge that duty.

4. A signatory may pay the Commissioner from its jurisdiction the salary or expenses, if any, that it considers appropriate.

5.(a) The Commission may employ engineering, technical, legal, clerical, and other personnel on a regular, part-time, or consulting basis to assist in the discharge of its functions.

(b) The Commission is not bound by any statute or regulation of a signatory in the employment or discharge of an officer or employee of the Commission, except that contained in this Compact.

6. The Commission shall establish its office at a location to be determined by the Commission within the Metropolitan District and shall publish rules and regulations governing the conduct of its operations.

#### ARTICLE IV

1.(a) The signatories shall bear the expenses of the Commission in the manner set forth here.

(b) The Commission shall submit to the Governor of Virginia, the Governor of Maryland, and the Mayor of the District of Columbia, when requested, a budget of its requirements for the period required by the laws of the signatories for presentation to the legislature.

(c) The Commission shall allocate its expenses among the signatories in the proportion that the population of each signatory within the Metropolitan District bears to the total population of the Metropolitan District.

(d)(i) The Commission shall base its allocation on the latest available population statistics of the Bureau of the Census; or

(ii) If current population data are not available, the Commission may, upon the request of a signatory, employ estimates of population prepared in a manner approved by the Commission and by the signatory making the request.

(e) The Governors of the two states and the Mayor of the District of Columbia shall approve the allocation made by the Commission.

2.(a) The signatories shall appropriate their proportion of the budget for the expenses of the Commission and shall pay that appropriation of the Commission.

(b) The budget of the Commission and the appropriations of the signatories may not include a sum for the payment of salaries or expenses of the Commissioners.

(c) The provisions of section 2.1-30 (1979) of the Code of Virginia do not apply to any official or employee of the Commonwealth of Virginia acting or performing services under this Act.

3.(a) If the Commission requests and a signatory makes available personnel, services, or material which the Commission would otherwise have to employ or purchase, the Commission shall:

- (i) Determine an amount; and
- (ii) Reduce the expenses allocable to a signatory.

(b) If any services in kind are rendered, the Commission shall return to the signatory an amount equivalent to the savings to the Commission represented by the contribution in kind.

4.(a) The Commission shall have the power to establish fees under regulations, including but not limited to filing fees and annual fees.

(b) The Commission shall return to the signatories fees established by it in proportion to the share of the Commission's expenses borne by each signatory in the fiscal year during which the fees were collected.

5.(a) The Commission shall keep accurate books of account, showing in full its receipts and disbursements.

(b) The books of account shall be open for inspection by representatives of the respective signatories at any reasonable time.

#### ARTICLE V

1. An action by the Commission may not be effective unless a majority of the members concur.

2. An order entered by the Commission under the provisions of Title II of this Act which affect operations or matters solely intrastate or solely within the District of Columbia may not be effective unless the Commissioner from the affected signatory concurs.

3. Two members of the Commission are a quorum.

4. The Commission may delegate by regulation the tasks that it considers appropriate.

#### ARTICLE VI

This Compact does not amend, alter, or affect the power of the signatories and their political subdivisions to levy and collect taxes on the property or income of any person or company subject to this Act or upon any material, equipment, or supplies purchased by that person or company or to levy, assess, and collect franchise or other similar taxes, or fees for the licensing of vehicles and their operation.

#### ARTICLE VII

This amended Compact shall become effective 90 days after the signatories adopt it.

#### ARTICLE VIII

1.(a) This Compact may be amended from time to time without the prior consent or approval of the Congress of the United States and any amendment

shall be effective unless, within one year, the Congress disapproves that amendment.

(b) An amendment may not be effective unless adopted by each of the signatories.

2.(a) A signatory may withdraw from the Compact upon written notice to the other signatories.

(b) In the event of a withdrawal, the Compact shall be terminated at the end of the Commission's next full fiscal year following the notice.

3. Upon the termination of this Compact, the jurisdiction over the matters and persons covered by this Act shall revert to the signatories and the federal government, as their interest may appear, and the applicable laws of the signatories and the federal government shall be reactivated without further legislation.

#### ARTICLE IX

Each of the signatories pledges to each of the other signatories faithful cooperation in the regulation of passenger transportation within the Metropolitan District and agrees to enact any necessary legislation to achieve the objectives of the Compact for the mutual benefit of the citizens living in the Metropolitan District.

#### ARTICLE X

1. If a provision of this Act or its application to any person or circumstance is held invalid in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.

2. In accordance with the ordinary rules for construction of interstate compacts, this Act shall be liberally construed to effectuate its purposes.

#### TITLE II

#### *COMPACT REGULATORY PROVISIONS*

#### ARTICLE XI

1. This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District, including but not limited to:

(a) As to interstate and foreign commerce, transportation performed over a regular route between a point in the Metropolitan District and a point outside the Metropolitan District if:

(i) The majority of passengers transported over that regular route are transported between points within the Metropolitan District; and

(ii) That regular route is authorized by a certificate of public convenience and necessity issued by the Interstate Commerce Commission; and

(b) The rates, charges, regulations, and minimum insurance requirements for taxicabs and other vehicles that perform a bona fide taxicab service where the taxicab or other vehicle:

- (i) Has a seating capacity of 9 persons or less, including the driver; and
- (ii) Provides transportation from one signatory to another within the Metropolitan District.

2. Solely for the purposes of this section and section 18 of this Article:

- (a) The Metropolitan District shall include that portion of Anne Arundel County, Maryland, occupied by the Baltimore-Washington International Airport; and

- (b) Jurisdiction of the Commission shall apply to taxicab rates, charges, regulations, and minimum insurance requirements for interstate transportation between the Baltimore-Washington International Airport and other points in the Metropolitan District, unless conducted by a taxicab licensed by the State of Maryland or a political subdivision of the State of Maryland, or operated under a contract with the State of Maryland.

3. Excluded from the application of this Act are:

- (a) Transportation by water, air, or rail;

- (b) Transportation performed by the federal government, the signatories to this Compact, or any political subdivision of the signatories;

- (c) Transportation performed by the Washington Metropolitan Area Transit Authority;

- (d) Transportation by a motor vehicle employed solely in transporting teachers and school children through grade 12 to or from public or private schools;

- (e) Transportation performed over a regular route between a point in the Metropolitan District and a point outside the Metropolitan District, including transportation between those points on the regular route that are within the Metropolitan District, if:

- (i) The majority of passengers transported over the regular route are not transported between points in the Metropolitan District; and

- (ii) The regular route is authorized by a certificate of public convenience and necessity issued by the Interstate Commerce Commission;

- (f) Matters other than rates, charges, regulations, and minimum insurance requirements relating to vehicles and operations described in Sections 1(b) and 2 of this Article;

- (g) Transportation solely with the Commonwealth of Virginia and the activities of persons performing that transportation; and

- (h) The exercise of any power of the discharge of any duty conferred or imposed upon the State Corporation Commission of Virginia by the Virginia Constitution.

#### Definitions

4. In this Act the following words have the meanings indicated.

- (a) "Carrier" means a person who engages in the transportation of passengers by motor vehicle or other form or means of hire.

- (b) "Motor vehicle" means an automobile, bus, or other vehicle propelled or drawn by mechanical or electrical power on the public streets or highways of the Metropolitan District and used for the transportation of passengers.

(c) "Person" means an individual, firm, copartnership, corporation, company, association or joint stock association, and includes a trustee, receiver, assignee, or personal representative of them.

(d) "Taxicab" means a motor vehicle for hire (other than a vehicle operated under a Certificate of Authority issued by the Commission) having a seating capacity of 9 persons or less, including the driver, used to accept or solicit passengers along the public streets for transportation.

#### General Duties of Carriers

5. Each authorized carrier shall

(a) Provide safe and adequate transportation service, equipment, and facilities; and

(b) Observe and enforce Commission regulations established under this Act.

#### Certificates of Authority

6.(a) A person may not engage in transportation subject to this Act unless there is in force a "Certificate of Authority" issued by the Commission authorizing the person to engage in that transportation.

(b) On the effective date of this Act a person engaged in transportation subject to this Act under an existing "Certificate of Public Convenience and Necessity" or order issued by the Commission shall be issued a new "Certificate of Authority" within 120 days after the effective date of this amendment.

(c)(i) Pending issuance of the new Certificate of Authority, the continuance of operations shall be permitted under an existing certificate or order issued by the Commission which will continue in effect on the effective date of this Act.

(ii) The operations described in paragraph (i) of this subsection shall be performed according to the rates, regulations, and practices of the certificate holder on file with the Commission on March 16, 1989.

7.(a) When an application is made under this section for a Certificate of Authority, the Commission shall issue a certificate to any qualified applicant, authorizing all or any part of the transportation covered by the application, if it finds that:

(i) The applicant is fit, willing, and able to perform that transportation properly, conform to the provisions of this Act, and conform to the rules, regulations, and requirements of the Commission; and

(ii) That the transportation is consistent with the public interest.

(b) If the Commission finds that the requirements of subsection (a) of this section have not been met, the application shall be denied by the Commission.

(c) The Commission shall act upon applications under this Act as soon as possible.

(d) The Commission may attach to the issuance of a certificate and to the exercise of the rights granted under it any term, condition, or limitation that is consistent with the public interest.

(e) A term, condition, or limitation imposed by the Commission may not restrict the right of the carrier to add to equipment and facilities over the

routes or within the territory specified in the certificate, as business development and public demand may require.

(f) A person applying for or holding a Certificate of Authority shall comply with Commission regulations regarding maintenance of a surety bond, insurance policy, self-insurance qualification, or other security or agreement in an amount that the Commission may require to pay any final judgment against a carrier for bodily injury or death of a person, or for loss or damage to property of another, resulting from the operation, maintenance, or use of a motor vehicle or other equipment in performing transportation subject to this Act.

(g) A Certificate of Authority is not valid unless the holder is in compliance with the insurance requirements of the Commission.

8. Application to the Commission for a certificate under this Act shall be:

- (a) Made in writing;
- (b) Verified; and

(c) In the form and with the information that the Commission regulations require.

9.(a) A Certificate of Authority issued by the Commission shall specify the route over which a regularly scheduled commuter service or other regular-route service will operate.

(b) A certificate issued by the Commission authorizing irregular-route service shall be coextensive with the Metropolitan District.

(c) A carrier subject to this Act may not provide any passenger transportation for hire on an individual fare paying basis in competition with an existing, scheduled, regular-route, passenger transportation service performed by, or under a contract with, the federal government, a signatory to the Compact, a political subdivision of a signatory, or the Washington Metropolitan Area Transit Authority, notwithstanding any Certificate of Authority.

(d) A certificate for the transportation of passengers may include authority to transport newspapers, passenger baggage, express, or mail in the same vehicle, or to transport passenger baggage in a separate vehicle.

10.(a) Certificates shall be effective from the date specified on them and shall remain in effect until amended, suspended, or terminated.

(b) Upon application by the holder of a certificate, the Commission may suspend, amend, or terminate the Certificate of Authority.

(c) Upon complaint or the Commission's own initiative, the Commission, after notice and hearing, may suspend or revoke all or part of any Certificate of Authority for willful failure to comply with:

- (i) A provision of this Act;
- (ii) An order, rule, or regulation of the Commission; or
- (iii) A term, condition, or limitation of the certificate.

(d) The Commission may direct that a carrier cease an operation conducted under a certificate if the Commission finds the operation, after notice and hearing, to be inconsistent with the public interest.

11.(a) A person may not transfer a Certificate of Authority unless the Commission approves the transfer as consistent with the public interest.

(b) A person other than the person to whom an operating authority is issued by the Commission may not lease, rent, or otherwise use that operating authority.

12.(a) A carrier may not abandon any scheduled commuter service operated under a Certificate of Authority issued to the carrier under this Act, unless the Commission authorizes the carrier to do so by a Commission order.

(b) Upon application by a carrier, the Commission shall issue an order, after notice and hearing, if it finds that abandonment of the route is consistent with the public interest.

(c) The Commission, by regulation or otherwise, may authorize the temporary suspension of a route if it is consistent with the public interest.

(d) As long as the carrier has an opportunity to earn a reasonable return in all its operations, the fact that a carrier is operating a service at a loss will not, of itself, determine the question of whether abandonment of service is consistent with the public interest.

13.(a) When the Commission finds that there is an immediate need for service that is not available, the Commission may grant temporary authority for that service without a hearing or other proceeding up to a maximum of 180 consecutive days, unless suspended or revoked for good cause.

(b) A grant of temporary authority does not create any presumption that permanent authority will be granted at a later date.

#### Rates and Tariffs

14.(a) Each carrier shall file with the Commission, publish, and keep available for public inspection tariffs showing:

(i) Fixed-rates and fixed-fares for transportation subject to this Act; and

(ii) Practices and regulations including those affecting rates and fares, required by the Commission.

(b) Each effective tariff shall:

(i) Remain in effect for at least 60 days from its effective date, unless the Commission orders otherwise; and

(ii) Be published and kept available for public inspection in the form and manner prescribed by the Commission.

(c) A carrier may not charge a rate or fare for transportation subject to this Act other than the applicable rate or fare specified in a tariff filed by the carrier under this Act and in effect at the time.

15.(a) A carrier proposing to change a rate, fare, regulation, or practice specified in an effective tariff shall file a tariff showing the change in the form and manner, and with the information, jurisdiction, notice, and supporting material prescribed by the Commission.

(b) Each tariff filed under Subsection (a) of this Section shall state a date on which the tariff shall take effect, which shall be at least 7 calendar days after the date on which the tariff is filed, unless the Commission orders an earlier effective date or rejects the tariff.

(c)(i) A tariff filed for approval with the Commission may be refused acceptance for filing if it is not consistent with this Act and Commission regulations; and

(ii) A tariff refused for filing shall be void.

16.(a) The Commission may hold a hearing upon complaint or upon the Commission's own initiative after reasonable notice to determine whether a

rate, fare, regulation, or practice relating to a tariff is unjust, unreasonable, unduly discriminatory, or unduly preferential between classes of riders or between locations within the Metropolitan District.

(b) Within 120 days of the hearing, the Commission shall pass an order prescribing the lawful rate, fare, regulation, or practice, or affirming the tariff.

#### Through Routes, Joint Fares

17. With the approval of the Commission, any carrier subject to this Act may establish through routes and joint fares with any other lawfully authorized carrier.

#### Taxicab Fares

18.(a) The Commission shall prescribe reasonable rates for transportation by taxicab, only when:

(i) The trip is between a point in the jurisdiction of one signatory and a point in the jurisdiction of another signatory; and

(ii) Both points are within the Metropolitan District.

(b) The fare or charge for taxicab transportation may be calculated on a mileage basis, a zone basis, or on any other basis approved by the Commission.

(c) The Commission may not require the installation of a taximeter in any taxicab when a taximeter is not permitted or required by the jurisdiction licensing and otherwise the operation and service of the taxicab.

(d) A person licensed by a signatory to own or operate a taxicab shall comply with Commission regulations regarding maintenance of a surety bond, insurance policy, self-insurance qualification, or other security or agreement in an amount that the Commission may require to pay a final judgment for bodily injury or death of a person, or for loss or damage to property of another, resulting from the operation, maintenance, or use of a taxicab in performing transportation subject to this Act.

#### ARTICLE XII

#### Accounts, Records, and Reports

1.(a) The Commission may prescribe that any carrier subject to this Act:

(i) Submit special reports and annual or other periodic reports;

(ii) Make reports in a form and manner required by the Commission;

(iii) Provide a detailed answer to any question about which the Commission requires information;

(iv) Submit reports and answers under oaths; and

(v) Keep accounts, records, and memoranda of its activity, including movement of traffic and receipt and expenditure of money in a form and for a period required by the Commission.

(b) The Commission shall have access at all times to the accounts, records, memoranda, lands, buildings, and equipment of any carrier for inspection purposes.

(c) This section shall apply to any person controlling, controlled by, or under common control with a carrier subject to this Act, whether or not that person otherwise is subject to this Act.



(d) A carrier that has its principal office outside of the Metropolitan District and operates both inside and outside of the Metropolitan District may keep all accounts, records, and memoranda at its principal office, but the carrier shall produce those materials before the Commission when directed by the Commission.

(e) This section does not relieve a carrier from recordkeeping or reporting obligations imposed by a state or federal agency or regulatory commission for transportation service rendered outside the Metropolitan District.

### Issuance of Securities

2. This act does not impair any authority of the federal government and the signatories to regulate the issuance of securities by a carrier.

### Consolidations, Mergers, and Acquisition of Control

3.(a) A carrier or any person controlling, controlled by, or under control with a carrier shall obtain Commission approval to:

(i) Consolidate or merge any part of the ownership, management, or operation of its property or franchise with a carrier that operates in the Metropolitan District;

(ii) Purchase, lease, or contract to operate a substantial part of the property or franchise of another carrier that operates in the Metropolitan District; or

(iii) Acquire control of another carrier that operates in the Metropolitan District through ownership of its stock or other means.

(b) Application for Commission approval of a transaction under this Section shall be made in the form and with the information that the regulations of the Commission require.

(c) If the Commission finds, after notice and hearing, that the proposed transaction is consistent with the public interest, the Commission shall pass an order authorizing the transaction.

(d) Pending determination of an application filed under this section, the Commission may grant "temporary approval" without a hearing or other proceeding up to a maximum of 180 consecutive days if the Commission determines that grant to be consistent with the public interest.

## ARTICLE XIII

### Investigation by the Commission and Complaints

1.(a) A person may file a written complaint with the Commission regarding anything done or omitted by a person in violation of a provision of this Act, or in violation of a requirement established under it.

(b)(i) If the respondent does not satisfy the complaint and the facts suggest that there are reasonable grounds for an investigation, the Commission shall investigate the matter.

(ii) If the Commission determines that a complaint does not state facts which warrant action, the Commission may dismiss the complaint without hearing.

(iii) The Commission shall notify a respondent that a complaint has been filed at least 10 days before a hearing is set on the complaint.

(c) The Commission may investigate on its own motion a fact, condition, practice, or matter to:

(i) Determine whether a person has violated or will violate a provision of this Act or a rule, regulation, or order;

(ii) Enforce the provisions of this Act or prescribe or enforce rules or regulations under it; or

(iii) Obtain information to recommend further legislation.

(d) If, after hearing, the Commission finds that a respondent has violated a provision of this Act or any requirement established under it, the Commission shall:

(i) Issue an order to compel the respondent to comply with this Act; and

(ii) Effect other just and reasonable relief.

(e) For the purpose of an investigation or other proceeding under this Act, the Commission may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of books, papers, correspondence, memoranda, contracts, agreements, or other records or evidence which the Commission considers relevant to the inquiry.

### Hearings; Rules of Procedure

2.(a) Hearings under this Act shall be held before the Commission, and records shall be kept.

(b) Rules of practice and procedure adopted by the Commission shall govern all hearings, investigations, and proceedings under this Act, but the Commission may apply the technical rules of evidence when appropriate.

### Administrative Powers of Commission; Rules, Regulations, and Orders

3.(a) The Commission shall perform any act, and prescribe, issue, make, amend, or rescind any order, rule, or regulation that it finds necessary to carry out the provisions of this Act.

(b) The rules and regulations of the Commission shall prescribe the form of any statement, declaration, application, or report filed with the Commission, the information it shall contain, and the time of filing.

(c) The rules and regulations of the Commission shall be effective 30 days after publication in the manner which the Commission shall prescribe, unless a different date is specified.

(d) Orders of the Commission shall be effective on the date and in the manner which the Commission shall prescribe.

(e) For the purposes of its rules and regulations, the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for them.

(f) Commission rules and regulations shall be available for public inspection during reasonable business hours.

## Reconsideration of Orders

4.(a) A party of a proceeding affected by a final order or decision of the Commission may file within 30 days of its publication a written application requesting Commission reconsideration of the matter involved, and stating specifically the errors claimed as grounds for the reconsideration.

(b) The Commission shall grant or deny the application within 30 days after it has been filed.

(c) If the Commission does not grant or deny the application by order within 30 days, the application shall be deemed denied.

(d) If the application is granted, the Commission shall rescind, modify, or affirm its order or decision with or without a hearing, after giving notice to all parties.

(e) Filing an application for reconsideration may not act as a stay upon the execution of a Commission order or decision, or any part of it unless the Commission orders otherwise.

(f) An appeal may not be taken from an order or decision of the Commission until an application for reconsideration has been filed and determined.

(g) Only an error specified as a ground for reconsideration may be used as a ground for judicial review.

## Judicial Review

5.(a) Any party to a proceeding under this Act may obtain a review of the Commission's order in the United States Court of Appeals for the Fourth Circuit, or in the United States Court of Appeals for the District of Columbia Circuit, by filing within 60 days after Commission determination of an application for reconsideration, a written petition praying that the order of the Commission be modified or set aside.

(b) A copy of the petition shall be delivered to the office of the Commission and the Commission shall certify and file with the court a transcript of the record upon which the Commission order was entered.

(c) The Court shall have exclusive jurisdiction to affirm, modify, remand for reconsideration, or set aside the Commission's order.

(d) The court's judgment shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in Title 28 U.S.C. sections 1254 and 2350.

(e) The commencement of proceedings under subsection (a) of this section may not operate as a stay of the Commission's order unless specifically ordered by the court.

(f) The Commission and its members, officers, agents, employees, or representatives are not liable to suit or action or for any judgment or decree for damages, loss, or injury resulting from action taken under the Act, nor required in any case arising or any appeal taken under this Act to make a deposit, pay costs, or pay for service to the clerks of a court or to the marshal of the United States or give a supersedeas bond or security for damages.

### Enforcement of Act; Penalty for Violations

6.(a) Whenever the Commission determines that a person is engaged or will engage in an act or practice which violates a provision of this Act or a rule, regulation, or order under it, the Commission may bring an action in the United States District Court in the district in which the person resides or conducts business or in which the violation occurred to enjoin the act or practice and to enforce compliance with this Act or a rule, regulation, or order under it.

(b) If the court makes a determination under subsection (a) of this section, that a person has violated or will violate this Act or a rule, regulation, or order under the Act, the court shall grant a permanent or temporary injunction or decree or restraining order without bond.

(c) Upon application of the Commission, the United States District Court for the district in which the person resides or conducts business, or in which the violation occurred, shall have jurisdiction to issue an order directing that person to comply with the provisions of this Act or a rule, regulation, or order of the Commission under it, and to effect other just and reasonable relief.

(d) The Commission may employ attorneys necessary for:

(i) The conduct of its work;

(ii) Representation of the public interest in Commission investigations, cases, or proceedings on the Commission's own initiative or upon complaint; or

(iii) Representation of the Commission in any court case.

(e) The expenses of employing an attorney shall be paid out of the funds of the Commission unless otherwise directed by the court.

(f)(i) A person who knowingly or willfully violates a provision of this Act, or a rule, regulation, requirement, or order issued under it, or a term or condition of a certificate shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation.

(ii) Each day of the violation shall constitute a separate violation.

(iii) Civil forfeitures shall be paid to the Commission with interest as assessed by the court.

(iv) The Commission shall pay to each signatory a share of the civil forfeitures and interest equal to the proportional share of the Commission's expenses borne by each signatory in the fiscal year during which the civil forfeiture is collected by the Commission.

## ARTICLE XIV

### Expenses of Investigations and Other Proceedings

1.(a) A carrier shall bear all expenses of an investigation or other proceeding conducted by the Commission concerning the carrier, and all litigation expenses, including appeals, arising from an investigation or other proceeding.

(b) When the Commission initiates an investigation or other proceeding, the Commission may require the carrier to pay to the Commission a sum estimated to cover the expenses that will be incurred under this section.

(c) Money paid by the carrier shall be deposited in the name and to the credit of the Commission, in any bank or other depository located in the Metropolitan District designated by the Commission, and the Commission may disburse that money to defray expenses of the investigation, proceeding, or litigation in question.

(d) The Commission shall return to the carrier any unexpended balance remaining after payment of expenses.

### Applicability of Other Laws

2.(a) The applicability of each law, rule, regulation, or order of a signatory relating to transportation subject to this Act shall be suspended on the effective date of this Act.

(b) The provisions of subsection (a) of this section do not apply to a law of a signatory relating to inspection of equipment and facilities.

(c) During the existence of the Compact, the jurisdiction of the Interstate Compact Commission is suspended to the extent it is in conflict with the provisions of this Act.

### Existing Rules, Regulations, Orders, and Decisions

3. All Commission rules, regulations, orders, or decisions that are in force on the effective date of this Act shall remain in effect and be enforceable under this Act, unless otherwise provided by the Commission.

### Pending Actions or Proceedings

4. A suit, action, or other judicial proceeding commenced prior to the effective date of this Act by or against the Commission is not affected by the enactment of this Act and shall be prosecuted and determined under the law applicable at the time the proceeding was commenced.

### Annual Report of the Commission

5. The Commission shall make an annual report for each fiscal year ending June 30, to the Governor of Virginia and the Governor of Maryland, and to the Mayor of the District of Columbia as soon as practicable after June 30, but no later than the first day of January of each year, which may contain, in addition to a report of the work performed under this Act, other information and recommendations concerning passenger transportation within the Metropolitan District as the Commission considers advisable.

(Sept. 15, 1960, 74 Stat. 1031, Pub. L. 86-794, § 1; Oct. 9, 1962, 76 Stat. 765, Pub. L. 87-767, § 1; 1973 Ed., § 1-1410; Mar. 16, 1989, D.C. Law 7-224, §§ 2, 3, 36 DCR 575; June 6, 1996, D.C. Law 11-138, § 3, 43 DCR 2142.)

**Cross references.** — As to equal access to public conveyances for blind and physically disabled persons, see § 6-1702.

**Section references.** — This section is referred to in §§ 1-2415, 1-2421, and 1-2431.

**Legislative history of Law 7-244.** — Law

7-224 was introduced in Council and assigned Bill No. 7-573, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was

assigned Act No. 7-299 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 11-138.** — Law 11-138, the "Washington Metropolitan Area Transit Regulation Compact Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-443, which was referred to the Committee on Public Services and Regional Authorities. The Bill was adopted on first and second readings on February 6, 1996, and April 2, 1996, respectively. Signed by the Mayor on April 15, 1996, it was assigned Act No. 11-253 and transmitted to both Houses of Congress for its review. D.C. Law 11-138 became effective on June 6, 1996.

**Effective date.** — Section 4 of D.C. Law 7-224 provided that this act shall not take effect until a similar act is passed by the Commonwealth of Virginia and the State of Maryland; the General Assembly of the Commonwealth of Virginia and the General Assembly of the State of Maryland are requested to concur in this act of the Council of the District of Columbia by the passage of a similar act; the District of Columbia shall notify the appropriate officials of the Commonwealth of Virginia and the State of Maryland of the passage of this act; and upon the concurrence of this act by the Commonwealth of Virginia and the State of Maryland, the Mayor of the District of Columbia shall issue a proclamation declaring this act valid and effective.

This act became effective on April 7, 1988, pursuant to Public Law 100-285 (102 Stat. 82).

**Effective date of §§ 2, 3, and 4 of Law 11-138.** — Section 5 of D.C. Law 11-138 provided that §§ 2, 3, and 4 shall take effect after those provisions have been adopted by the District of Columbia, the State of Maryland, and the Commonwealth of Virginia in a manner provided by law therefor, and have received the consent of Congress.

**Adoption of amendments subject to Congressional consent.** — Pursuant to § 2 of D.C. Law 11-138, the District of Columbia adopted amendments to Article I of Title I and Articles III, VI, XIII, XIV, and XVI of Title III of the Washington Metropolitan Area Transit Regulation Compact as set forth in §§ 2 and 3 of the act, subject to the consent of Congress thereto and the fulfillment of the conditions in §§ 5 and 6 of the act.

**Washington Metropolitan Area Transit Commission is not a federal agency** or instrumentality but instead is comparable to a state regulatory agency that satisfies the need to coordinate the regulatory agencies of 3 political jurisdictions. *Executive Limousine Serv., Inc. v. Adams*, 450 F. Supp. 579 (D.D.C. 1978), *rev'd* on other grounds, 628 F.2d 115 (D.C. Cir. 1980); *Executive Limousine Serv., Inc. v. Goldschmidt*, 628 F.2d 115 (D.C. Cir. 1980).

**Jurisdiction conflicting with Commission circumscribed.** — The overall scheme of the Washington Metropolitan Area Transit Regulations Compact suggests that exercise of jurisdiction which might conflict with the jurisdiction of the Commission is to be sharply circumscribed. *Democratic Cent. Comm. v. District of Columbia Transit Sys.*, 459 F.2d 1178 (D.C. Cir. 1972).

**Explanation for change required when Commission announces new conclusion.**

— The Commission cannot replace its conclusion that it lacks jurisdiction over incidental special and charter transportation services, as expressed in an order that had been in effect for 12 years, with a different view, unless the announcement of that different view is accompanied by an explanation of the Commission's reasons for making the change. *Baltimore & A.R.R. v. Washington Metro. Area Transit Comm'n*, 642 F.2d 1365 (D.C. Cir. 1980).

**Res judicata does not bind Commission to follow interpretations made in order dismissing application without prejudice,** since such an order allows renewal of the application if a subsequent Commission determination of its jurisdiction makes renewal necessary, thereby leaving open the possibility that a different determination of jurisdiction might be made in the future. *Baltimore & A.R.R. v. Washington Metro. Area Transit Comm'n*, 642 F.2d 1365 (D.C. Cir. 1980).

**Commission has jurisdiction over sightseeing bus tours.** — Nothing in this section strips the Washington Metropolitan Area Transit Commission of its jurisdiction simply because those providing transportation for hire are also involved in another business such as a sightseeing operation. *Banner Sightseeing Co. v. Washington Metro. Area Transit Comm'n*, 731 F.2d 993 (D.C. Cir. 1984).

**Authority to issue interim orders.** — The Washington Metropolitan Area Transit Commission has general authority to issue interim orders. *Payne v. Washington Metro. Area Transit Comm'n*, 415 F.2d 901 (D.C. Cir. 1969).

The Commission, upon finding that existing fares were unjust, acted properly in ordering a temporary fare increase. *Democratic Cent. Comm. v. Washington Metro. Area Transit Comm'n*, 485 F.2d 847 (D.C. Cir. 1973).

**Authority to modify rates.** — Under the Compact, the Commission has the authority to modify existing rates upon making a finding that existing rates are unjust and unreasonable. *Payne v. Washington Metro. Area Transit Comm'n*, 415 F.2d 901 (D.C. Cir. 1969).

**But not retroactively.** — The Commission possesses no authority to fix rates for the past. An order prescribing lawful fares to be charged by public utility, being essentially legislative in character, ordinarily speaks only for the future. *Williams v. Washington Metro. Area Transit*

Comm'n, 415 F.2d 922 (D.C. Cir. 1968), cert. denied, 393 U.S. 1081, 89 S. Ct. 860, 21 L. Ed. 2d 773 (1969).

**Commission's responsibilities at rate-fixing proceeding.** — In a rate-fixing proceeding, the Commission is not at liberty to sit back and place responsibility for initiating or carrying through essential inquiries on private parties. *Democratic Cent. Comm. v. Washington Metro. Area Transit Comm'n*, 485 F.2d 886 (D.C. Cir. 1973), cert. denied, 415 U.S. 935, 94 S. Ct. 1451, 39 L. Ed. 2d 493 (1974).

In dealing with a bus company's application for leave to elevate its fares, the Commission is called upon to balance the interest of both the company and the public. *Powell v. Washington Metro. Area Transit Comm'n*, 485 F.2d 1080 (D.C. Cir. 1973).

**Considerations in fare adjustments.** — On the issue of fare adjustments, the Commission is required to consider not only the justness and reasonableness of fares charged or proposed to be charged by the carrier, in the sense of meeting overall revenue requirements, but also whether such fares are "unduly preferential or unduly discriminatory either between riders or sections of the Metropolitan District." *Payne v. Washington Metro. Area Transit Comm'n*, 415 F.2d 901 (D.C. Cir. 1969).

The Commission is required, in passing upon a rate application, to consider and weigh not only the interests of the company, including its right to a reasonable return on its investment, but also interests of the public, including the public's right to economical, efficient, and adequate transportation services. *District of Columbia Transit Sys. v. Washington Metro. Area Transit Comm'n*, 466 F.2d 394 (D.C. Cir.), cert. denied, 409 U.S. 1086, 93 S. Ct. 688, 34 L. Ed. 2d 673 (1972).

The carrier is entitled to revenues enabling provision of adequate and efficient transportation service, but only to the extent needed under honest, economical, and efficient management, and it is not entitled to a fare raise irrespective of the quality of its operation and service. *District of Columbia Transit Sys. v. Washington Metro. Area Transit Comm'n*, 466 F.2d 394 (D.C. Cir.), cert. denied, 409 U.S. 1086, 93 S. Ct. 688, 34 L. Ed. 2d 673 (1972).

In exercising its rate-making functions, the Commission is under an obligation to take into account any economy that the transit company could effect, and any that were probable from decreased ridership. *Democratic Cent. Comm. v. Washington Metro. Area Transit Comm'n*, 485 F.2d 847 (D.C. Cir. 1973).

Notwithstanding the likelihood that the transit company would be obligated to make substantial refunds under decisions affecting other fare orders, the Commission properly granted a temporary increase in fares to enable the transit company to operate at the break-

even point. *Democratic Cent. Comm. v. Washington Metro. Area Transit Comm'n*, 485 F.2d 847 (D.C. Cir. 1973).

Possible increased labor costs attributable to changes in the cost-of-living index are properly to be taken into account in establishing bus fares, whenever they can be predicted with reasonable accuracy. *District of Columbia Transit Sys. v. Washington Metro. Area Transit Comm'n*, 485 F.2d 881 (D.C. Cir. 1973).

The Commission should investigate the extent to which the transit company would have been able to make profit if there were no regulation at all, and the extent to which the company could earn a sufficient return to make it an attractive investment at any level of fares which could have been deemed reasonable. *Democratic Cent. Comm. v. Washington Metro. Area Transit Comm'n*, 485 F.2d 886 (D.C. Cir. 1973), cert. denied, 415 U.S. 935, 94 S. Ct. 1451, 39 L. Ed. 2d 493 (1974).

The Commission is under an affirmative duty to give due consideration to the efficiency of the transit company's management and could not fail to investigate such management because of failure of formal parties to produce evidence of bad management. *Democratic Cent. Comm. v. Washington Metro. Area Transit Comm'n*, 485 F.2d 886 (D.C. Cir. 1973), cert. denied, 415 U.S. 935, 94 S. Ct. 1451, 39 L. Ed. 2d 493 (1974).

In considering bus company's application for rate increase, it is the Commission's responsibility to minimize the impact of higher fares on bus company's patrons. *Powell v. Washington Metro. Area Transit Comm'n*, 485 F.2d 1080 (D.C. Cir. 1972).

**Reasonableness of fare** entails a consideration of the value of the service to the riders, the numbers who can use the service at the fare set, and the burden of those fares on the riding public or important segments of it. *Democratic Cent. Comm. v. Washington Metro. Area Transit Comm'n*, 485 F.2d 886 (D.C. Cir. 1973), cert. denied, 415 U.S. 935, 94 S. Ct. 1451, 39 L. Ed. 2d 493 (1974).

It cannot be said that any transit fare is unreasonable no matter how high it was or how few riders were able to pay fare, so long as the transit company is able to show a technical excess of gross income over expenses. *Democratic Cent. Comm. v. Washington Metro. Area Transit Comm'n*, 485 F.2d 886 (D.C. Cir. 1973), cert. denied, 415 U.S. 935, 94 S. Ct. 1451, 39 L. Ed. 2d 493 (1974).

**Economical transit operation.** — In appraising whether a transit operation is economical, account must be taken of the relationship between the level of fares and the worth of the services rendered to the riders. *Democratic Cent. Comm. v. Washington Metro. Area Transit Comm'n*, 485 F.2d 886 (D.C. Cir. 1973), cert. denied, 415 U.S. 935, 94 S. Ct. 1451, 39 L. Ed. 2d 493 (1974).

A transit service is not economical simply because it is honest, mechanically efficient, and as thrifty as it can be under the circumstances. *Democratic Cent. Comm. v. Washington Metro. Area Transit Comm'n*, 485 F.2d 886 (D.C. Cir. 1973), cert. denied, 415 U.S. 935, 94 S. Ct. 1451, 39 L. Ed. 2d 493 (1974).

A transit system is not economical if the charge for the service must be set at inordinately high levels in order for the transit company to obtain profit. *Democratic Cent. Comm. v. Washington Metro. Area Transit Comm'n*, 485 F.2d 886 (D.C. Cir. 1973), cert. denied, 415 U.S. 935, 94 S. Ct. 1451, 39 L. Ed. 2d 493 (1974).

**Rate of return on equity.** — The bus company's debt-equity ratio is a factor to be taken into account in ascertaining a fair rate of return on equity, in connection with an application for rate increases. *Powell v. Washington Metro. Area Transit Comm'n*, 485 F.2d 1080 (D.C. Cir. 1973).

One of the factors which may be taken into consideration in calculating the rate of return to a public utility is the degree of risk to which its capital is put. *Powell v. Washington Metro. Area Transit Comm'n*, 485 F.2d 1080 (D.C. Cir. 1973).

A rate of return on equity of 5.33 percent allowed to bus company in connection with approved rate increases is not immodest. *Powell v. Washington Metro. Area Transit Comm'n*, 485 F.2d 1080 (D.C. Cir. 1973).

**Automatic stay on filing for reconsideration.** — Under provisions of the Compact for automatic stay of order or decision of Commission upon the filing of an application for reconsideration until final action, the stay of an order by filing of application for its reconsideration is automatic, immediate, and mandatory. *Black United Front v. Washington Metro. Area Transit Comm'n*, 436 F.2d 227 (D.C. Cir. 1970).

**But no stay pending judicial review.** — A Commission order authorizing an increase in bus fares would not be stayed pending review, in view of nature of showing as to the ultimate success on merits, the company's financial condition, the nature of injury that might result from stay as compared to injury from fare increase, and public interest considerations. *Democratic Cent. Comm. v. Washington Metro. Area Transit Comm'n*, 436 F.2d 233 (D.C. Cir. 1970).

**Restitution for invalid rate change.** — Where Commission's rate-making order is declared invalid, restitution is the proper remedy. *Democratic Cent. Comm. v. Washington Metro. Area Transit Comm'n*, 485 F.2d 886 (D.C. Cir. 1973), cert. denied, 415 U.S. 935, 94 S. Ct. 1451, 39 L. Ed. 2d 493 (1974).

The transfer of a transit company from a private to a public company does not affect the private company's obligation to make a refund

under an invalid rate-fixing order. *Democratic Cent. Comm. v. Washington Metro. Area Transit Comm'n*, 485 F.2d 886 (D.C. Cir. 1973), cert. denied, 415 U.S. 935, 94 S. Ct. 1451, 39 L. Ed. 2d 493 (1974).

In view of defects in rate orders issued by the Commission, and the fact that there had been a public takeover of the transit company's transportation assets and operations, restitution was an appropriate avenue of relief. *Democratic Cent. Comm. v. Washington Metro. Area Transit Comm'n*, 485 F.2d 886 (D.C. Cir. 1973), cert. denied, 415 U.S. 935, 94 S. Ct. 1451, 39 L. Ed. 2d 493 (1974).

**Fare increase contingent on service improvement.** — The Commission did not exceed limits of due process when it made a fare raise contingent upon steps calculated to rectify serious deficiencies in the service which the carrier furnished bus-riding public, notwithstanding carrier's claim that at existing fares, it would be operating at a substantial loss. *District of Columbia Transit Sys. v. Washington Metro. Area Transit Comm'n*, 466 F.2d 394 (D.C. Cir.), cert. denied, 409 U.S. 1086, 93 S. Ct. 688, 34 L. Ed. 2d 673 (1972).

**Full and complete findings not necessary for interim rate increase.** — In making an interim rate increase, the Commission is not required to make the full and complete findings as to margin of return and fare structure that must accompany an exercise of its authority to prescribe permanent rates, but its discretion must be exercised rationally, and it may not act without making relevant findings, supported by the record, to sustain its action. *Payne v. Washington Metro. Area Transit Comm'n*, 415 F.2d 901 (D.C. Cir. 1969).

In fashioning interim fare orders, the Commission was not required to make full and complete findings that must accompany exercise of its authority to prescribe permanent rates. *Democratic Cent. Comm. v. Washington Metro. Area Transit Comm'n*, 485 F.2d 847 (D.C. Cir. 1973).

**No authority to regulate conduct of passengers.** — The Washington Metropolitan Area Transit Regulation Compact does not have authority to promulgate an order regulating conduct of bus passengers. *District of Columbia v. Jones*, App. D.C., 287 A.2d 816 (1972).

**Independent transportation services may be combined.** — Under the Compact, independently authorized transportation services may be joined so that a more convenient service can be provided to passengers who would otherwise have to buy several tickets and devise their own interconnections, and so that a more efficient cost structure can be available to carriers that would otherwise have to duplicate cost items, but a through route service can never be a cover for operations which in fact exceed the individual certificate



authorities of one or both carriers. *District of Columbia Transit Sys. v. Washington Metro. Area Transit Comm'n*, 429 F.2d 197 (D.C. Cir. 1970).

Under the Compact, a certificate of public convenience and necessity is necessary for the underlying services sought to be availed of to create a through route service by 2 bus companies, and if the Commission has reason to doubt the adequacy of underlying certificate authority to support the through route service, it can suspend the joint tariff and initiate an investigation of that adequacy. *District of Columbia Transit Sys. v. Washington Metro. Area Transit Comm'n*, 429 F.2d 197 (D.C. Cir. 1970).

**Through routes.** — Under the Compact allowing the Commission to establish a reasonable division of joint fares among interconnecting carriers whenever it finds proposed or existing division to be unreasonable, the Commission has the power to prevent any undue subsidization of 1 carrier by another carrier with which it is establishing a through route service. *District of Columbia Transit Sys. v. Washington Metro. Area Transit Comm'n*, 429 F.2d 197 (D.C. Cir. 1970).

The Commission may, in appropriate cases, compel 1 party to an existing through route service to establish additional through route agreements with other carriers, if that is their only means of developing competing through route services. *District of Columbia Transit Sys. v. Washington Metro. Area Transit Comm'n*, 429 F.2d 197 (D.C. Cir. 1970).

**Public convenience standard limitation on Commission's power to initiate through routes.** — Because the Compact declares any carrier's right to establish through routes and joint fares with other carriers and, whenever required by public convenience and necessity, invests the Commission with the power to direct establishment of a through route service upon complaint or upon its own initiative, the public convenience and necessity standard is a limitation on Commission's, as distinct from carriers', power to initiate through route service. *District of Columbia Transit Sys. v. Washington Metro. Area Transit Comm'n*, 429 F.2d 197 (D.C. Cir. 1970).

**Commission to make factual determinations relating to application for certificate.** — In processing an application for certificate of convenience and necessity to operate buses, the Commission is required to make factual determinations, not on the basis of legal technicalities, but on such things as absence of evasiveness and of deliberate and knowing disregard of the requirements of the law. *Holiday Tours, Inc. v. Washington Metro. Area Transit Comm'n*, 352 F.2d 672 (D.C. Cir. 1965).

**Convenience of passengers is not sole criterion for extension of routes in a manner competitively adverse to holder of certifi-**

cate granted prior to the Compact. *District of Columbia Transit Sys. v. Washington Metro. Area Transit Comm'n*, 376 F.2d 765 (D.C. Cir.), cert. denied, 389 U.S. 847, 88 S. Ct. 52, 19 L. Ed. 2d 115 (1967).

The Commission could not extend routes, in the District, of carriers which had, prior to the Compact, received authority from the Joint Board to traverse certain streets to terminal points, in a manner competitively adverse to holder of certificate issued prior to the Compact, without taking into account the limiting statutory conditions which involved a concept of public convenience and necessity far beyond that of carriers' passengers. *District of Columbia Transit Sys. v. Washington Metro. Area Transit Comm'n*, 376 F.2d 765 (D.C. Cir.), cert. denied, 389 U.S. 847, 88 S. Ct. 52, 19 L. Ed. 2d 115 (1967).

**Commission may not compel carrier to pursue application for certificate.** — The Commission, to which carrier applied for certificate while making simultaneous motion to dismiss on ground that its operation was exempt from regulation, could not, upon determining that the operation was not exempt, grant the motion and thus compel the carrier to pursue application, since the carrier might not wish to seek regulated operation. *Montgomery Charter Serv., Inc. v. Washington Metro. Area Transit Comm'n*, 302 F.2d 906 (D.C. Cir. 1962).

**Grandfather rights in Compact.** — Grandfather rights in the Compact expressly contemplated the issuance of certificates, without new or further proof of public convenience and necessity, to those "bona fide engaged in transportation" on the effective date of the statute. *District of Columbia Transit Sys. v. Washington Metro. Area Transit Comm'n*, 376 F.2d 765 (D.C. Cir.), cert. denied, 389 U.S. 847, 88 S. Ct. 52, 19 L. Ed. 2d 115 (1967).

**No exclusive and permanent monopolies.** — Transit operator existing prior to the Compact was given no exclusive and permanent monopolies, and the Commission could, with due observance of requirements of the statute and upon proper findings, grant certificate authority competitive with that held by the prior existing certificate holder. *District of Columbia Transit Sys. v. Washington Metro. Area Transit Comm'n*, 376 F.2d 765 (D.C. Cir.), cert. denied, 389 U.S. 847, 88 S. Ct. 52, 19 L. Ed. 2d 115 (1967).

**Financial burdens shared by farepayers and investors.** — Where the risk of loss of value of lands was unlikely, the farepayers had shouldered a significant financial onus with respect to such lands, and transit company investors benefited uniquely in their ownership of lands, farepayers were entitled to all appreciation in value of properties which the transit company transferred from operating to nonoperating status and which had appreciated in

value while in service. *Democratic Cent. Comm. v. Washington Metro. Area Transit Comm'n*, 485 F.2d 786 (D.C. Cir. 1973), cert. denied, 415 U.S. 935, 94 S. Ct. 1451, 39 L. Ed. 2d 493 (1974).

Capital gains realized on the disposition of depreciable assets while in service do not automatically flow to the transit company's investors, although extraordinary circumstances may enable them to share therein, and the transit company's farepayers have a protectible interest in such gains which extends to amount of depreciation which has been charged to farepayers, and may extend beyond. *Democratic Cent. Comm. v. Washington Metro. Area Transit Comm'n*, 485 F.2d 786 (D.C. Cir. 1973), cert. denied, 415 U.S. 935, 94 S. Ct. 1451, 39 L. Ed. 2d 493 (1974).

**Findings of the Commission are conclusive if supported by substantial evidence**, and it is not a valid objection that conflicts in the evidence might conceivably have been resolved differently, or other inferences drawn from the same record. *Payne v. Washington Metro. Area Transit Comm'n*, 415 F.2d 901 (D.C. Cir. 1969).

The Court of Appeals must sustain the findings of the Commission when they materialize as rational deductions grounded on substantial evidence in the record considered as a whole. *Williams v. Washington Metro. Area Transit Comm'n*, 415 F.2d 922 (D.C. Cir. 1968), cert. denied, 393 U.S. 1081, 89 S. Ct. 860, 21 L. Ed. 2d 773 (1969).

If the Commission has exercised its discretion rationally, has made findings supported by record, and has applied correct legal standards, it is of no import that conflicts in evidence might conceivably have been resolved differently or other inferences drawn from the same record. *District of Columbia Transit Sys. v. Washington Metro. Area Transit Comm'n*, 452 F.2d 1321 (D.C. Cir. 1971).

**Transportation to Dulles Airport.** — Congress intended that the Commission regulate the transportation of passengers from Dulles Airport. *Executive Limousine Serv., Inc. v. Goldschmidt*, 628 F.2d 115 (D.C. Cir. 1980).

The Federal Aviation Administration (FAA) may appear before the Commission to oppose

certification of additional carriers. However, under Congress' allocation of regulatory powers, the ultimate decision belongs to the Commission, and the FAA may not render that decision nugatory by refusing to contract with a certified carrier. *Executive Limousine Serv., Inc. v. Goldschmidt*, 628 F.2d 115 (D.C. Cir. 1980).

**Review of injunction against operation without certificate.** — The destruction of the business in its current form as a provider of bus tours, together with the absence of harm to other parties or the public interest from issuance of stay, militated in favor of the grant of a stay, pending appeal, of a permanent injunction restraining the operator of a tour service from operating a motor coach sight-seeing service without a certificate of public convenience and necessity. *Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977).

**Willful transportation for hire without certificate.** — In a prosecution for willfully, as a carrier, engaging in transportation for hire of persons by motor vehicle without first obtaining a certificate of public convenience and necessity, the evidence supported the finding that the arrangement between defendants and the licensed carrier constituted a lease, not a charter. *Holiday Tours, Inc. v. District of Columbia, App. D.C.*, 234 A.2d 179 (1967).

**Cited in** *Bootery, Inc. v. Washington Metro. Area Transit Auth.*, 326 F. Supp. 794 (D.D.C. 1971); *Powell v. Washington Metro. Area Transit Comm'n*, 466 F.2d 466 (D.C. Cir. 1972); *Bebchick v. Washington Metro. Area Transit Comm'n*, 485 F.2d 858 (D.C. Cir. 1973); *Otis Elevator Co. v. Washington Metro. Area Transit Auth.*, 432 F. Supp. 1089 (D.D.C. 1976); *Webb Tours, Inc. v. Washington Metro. Area Transit Comm'n*, 735 F.2d 599 (D.C. Cir. 1984); *Fields v. Washington Metro. Area Transit Auth.*, 743 F.2d 890 (D.C. Cir. 1984); *Christmas v. Washington Metro. Area Transit Auth.*, 621 F. Supp. 355 (D.D.C. 1985); *Keenan v. Washington Metro. Area Transit Auth.*, 643 F. Supp. 324 (D.D.C. 1986); *Hoban v. Washington Metro. Area Transit Auth.*, 841 F.2d 1157 (D.C. Cir. 1988); *Henderson v. Washington*, 120 WLR 713 (Super. Ct. 1992).

## § 1-2412. Congressional consent given to effectuate amendments to Compact.

The consent of Congress is hereby given to the State of Maryland and the Commonwealth of Virginia to effectuate the following amendments to the Compact, and the Mayor of the District of Columbia is authorized and directed to effectuate said amendments on behalf of the United States for the District of Columbia.

## ARTICLE I

There is hereby created the Washington Metropolitan Area Transit District, hereinafter referred to as Metropolitan District, which shall embrace the District of Columbia, the cities of Alexandria and Falls Church, the counties of Arlington and Fairfax, and political subdivisions of the State of Virginia located within those counties and that portion of Loudoun County, Virginia, occupied by the Dulles International Airport and the counties of Montgomery and Prince Georges, in the State of Maryland and political subdivisions of the State of Maryland located within said counties, and all other cities now or hereafter existing in Maryland or Virginia within the geographic area bounded by the other boundaries of the combined area of said counties, cities and airport.

## ARTICLE XII

## Transportation Covered

1.(a) This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District and to the persons engaged in rendering or performing such transportation service, except, —

(1) transportation by water;

(2) transportation by the Federal Government, the signatories hereto, or any political subdivision thereof;

(3) transportation by motor vehicles employed solely in transporting school children and teachers to or from public or private schools;

(4) transportation performed in the course of an operation over a regular route, between a point in the Metropolitan District and a point outside the Metropolitan District, including transportation between points on such regular route within the Metropolitan District as to interstate and foreign commerce, if authorized by certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission, and any carrier whose only transportation within the Metropolitan District is within this exemption shall not be deemed to be a carrier subject to the Compact; provided, however, if the primary function of a carrier's entire operations is the furnishing of mass transportation service within the Washington Metropolitan Area Transit District, then such operations in the Metropolitan District shall be subject to the jurisdiction of the Commission;

(5) transportation performed by a common carrier by railroad subject to Part I of the Interstate Commerce Act, as amended.

(b) The provisions of this Title II shall not apply to transportation as specified in this section solely within the Commonwealth of Virginia and to the activities of persons engaged in such transportation, nor shall any provision of this Title II be construed to infringe the exercise of any power or the discharge of any duties conferred or imposed upon the State Corporation Commission of the Commonwealth of Virginia by the Virginia Constitution.

(c) Notwithstanding the provisions of paragraph (a) of this section, this Act shall apply to taxicabs and other vehicles used in performing a bona fide

taxicab service having a seating capacity of eight passengers or less in addition to the driver thereof with respect only to (i) the rate or charges for transportation from one signatory to another within the confines of the Metropolitan District, and (ii) requirements for minimum insurance coverage.

### Annual Report of the Commission

24. The Commission shall make an annual report for each fiscal year ending June thirtieth, to the Governor of Virginia and the Governor of Maryland, and to the Board of Commissioners of the District of Columbia as soon as practicable after June thirtieth, but no later than the 1st day of January of each year, which shall contain, in addition to a report of the work performed under this Act, such other information and recommendations concerning passenger transportation within the Metropolitan District, as the Commission deems advisable.

(Oct. 9, 1962, 76 Stat. 765, Pub. L. 87-767, § 1; 1973 Ed., § 1-1410a.)

**Section references.** — This section is referred to in §§ 1-2421 and 1-2431.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**WMATC to regulate transportation of passengers to Dulles Airport.** — Congress,

in creating the Washington Metropolitan Area Transit Commission (WMATC) and in specifically extending the WMATC's transportation authority to include Dulles Airport, intended that the WMATC regulate the transportation of passengers from the airport. *Executive Limousine Serv., Inc. v. Goldschmidt*, 628 F.2d 115 (D.C. Cir. 1980).

It is for the Washington Metropolitan Area Transit Commission to certify the number of ground transportation carriers from Dulles that it thinks will best serve the public convenience and necessity. *Executive Limousine Serv., Inc. v. Goldschmidt*, 628 F.2d 115 (D.C. Cir. 1980).

**And has authority superior to FAA.** — The Federal Aviation Administration (FAA) may appear before the Washington Metropolitan Area Transit Commission (WMATC) to oppose certification of additional carriers. However, under Congress' allocation of regulatory powers, the ultimate decision belongs to the WMATC, and the FAA may not render that decision nugatory by refusing to contract with a certified carrier. *Executive Limousine Serv., Inc. v. Goldschmidt*, 628 F.2d 115 (D.C. Cir. 1980).

## § 1-2413. Duties of Mayor; appropriations authorized; Congressional approval required for Compact amendments.

The Mayor of the District of Columbia is authorized and directed to enter into and execute on behalf of the United States for the District of Columbia a Compact substantially as set forth above with the States of Virginia and Maryland and is further authorized and directed to carry out and effectuate the terms and provisions of said Compact, and there are hereby authorized to be appropriated such funds as are necessary to carry out the obligations of the

District of Columbia in accordance with the terms of the said Compact: Provided, that the said Mayor shall not adopt any amendment to the said Compact for the District of Columbia under the provisions of § 1 of Article IX of the Compact unless the said amendment has had the consent or approval of the Congress. (Sept. 15, 1960, 74 Stat. 1050, Pub. L. 86-794, § 2; 1973 Ed., § 1-1411.)

**Cross references.** — As to authority of Mayor to enter into agreements with Maryland and Virginia to develop a continuing transportation planning process for the National Capital region, see § 1-2401.

**References in text.** — The reference to “§ 1 of Article IX of the Compact,” found in the proviso, was made prior to the revision of the Compact. The information is now found in § 1 of Article VIII of the Compact.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

## § 1-2414. Effect of Compact on other laws.

Upon the effective date of the Compact and so long thereafter as the Compact remains effective, the applicability of the laws of the United States, and the rules, regulations, and orders promulgated thereunder, relating to or affecting transportation under the Compact and to the persons engaged therein, including those provisions of § 40-703(e), relating to the powers of the Public Service Commission of the District of Columbia and the Joint Board created under such section, is suspended, except as otherwise specified in the Compact, to the extent that such laws, rules, regulations, and orders are inconsistent with or in duplication of the provisions of the Compact: Provided, that upon the termination of the Compact, the suspension of such laws, rules, regulations, and orders, if not theretofore repealed, shall terminate and such laws, rules, regulations, and orders shall thereupon again become applicable and legally effective without further legislative or administrative action: Provided further, that nothing in this subchapter or in the Compact shall affect the normal and ordinary police powers of the signatories and of the political subdivisions thereof and of the Director of the National Park Service with respect to the regulation of vehicles, control of traffic and use of streets, highways, and other vehicular facilities: Provided further, that nothing in this subchapter or in the Compact consented to and approved hereby shall impair or affect the rights, duties, and obligations created by the Act of July 24, 1956 (70 Stat. 598, ch. 669), granting a franchise to D.C. Transit System, Inc.: Provided further, that the term “public interest” as used in § 3(c) of Article XII, Title II of the Compact shall be deemed to include, among other things, the interest of the carrier employees affected: And provided further, that nothing herein shall be deemed to render inapplicable any laws of the United States

providing benefits for the employees of any carrier subject to this Compact or relating to the wages, hours, and working conditions of employees of any carrier, or to collective bargaining between the carriers and said employees, or to the rights to self-organization, including, but not limited to, the Labor-Management Relations Act, 1947, as amended (29 U.S.C. § 141 et seq.), and the Fair Labor Standards Act, as amended (29 U.S.C. § 201 et seq.). Notwithstanding any provision of this section to the contrary, the jurisdiction of the Public Service Commission of the District of Columbia and of the Interstate Commerce Commission over all carriers and persons subject to the provisions of the Washington Metropolitan Area Transit Regulation Compact are hereby transferred, as and to the extent provided therein, to the Washington Metropolitan Area Transit Commission. (Sept. 15, 1960, 74 Stat. 1050, Pub. L. 86-794, § 3; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21; 1973 Ed., § 1-1412.)

**Cross references.** — As to cancellation of franchise of D.C. Transit System, Inc., see § 1-2471.

**Editor's notes.** — This section was enacted prior to revision of the Compact. References to specific sections of the Compact have been updated following revision of the Compact.

**Joint Board abolished.** — The Joint Board, referred to in the first sentence, was abolished by § 503(c) of Reorganization Plan No. 3 of 1967.

**Bus drivers entitled to benefits of Minimum Wage Act.** — Bus drivers who were engaged in interstate commerce and who regularly spent more than 50% of their work week in the District were entitled to benefits of District of Columbia Minimum Wage Act (§ 36-

201 et seq.). *Williams v. W.M.A. Transit Co.*, 472 F.2d 1258 (D.C. Cir. 1972).

**Compact did not affect regulatory authority of FAA.** — Congress' consent and approval to the Compact and the formation of the Washington Metropolitan Area Transit Commission did not impinge on the broad power given the Federal Aviation Administration under the Second Washington Airport Act (§ 7-1201 et seq.). *Executive Limousine Serv., Inc. v. Adams*, 450 F. Supp. 579 (D.D.C. 1978), rev'd on other grounds, 628 F.2d 115 (D.C. Cir. 1980).

**Cited in** *Office & Professional Employees Int'l Union, Local 2 v. Washington Metro. Area Transit Auth.*, 552 F. Supp. 622 (D.D.C. 1982), aff'd, 713 F.2d 865 (D.C. Cir. 1983).

## § 1-2415. Congressional consent conditioned on nonuse of Compact to break a lawful strike.

The consent and approval of Congress set forth in § 1-2411 is given on the express condition that § 13(a) of Article XI and § 3(d) of Article XII of such Compact shall not be used to break a lawful strike by the employees of any carrier authorized to provide service pursuant to such Compact. (Sept. 15, 1960, 74 Stat. 1050, Pub. L. 86-794, § 4; 1973 Ed., § 1-1413.)

**Editor's notes.** — This section was enacted prior to revision of the Compact. References to specific sections of the Compact have been updated following revision of the Compact.

## § 1-2416. Jurisdiction to review orders of Washington Metropolitan Area Transit Commission and to enforce Compact.

Jurisdiction is hereby conferred:

(1) Upon the United States Court of Appeals for the Fourth Circuit and the United States Court of Appeals for the District of Columbia Circuit,

respectively, to review orders of the Washington Metropolitan Area Transit Commission as provided by § 5, Article XII, Title II, of the Washington Metropolitan Area Transit Regulation Compact; and

(2) Upon the United States district courts to enforce the provisions of said Title II as provided in § 6, Article XII, Title II, of said Compact. (Sept. 15, 1960, 74 Stat. 1051, Pub. L. 86-794, § 6; 1973 Ed., § 1-1415.)

**Editor's notes.** — This section was enacted prior to revision of the Compact. References to specific sections of the Compact have been updated following revision of the Compact.

**Cited in** District of Columbia v. Solomon, App. D.C., 275 A.2d 204 (1971).

## **§ 1-2417. Reservation of right to alter, amend, or repeal subchapter; submission of periodic reports to Congress; scope of Congressional inquiry.**

(a) The right to alter, amend, or repeal this subchapter is hereby expressly reserved.

(b) The Washington Metropolitan Area Transit Commission shall submit to Congress copies of all periodic reports made by that Commission to the Governors, the Mayor of the District of Columbia and/or the legislatures of the compacting States.

(c) The Congress or any committee thereof shall have the right to require the disclosure and furnishing of such information by the Washington Metropolitan Area Transit Commission as is deemed appropriate by the Congress or any of its committees. Further, Congress or any of its committees shall have access to all books, records and papers of the Washington Metropolitan Area Transit Commission as well as the right of inspection of any facility use, owned, leased, regulated or under the control of said Commission. (Sept. 15, 1960, 74 Stat. 1051, Pub. L. 86-794, § 7; 1973 Ed., § 1-1416.)

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

### *Subchapter III. Rail Rapid Transit.*

## **§ 1-2421. Statement of findings and purpose.**

To further the objectives of subchapter I of this chapter, the Congress hereby finds and declares that:

(1) A coordinated system of rail rapid transit, bus transportation service, and highways is essential in the National Capital region for the satisfactory

movement of people and goods, the alleviation of present and future traffic congestion, the economic welfare and vitality of all parts of the region, the effective performance of the functions of the United States government located within the region, the orderly growth and development of the region, the comfort and convenience of the residents and visitors to the region, and the preservation of the beauty and dignity of the Nation's Capital;

(2) Such a coordinated system should be developed cooperatively by the federal, state, and local governments of the National Capital region as part of a balanced system of transportation utilizing to their best advantage highways and other transit facilities, and the cost of improved mass transit facilities should be financed, as far as possible, by persons using or benefiting from such facilities and their remaining costs should be shared equitably among the federal, state, and local governments;

(3) Various steps have already been taken to bring such a system into being, including the preparation by the Washington Metropolitan Area Transit Authority (hereinafter referred to as the "Authority") of a transit development program for the National Capital region, and authorization of the negotiation by the Mayor of the District of Columbia, the State of Maryland and the Commonwealth of Virginia of an interstate compact to establish a regional transportation organization under the terms of §§ 1-1408 and 1-1409, and approval by the Congress of the Washington Metropolitan Area Transit Regulation Compact (§§ 1-2411 and 1-2412.) Nothing in this subchapter shall be construed as altering or amending the Washington Metropolitan Area Transit Regulation Compact;

(4) While the negotiation of an interstate compact to establish a regional transportation organization has not been completed, and plans for the development of improved mass transit facilities throughout the National Capital region are still being developed, the Authority has prepared a satisfactory transit development program for the establishment, principally within the District of Columbia, of a system of rail rapid transit lines and related facilities which are capable of being extended to serve other parts of the region, and the design and construction of such facilities should now proceed as contemplated by subchapter I of this chapter;

(5) In developing such improved transportation facilities, it is necessary that the operation of rail rapid transit and bus services be coordinated, and that the creation and operation of public rail rapid transit facilities be accomplished with the least possible adverse effect on the private companies transporting persons in the National Capital region, on their employees, and on persons, families and businesses displaced by the construction of such facilities. (Sept. 8, 1965, 79 Stat. 663, Pub. L. 89-173, § 2; 1973 Ed., § 1-1421.)

**Cross references.** — As to federal contribution to subway and rapid rail system for access to handicapped persons, see § 1-2453.

As to requirement of equal access to public conveyances for blind and physically disabled persons, see § 6-1702.

**References in text.** — Sections 1-1408 and 1-1409, referred to in the first sentence of

paragraph (3) of this section, were repealed by the Act of December 9, 1969, 83 Stat. 322, Pub. L. 91-143, § 8(a)(1).

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of



Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the

District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

## § 1-2422. Appropriations authorized.

The cost of designing, engineering, constructing, and equipping the facilities of the adopted regional system (as defined in § 1-2451(1)) shall be financed in part by the federal and District of Columbia governments, as follows:

(1) To finance the United States portion there is hereby authorized to be appropriated to the Authority an amount not to exceed \$100,000,000, which shall remain available until expended;

(2) To finance the District of Columbia portion there is hereby authorized to be appropriated to the Authority out of the General Fund of the District of Columbia an amount not to exceed \$50,000,000, which shall remain available until expended. (Sept. 8, 1965, 79 Stat. 665, Pub. L. 89-173, § 5(a); Dec. 9, 1969, 83 Stat. 323, Pub. L. 91-143, § 8(b); 1973 Ed., § 1-1424.)

**Cross references.** — As to authority to appropriate for payment to Washington Metropolitan Area Transit Authority unappropriated portions of authorizations specified in this section, see § 1-2454.

As to relocation payments and assistance to

persons displaced by programs and projects of Washington Metropolitan Area Transit Authority, see § 5-834.

**Section references.** — This section is referred to in §§ 1-2438, 1-2452 and 1-2454.

## § 1-2423. Severability.

If any part of this subchapter is declared unconstitutional the constitutionality of no other part of the subchapter shall be affected thereby. (Sept. 8, 1965, 79 Stat. 666, Pub. L. 89-173, § 8; 1973 Ed., § 1-1426.)

### *Subchapter IV. Washington Metropolitan Area Transit Authority Compact.*

## § 1-2431. Congressional consent given to Compact amendment.

The Congress hereby consents to, adopts and enacts for the District of Columbia an amendment to the Washington Metropolitan Area Transit Regulation Compact, for which Congress heretofore has granted its consent (§§ 1-2411 and 1-2412) by adding thereto Title III, known as the Washington Metropolitan Area Transit Authority Compact (referred to in this subchapter as Title III), substantially as set out below.

TITLE III

ARTICLE I

DEFINITIONS

1. As used in this Title, the following words and terms shall have the following meanings, unless the context clearly requires a different meaning:

(a) "Board" means the Board of Directors of the Washington Metropolitan Area Transit Authority;

(b) "Director" means a member of the Board of Directors of the Washington Metropolitan Area Transit Authority;

(c) "Private transit companies" and "private carriers" means corporations, persons, firms or associations rendering transit service within the Zone pursuant to a certificate of public convenience and necessity issued by the Washington Metropolitan Area Transit Commission or by a franchise granted by the United States or any signatory party to this Title;

(d) "Signatory" means the State of Maryland, the Commonwealth of Virginia and the District of Columbia;

(e) "State" includes District of Columbia;

(f) "Transit facilities" means all real and personal property located in the Zone, necessary or useful in rendering transit service between points within the Zone, by means of rail, bus, water or air and any other mode of travel, including without limitation, tracks, rights of way, bridges, tunnels, subways, rolling stock for rail, motor vehicle, marine and air transportation, stations, terminals and ports, areas for parking and all equipment, fixtures, buildings and structures and services incidental to or required in connection with the performance of transit service;

(g) "Transit services" means the transportation of persons and their packages and baggage by means of transit facilities between points within the Zone including the transportation of newspapers, express, and mail between such points, and charter service which originates within the Zone but does not include taxicab service or individual-ticket-sales sightseeing operations;

(h) "Transit Zone" or "Zone" means the Washington Metropolitan Area Transit Zone created by and described in section 3, as well as any additional areas that may be added pursuant to section 83(a); and

(i) "WMATC" means Washington Metropolitan Area Transit Commission.

ARTICLE II

PURPOSE AND FUNCTIONS

2. The purpose of this Title is to create a regional instrumentality, as a common agency of each signatory party, empowered, in the manner hereinafter set forth, (1) to plan, develop, finance and cause to be operated improved transit facilities, in coordination with transportation and general development planning for the Zone, as part of a balanced regional system of transportation, utilizing to their best advantage the various modes of transportation, (2) to coordinate the operation of the public and privately owned or controlled transit

facilities, to the fullest extent practicable, into a unified regional transit system without unnecessary duplicating service, and (3) to serve such other regional purposes and to perform such other regional functions as the signatories may authorize by appropriate legislation.

### ARTICLE III

#### ORGANIZATION AND AREA

##### Washington Metropolitan Area Transit Zone

3. There is hereby created the Washington Metropolitan Area Transit Zone which shall embrace the District of Columbia, the cities of Alexandria, Falls Church, and Fairfax, the counties of Arlington, Fairfax, and Loudoun and political subdivisions of the Commonwealth of Virginia located within those counties, and the counties of Montgomery and Prince George's in the State of Maryland and political subdivisions of the State of Maryland located in said counties.

##### Washington Metropolitan Area Transit Authority

4. There is hereby created, as an instrumentality and agency of each of the signatory parties hereto, the Washington Metropolitan Area Transit Authority which shall be a body corporate and politic, and which shall have the powers and duties granted herein and such additional powers as may hereafter be conferred upon it pursuant to law.

##### Board Membership

5. (a) The Authority shall be governed by a Board of 6 Directors consisting of 2 Directors for each Signatory. For Virginia, the Directors shall be appointed by the Northern Virginia Transportation Commission; for the District of Columbia, by the Council of the District of Columbia; and for Maryland, by the Washington Suburban Transit Commission. For Virginia and Maryland, the Directors shall be appointed from among the members of the appointing body, except as otherwise provided herein, and shall serve for a term coincident with their term on the appointing body. A Director may be removed or suspended from office only as provided by the law of the Signatory from which he was appointed. The appointing authorities shall also appoint an alternate for each Director, who may act only in the absence of the Director for whom he has been appointed an alternate, except that, in the case of the District of Columbia where only one Director and his alternate are present, such alternate may act on behalf of the absent Director. Each alternate shall serve at the pleasure of the appointing authority. In the event of a vacancy in the Office of Director or alternate, it shall be filled in the same manner as an original appointment.

(b) Before entering upon the duties of his office each Director and alternate director shall take and subscribe to the following oath (or affirmation) of office or any such other oath or affirmation, if any, as the Constitution or laws of the signatory he represents shall provide:

"I, ....., hereby solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution and Laws of the state or political jurisdiction from which I was appointed as a director (alternate director) of the Board of Washington Metropolitan Area Transit Authority and will faithfully discharge the duties of the office upon which I am about to enter."

#### Compensation of Directors and Alternates

6. Members of the Board and alternates shall serve without compensation but may be reimbursed for necessary expenses incurred as an incident to the performance of their duties.

#### Organization and Procedure

7. The Board shall provide for its own organization and procedure. It shall organize annually by the election of a Chairman and Vice-Chairman from among its members. Meetings of the Board shall be held as frequently as the Board deems that the proper performance of its duties requires and the Board shall keep minutes of its meetings. The Board shall adopt rules and regulations governing its meeting, minutes and transactions.

#### Quorum and Actions by the Board

8. (a) Four Directors or alternates, consisting of at least one Director or alternate appointed from each Signatory, shall constitute a quorum and no action by the Board shall be effective unless a majority of the Board present and voting, which majority shall include at least one Director or alternate from each Signatory, concur therein; provided, however, that a plan of financing may be adopted or a mass transit plan adopted, altered, revised, or amended by the unanimous vote of the Directors representing any two Signatories.

(b) The actions of the Board shall be expressed by motion or resolution. Actions dealing solely with internal management of the Authority shall become effective when directed by the Board, but no other action shall become effective prior to the expiration of thirty days following its adoption; provided, however, that the Board may provide for the acceleration of any action upon a finding that such acceleration is required for the proper and timely performance of its functions.

#### Officers

9.(a) The officers of the Authority, none of whom shall be members of the Board, shall consist of a general manager, a secretary, a treasurer, a comptroller and a general counsel and such other officers as the Board may provide. Except for the office of general manager and comptroller, the Board may consolidate any of such other offices in one person. All such officers shall be appointed and may be removed by the Board, shall serve at the pleasure of the Board and shall perform such duties and functions as the Board shall specify. The Board shall fix and determine the compensation to be paid to all officers

and, except for the general manager who shall be a full-time employee, all other officers may be hired on a full-time or part-time basis and may be compensated on a salary or fee basis, as the Board may determine. All employees and such officers as the Board may designate shall be appointed and removed by the general manager under such rules of procedure and standards as the Board may determine.

(b) The general manager shall be the chief administrative officer of the Authority and, subject to policy direction by the Board, shall be responsible for all activities of the Authority.

(c) The treasurer shall be the custodian of the funds of the Authority, shall keep an account of all receipts and disbursements and shall make payments only upon warrants duly and regularly signed by the Chairman or Vice-Chairman of the Board, or other person authorized by the Board to do so, and by the secretary or general manager; provided, however, that the Board may provide that warrants not exceeding such amounts or for such purposes as may from time to time be specified by the Board may be signed by the general manager or by persons designated by him.

(d) An oath of office in the form set out in Section 5(b) of this Article shall be taken, subscribed and filed with the Board by all appointed officers.

(e) Each Director, officer and employees specified by the Board shall give such bond in such form and amount as the Board may require, the premium for which shall be paid by the Authority.

#### Conflict of Interests

10.(a) No Director, officer or employee shall:

(1) be financially interested, either directly or indirectly, in any contract, sale, purchase, lease or transfer of real or personal property to which the Board or the Authority is a party;

(2) in connection with services performed within the scope of his official duties, solicit or accept money or any other thing of value in addition to the compensation or expenses paid to him by the Authority;

(3) offer money or any thing of value for or in consideration of obtaining an appointment, promotion or privilege in his employment with the authority.

(b) Any Director, officer or employee who shall willfully violate any provision of this section shall, in the discretion of the Board, forfeit his office or employment.

(c) Any contract or agreement made in contravention of this section may be declared void by the Board.

(d) Nothing in this section shall be construed to abrogate or limit the applicability of any federal or state law which may be violated by any action prescribed by this section.

#### ARTICLE IV

##### PLEDGE OF COOPERATION

11. Each Signatory pledges to each other faithful cooperation in the achievement of the purposes and objects of this Title.

ARTICLE V

GENERAL POWERS

Enumeration

12. In addition to the powers and duties elsewhere described in this Title, and except as limited in this Title, the Authority may:

- (a) Sue and be sued;
- (b) Adopt and use a corporate seal and alter the same at pleasure;
- (c) Adopt, amend, and repeal rules and regulations respecting the exercise of the powers conferred by this Title;
- (d) Construct, acquire, own, operate, maintain, control, sell and convey real and personal property and any interest therein by contract, purchase, condemnation, lease, license, mortgage or otherwise but all of said property shall be located in the Zone and shall be necessary or useful in rendering transit service or in activities incidental thereto;
- (e) Receive and accept such payments, appropriations, grants, gifts, loans, advances and other funds, properties and services may be transferred or made available to it by any signatory party, any political subdivision or agency thereof, by the United States, or by any agency thereof, or by any other public or private corporation or individual, and enter into agreements to make reimbursement for all or any part thereof;
- (f) Enter into and perform contracts, leases and agreements with any person, firm or corporation or with any political subdivision or agency of any signatory party or with the federal government, or any agency thereof, including, but not limited to, contracts or agreements to furnish transit facilities and service;
- (g) Create and abolish offices, employments and positions (other than those specifically provided for herein) as it deems necessary for the purposes of the Authority, and fix and provide for the qualification, appointment, removal, term, tenure, compensation, pension and retirement rights of its officers and employees without regard to the laws of any of the signatories;
- (h) Establish, in its discretion, a personnel system based on merit and fitness and, subject to eligibility, participate in the pension and retirement plans of any signatory, or political subdivision or agency thereof, upon terms and conditions mutually acceptable;
- (i) Contract for or employ any professional services;
- (j) Control and regulate the use of facilities owned or controlled by the Authority, the service to be rendered and the fares and charges to be made therefor;
- (k) Hold public hearings and conduct investigations relating to any matter affecting transportation in the Zone with which the Authority is concerned and, in connection therewith, subpoena witnesses, papers, records and documents; or delegate such authority to any officer. Each director may administer oaths or affirmations in any proceeding or investigation;
- (l) Make or participate in studies of all phases and forms of transportation, including transportation vehicle research and development techniques

and methods for determining traffic projections, demand motivations, and fiscal research and publicize and make available the results of such studies and other information relating to transportation; and

(m) Exercise, subject to the limitations and restrictions herein imposed, all powers reasonably necessary or essential to the declared objects and purposes of this Title.

## ARTICLE VI

### PLANNING

#### Mass Transit Plan

13.(a) The Board shall develop and adopt, and may from time to time review and revise, a mass transit plan for the immediate and long-range needs of the Zone. The mass transit plan shall include one or more plans designating (1) the transit facilities to be provided by the Authority, including the locations of terminals, stations, platforms, parking facilities and the character and nature thereof; (2) the design and location of such facilities; (3) whether such facilities are to be constructed or acquired by lease, purchase or condemnation; (4) a timetable for the provision of such facilities; (5) the anticipated capital costs; (6) estimated operating expenses and revenues relating thereto; and (7) the various other factors and considerations, which, in the opinion of the Board, justify and require the projects therein proposed. Such plan shall specify the types of equipment to be utilized, the areas to be served, the routes and schedules of service expected to be provided and the probable fares and charges therefor.

(b) In preparing the mass transit plan, and in any review of revision thereof, the Board shall make full utilization of all data, studies, reports and information available from the National Capital Transportation Agency and from any other agencies of the federal government, and from signatories and the political subdivisions thereof.

#### Planning Process

14.(a) The mass transit plan, and any revisions, alterations or amendments thereof, shall be coordinated, through the procedures hereinafter set forth, with

(1) other plans and programs affecting transportation in the Zone in order to achieve a balanced system of transportation, utilizing each mode to its best advantage;

(2) the general plan or plans for the development of the Zone; and

(3) the development plans of the various political subdivisions embraced within the Zone.

(b) It shall be the duty and responsibility of each member of the Board to serve as liaison between the Board and the body which appointed him to the Board. To provide a framework for regional participation in the planning process, the Board shall create technical committees concerned with planning and collection and analyses of data relative to decision-making in the trans-

portation planning process, and the Mayor and Council of the District of Columbia, the component governments of the Northern Virginia Transportation District and the Washington Suburban Transit District shall appoint representatives to such technical committees and otherwise cooperate with the Board in the formulation of a mass transit plan, or in revisions, alterations, or amendments thereof.

(c) The Board, in the preparation, revision, alteration or amendment of a mass transit plan, shall

(1) consider data with respect to current and prospective conditions in the Zone, including, without limitation, land use, population, economic factors affecting development plans, goals or objectives for the development of the Zone and the separate political subdivisions, transit demands to be generated by such development, travel patterns, existing and proposed transportation and transit facilities, impact of transit plans on the dislocation of families and businesses, preservation of the beauty and dignity of the Nation's Capital, factors affecting environmental amenities and aesthetics and financial resources;

(2) cooperate with and participate in any continuous, comprehensive transportation planning process cooperatively established by the highway agencies of the signatories and the local political subdivisions in the Zone to meet the planning standards now or hereafter prescribed by the Federal-Aid Highway Acts; and

(3) to the extent not inconsistent with or duplicative of the planning process specified in subparagraph (2) of this paragraph (c), cooperate with the National Capital Planning Commission, the National Capital Regional Planning Council, the Washington Metropolitan Council of Governments, the Washington Metropolitan Area Transit Commission, the highway agencies of the Signatories, the Maryland-National Capital Park and Planning Commission, the Northern Virginia Regional Planning and Economic Development Commission, the Maryland State Planning Department and the Commission of Fine Arts. Such cooperation shall include the creation, as necessary, of technical committees composed of personnel, appointed by such agencies, concerned with planning and collection and analysis of data relative to decisionmaking in the transportation planning process.

#### Adoption of Mass Transit Plan

15.(a) Before a mass transit plan is adopted, altered, revised or amended, the Board shall transmit such proposed plan, alteration, revision or amendment for comment to the following and to such other agencies as the Board shall determine:

(1) The Mayor and Council of the District of Columbia, the Northern Virginia Transportation Commission and the Washington Suburban Transit Commission;

(2) the governing bodies of the Counties and Cities embraced within the Zone;

(3) The transportation agencies of the Signatories;



- (4) the Washington Metropolitan Area Transit Commission;
- (5) the Washington Metropolitan Council of Governments;
- (6) the National Capital Planning Commission;
- (7) the National Capital Regional Planning Council;
- (8) the Maryland-National Capital Park and Planning Commission;
- (9) the Northern Virginia Regional Planning and Economic Development Commission;
- (10) the Maryland State Planning Department; and
- (11) the private transit companies operating in the Zone and the Labor Unions representing the employees of such companies and employees of contractors providing service under operating contracts.

A copy of the proposed mass transit plan, amendment, or revision shall be kept at the office of the Board and shall be available for public inspection. Information with respect thereto shall be released to the public. After 30 days notice published once a week for 2 successive weeks in one or more newspapers of general circulation within the Transit Zone, a public hearing shall be held with respect to the proposed plan, alteration, revision, or amendment. The 30 days notice shall begin to run on the first day the notice appears in any such newspaper. The Board shall consider the evidence submitted and statements and comments made at such hearing and may make any changes in the proposed plan, amendment, or revision which it deems appropriate and such changes may be made without further hearing.

## ARTICLE VII

### FINANCING

#### Policy

16. With due regard for the policy of Congress for financing a mass transit plan for the Zone set forth in Section 204(g) of the National Capital Transportation Act of 1960 (74 Stat. 537), it is hereby declared to be the policy of this Title that, as far as possible, the payment of all costs shall be borne by the persons using or benefiting from the Authority's facilities and services and any remaining costs shall be equitably shared among the federal, District of Columbia and participating local governments in the Zone. The allocation among such governments of such remaining costs shall be determined by agreement among them and shall be provided in the manner hereinafter specified.

#### Plan of Financing

17.(a) The Authority, in conformance with said policy, shall prepare and adopt a plan for financing the construction, acquisition, and operation of facilities specified in a mass transit plan adopted pursuant to Article VI hereof, or in any alteration, revision or amendment thereof. Such plan of financing shall specify the facilities to be constructed or acquired, the cost thereof, the principal amount of revenue bonds, equipment trust certificates, and other evidences of debt proposed to be issued, the principal terms and provisions of

all loans and underlying agreements and indentures, estimated operating expenses and revenues, and the proposed allocation among the federal, District of Columbia, and participating local governments of the remaining costs and deficits, if any, and such other information as the Commission may consider appropriate.

(b) Such plan of financing shall constitute a proposal to the interested governments for financial participation and shall not impose any obligation on any government and such obligations shall be created only as provided in Section 18 of this Article VII.

#### Commitments for Financial Participation

18.(a) Commitments on behalf of the portion of the Zone located in Virginia shall be by contract or agreement by the Authority with the Northern Virginia Transportation District, or its component governments, as authorized in the Transportation District Act of 1964 (Ch. 631, 1964 Acts of Virginia Assembly), to contribute to the capital required for the construction and/or acquisition of facilities specified in a mass transit plan adopted as provided in Article VI, or any alteration, revision or amendment thereof, and for meeting expenses and obligations in the operation of such facilities. No such contract or agreement, however, shall be entered into by the Authority with the Northern Virginia Transportation District unless said District has entered into the contracts or agreements with its member governments, as contemplated by Section 1(b)(4) of Article 4 of said Act, which contracts or agreements expressly provide that such contracts or agreements shall inure to the benefit of the Authority and shall be enforceable by the Authority in accordance with the provisions of Section 2, Article 5 of said Act, and such contracts or agreements are acceptable to the Board. The General Assembly of Virginia hereby authorizes and designates the Authority as the agency to plan for and provide transit facilities and services for the area of Virginia encompassed within the Zone within the contemplation of Article 1, Section 3(c) of said Act.

(b) Commitments on behalf of the portion of the Zone located in Maryland shall be by contract or agreement by the Authority with the Washington Suburban Transit District, pursuant to which the Authority undertakes to provide transit facilities and service in consideration for the agreement by said District to contribute to the capital required for the construction and/or acquisition of facilities specified in a mass transit plan adopted as provided in Article VI, or in any alteration, revision or amendment thereof, and for meeting expenses and obligations incurred in the operation of such facilities.

(c) With respect to the District of Columbia and the federal government, the commitment or obligation to render financial assistance shall be created by appropriation or in such other manner, or by such other legislation, as the Congress shall determine. If prior to making such commitment by or on behalf of the District of Columbia, legislation is enacted by the Congress granting the governing body of the District of Columbia plenary power to create obligations and levy taxes, the commitment by the District of Columbia shall be by contract or agreement between the governing body of the District of Columbia

and the Authority, pursuant to which the Authority undertakes, subject to the provisions of Section 20 hereof, to provide transit facilities and service in consideration for the undertaking by the District of Columbia to contribute to the capital required for the construction and/or acquisition of facilities specified in a mass transit plan adopted as provided in Article VI, or in any alteration, revision or amendment thereof, and for meeting expenses and obligations incurred in the operation of such facilities.

#### Administrative Expenses

19. Prior to the time the Authority has receipts from appropriations and contracts or agreements as provided in Section 18 of this Article VII, the expenses of the Authority for administration and for preparation of a mass transit and financing plan, including all engineering, financial, legal and other services required in connection therewith, shall, to the extent funds for such expenses are not provided through grants by the federal government, be borne by the District of Columbia, by the Washington Suburban Transit District and the component governments of the Northern Virginia Transportation District. Such expenses shall be allocated among such governments on the basis of population as reflected by the latest available population statistics of the Bureau of the Census; provided, however, that upon the request of any Director the Board shall make the allocation upon estimates of population acceptable to the Board. The allocations shall be made by the Board and shall be included in the annual current expense budget prepared by the Board.

#### Acquisition of Facilities from Federal or Other Agencies

20.(a) The Authority is authorized to acquire by purchase, lease or grant or in any manner other than condemnation, from the federal government, or any agency thereof, from the District of Columbia, Maryland or Virginia, or any political subdivision or agency thereof, any transit and related facilities, including real and personal property and all other assets, located within the Zone, whether in operation or under construction. Such acquisition shall be made upon such terms and conditions as may be agreed upon and subject to such authorization or approval by the Congress and the governing body of the District of Columbia, as may be required; provided, however, that if such acquisition imposes or may impose any further or additional obligation or liability upon the Washington Suburban Transit District, the Northern Virginia Transportation District, or any component government thereof, under any contract with the Authority, the Authority shall not make such acquisition until any such affected contract has been appropriately amended.

(b) For such purpose, the authority is authorized to assume all liabilities and contracts relating thereto, to assume responsibility as primary obligor, endorser or guarantor on any outstanding revenue bonds, equipment trust certificates or other form of indebtedness authorized in this Act issued by such predecessor agency or agencies and, in connection therewith, to become a party to, and assume the obligations of, any indenture or loan agreement underlying or issued in connection with any outstanding securities or debts.

### Temporary Borrowing

21. The Board may borrow, in anticipation of receipts, from any signatory, the Washington Suburban Transit District, the Northern Virginia Transportation District or any component government thereof, or from any lending institution for any purposes of this Title, including administrative expenses. Such loans shall be for a term not to exceed two years and at such rates of interest as shall be acceptable to the Board. The signatories and any such political subdivision or agency may, in its discretion, make such loans from any available money.

### Funding

22. The Board shall not construct or acquire any of the transit facilities specified in a mass transit plan adopted pursuant to the provisions of Article VI of this Title, or in any alteration, revision or amendment thereof, nor make any commitments or incur any obligations with respect thereto until funds are available therefor.

## ARTICLE VIII

### BUDGET

#### Capital Budget

23. The Board shall annually adopt a capital budget, including all capital projects it proposes to undertake or continue during the budget period, containing a statement of the estimated cost of each project and the method of financing thereof.

#### Current Expense Budget

24. The Board shall annually adopt a current expense budget for each fiscal year. Such budget shall include the Board's estimated expenditures for administration, operation, maintenance and repairs, debt service requirements and payments to be made into any funds required to be maintained. The total of such expenses shall be balanced by the Board's estimated revenues and receipts from all sources, excluding funds included in the capital budget or otherwise earmarked for other purposes.

#### Adoption and Distribution of Budgets

25.(a) Following the adoption by the Board of Annual capital and current expense budgets, the general manager shall transmit certified copies of such budgets to the principal budget officer of the federal government, the District of Columbia, the Washington Suburban Transit District and of the component governments of the Northern Virginia Transportation Commission at such time and in such manner as may be required under their respective budgetary procedures.

(b) Each budget shall indicate the amounts, if any, required from the federal government, the Government of the District of Columbia, the Wash-

ington Suburban Transit District and the component governments of the Northern Virginia Transportation District, determined in accordance with the commitments made pursuant to Article VII, Section 18 of this Title, to balance each of said budgets.

#### Payments

26. Subject to such review and approval as may be required by their budgetary or other applicable processes, the federal government, the Government of the District of Columbia, the Washington Suburban Transit District and the component governments of the Northern Virginia Transportation District shall include in their respective budgets next to be adopted and appropriate or otherwise provide the amounts certified to each of them as set forth in the budgets.

### ARTICLE IX

#### REVENUE BONDS

##### Borrowing Power

27. The Authority may borrow money for any of the purposes of this Title, may issue its negotiable bonds and other evidences of indebtedness in respect thereto and may mortgage or pledge its properties, revenues and contracts as security therefor.

All such bonds and evidences of indebtedness shall be payable solely out of the properties and revenues of the Authority. The bonds and other obligations of the Authority, except as may be otherwise provided in the indenture under which they were issued, shall be direct and general obligations of the Authority and the full faith and credit of the Authority are hereby pledged for the prompt payment of the debt service thereon and for the fulfillment of all other undertakings of the Authority assumed by it to or for the benefit of the holders thereof.

##### Funds and Expenses

28. The purposes of this Title shall include, without limitation, all costs of any project or facility or any part thereof, including interest during a period of construction and for a period not to exceed two years thereafter and any incidental expenses (legal, engineering, fiscal, financial, consultant and other expenses) connected with issuing and disposing of the bonds; all amounts required for the creation of an operating fund, construction fund, reserve fund, sinking fund, or other special fund; all other expenses connected with administration, the planning, design, acquisition, construction, completion, improvement or reconstruction of any facility or any part thereof; and reimbursement of advances by the Board or by others for such purposes and for working capital.

##### Credit Excluded; Officers, State, Political Subdivisions and Agencies

29. The Board shall have no power to pledge the credit of any signatory party, political subdivision or agency thereof, or to impose any obligation for

payment of the bonds upon any signatory party, political subdivision or agency thereof, but may pledge the contracts of such governments and agencies; provided, however, that the bonds may be underwritten in whole or in part as to principal and interest by the United States, or by any political subdivision or agency of any signatory; provided, further, that any bonds underwritten in whole or in part as to principal and interest by the United States shall not be issued without approval of the Secretary of the Treasury. Neither the Directors nor any person executing the bonds shall be liable personally on the bonds of the Authority or be subject to any personal liability or accountability by reason of the issuance thereof.

### Funding and Refunding

30. Whenever the Board deems it expedient, it may fund and refund the bonds and other obligations of the Authority whether or not such bonds and obligations have matured. It may provide for the issuance, sale or exchange of refunding bonds for the purpose of redeeming or retiring any bonds (including the payment of any premium, duplicate interest or each cash adjustment required in connection therewith) issued by the Authority or issued by any other issuing body, the proceeds of the sale of which have been applied to any facility acquired by the Authority or which are payable out of the revenues of any facility acquired by the Authority. Bonds may be issued partly to refund bonds and other obligations then outstanding, and partly for any other purpose of the Authority. All provisions of this Title applicable to the issuance of bonds are applicable to refunding bonds and to the issuance, sale or exchange thereof.

### Bonds; Authorization Generally

31. Bonds and other indebtedness of the Authority shall be authorized by resolution of the Board. The validity of the authorization and issuance of any bonds by the Authority shall not be dependent upon nor affected in any way by: (i) the deposition of bond proceeds by the Board or by contract, commitment or action taken with respect to such proceeds; or (ii) the failure to complete any part of the project for which bonds are authorized to be issued. The Authority may issue bonds in one or more series and may provide for or more consolidated bond issues, in such principal amounts and with such terms and provisions as the Board may deem necessary. The bonds may be secured by a pledge of all or any part of the property, revenues and franchises under its control. Bonds may be issued by the Authority in such amount, with such maturities and in such denominations and form or forms, whether coupon or registered, as to principal alone or as to both principal and interest, as may be determined by the Board. The Board may provide for redemption of bonds prior to maturity on such notice and at such time or times and with such redemption provisions, including premiums, as the Board may determine.

### Bonds; Resolutions and Indentures Generally

32. The Board may determine and enter into indentures or adopt resolutions providing for the principal amount, date or dates, maturities, interest

rate, or rates, denominations, form, registration, transfer, interchange and other provisions of the bonds and coupons and the terms and conditions upon which the same shall be executed, issued, secured, sold, paid, redeemed, funded and refunded. The resolution of the Board authorizing any bond or any indenture so authorized under which the bonds are issued may include all such covenants and other provisions not inconsistent with the provisions of this Title, other than any restriction on the regulatory powers vested in the Board by this Title, as the Board may deem necessary or desirable for the issue, payment, security, protection or marketing of the bonds, including without limitation covenants and other provisions as to the rates or amounts of fees, rents and other charges to be charged or made for use of the facilities; the use, pledge, custody, securing, application and disposition of such revenues, of the proceeds of the bonds, and of any other moneys or contracts of the Authority; the operation, maintenance, repair and reconstruction of the facilities and the amounts which may be expended therefor; the sale, lease or other disposition of the facilities; the insuring of the facilities and of the revenues derived therefrom; the construction or other acquisition of other facilities; the issuance of additional bonds or other indebtedness; the rights of the bondholders and of any trustee for the bondholders upon default by the Authority or otherwise; and the modification of the provisions of the indenture and of the bonds. Reference on the face of the bonds to such resolution or indenture by its date of adoption or the apparent date on the face thereof is sufficient to incorporate all of the provisions thereof and of this Title into the body of the bonds and their appurtenant coupons. Each taker and subsequent holder of the bonds or coupons, whether the coupons are attached to or detached from the bonds, has recourse to all of the provisions of the indenture and of this Title and is bound thereby.

#### Maximum Maturity

33. No bond or its terms shall mature in more than fifty years from its own date and in the event any authorized issue is divided into two or more series or divisions, the maximum maturity date herein authorized shall be calculated from the date on the face of each bond separately, irrespective of the fact that different dates may be prescribed for the bonds of each separate series or division of any authorized issue.

#### Tax Exemption

34. All bonds and all other evidences of debt issued by the Authority under the provisions of this Title and the interest thereon shall at all times be free and exempt from all taxation by or under authority of any signatory parties, except for transfer, inheritance and estate taxes.

#### Interest

35. Bonds shall bear interest at such rate or rates as may be determined by the Board, payable annually or semiannually.

### Place of Payment

36. The Board may provide for the payment of the principal and interest of bonds at any place or places within or without the signatory states, and in any specified lawful coin or currency of the United States of America.

### Execution

37. The Board may provide for the execution and authentication of bonds by the manual, lithographed or printed facsimile signature of members of the Board, and by additional authentication by a trustee or fiscal agent appointed by the Board; provided, however, that one of such signatures shall be manual. If any of the members whose signatures or countersignatures appear upon the bonds or coupons cease to be members before the delivery of the bonds or coupons, their signatures or countersignatures are nevertheless valid and of the same force and effect as if the members had remained in office until the delivery of the bonds and coupons.

### Holding Own Bonds

38. The Board shall have power out of any funds available therefor to purchase its bonds and may hold, cancel or resell such bonds.

### Sale

39. The Board may fix terms and conditions for the sale or other disposition of any authorized issue of bonds. The Board may sell bonds at less than their par or face value but no issue of bonds may be sold at an aggregate price below the par or face value thereof if such sale would result in a net interest cost to the Authority calculated upon the entire issue so sold in excess of the applicable rate determined by the Board, payable semiannually, computed with relation to the absolute maturity of the bonds according to standard tables of bond values, deducting the amount of any premium to be paid on the redemption of any bonds prior to maturity. All bonds issued and sold pursuant to this Title may be sold in such manner, either at public or private sale, as the Board shall determine.

### Negotiability

40. All bonds issued under the provisions of this Title are negotiable instruments.

### Bonds Eligible for Investment and Deposit

41. Bonds issued under the provisions of this Title are hereby made securities in which all public officers and public agencies of the signatories and their political subdivisions and all banks, trust companies, savings and loan associations, investment companies and others carrying on a banking business, all insurance companies and insurance associations and others carrying on an insurance business, all administrators, executors, guardians, trustees



and other fiduciaries, and all other persons may legally and properly invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any officer of any signatory, or of any agency or political subdivision of any signatory, for any purpose for which the deposit of bonds or other obligations of such signatory is now or may hereafter be authorized by law.

#### Validation Proceedings

42. Prior to the issuance of any bonds, the Board may institute a special proceeding to determine the legality of proceedings to issue the bonds and their validity under the laws of any of the signatory parties. Such proceeding shall be instituted and prosecuted in rem and the final judgment rendered therein shall be conclusive against all persons whomsoever and against each of the signatory parties.

#### Recording

43. No indenture need be recorded or filed in any public office, other than the office of the Board. The pledge of revenues provided in any indenture shall take effect forthwith as provided therein and irrespective of the date of receipt of such revenues by the Board of the indenture trustee. Such pledge shall be effective as provided in the indenture without physical delivery of the revenues to the Board or to the indenture trustee.

#### Pledged Revenues

44. Bond redemption and interest payments shall, to the extent provided in the resolution or indenture, constitute a first, direct and exclusive charge and lien on all revenues received from the use and operation of the facility, and on any sinking or other funds created therefrom. All such revenues, together with interest thereon, shall constitute a trust fund for the security and payment of such bonds and except as and to the extent provided in the indenture with respect to the payment therefrom of expenses for other purposes including administration, operation, maintenance, improvements or extensions of the facilities or other purposes shall not be used or pledged for any other purpose so long as such bonds, or any of them, are outstanding and unpaid.

#### Remedies

45. The holder of any bond may for the equal benefit and protection of all holders of bonds similarly situated: (1) by mandamus or other appropriate proceedings require and compel the performance of any of the duties imposed upon the Board or assumed by it, its officers, agents or employees under the provisions of any indenture, in connection with the acquisition, construction, operation, maintenance, repair, reconstruction or insurance of the facilities, or in connection with the collection, deposit, investment, application and disbursement of the revenues derived from the operation and use of the facilities, or in connection with the deposit, investment and disbursement of the proceeds

received from the sale of bonds; or (2) by action or suit in a court of competent jurisdiction of any signatory party require the Authority to account as if it were the trustee of an express trust, or enjoin any acts or things which may be unlawful or in violation of the rights of the holders of the bonds. The enumeration of such rights and remedies does not, however, exclude the exercise or prosecution of any other rights or remedies available to the holders of bonds.

## ARTICLE X

### EQUIPMENT TRUST CERTIFICATES

#### Power

46. The Board shall have power to execute agreements, leases and equipment trust certificates with respect to the purchase of facilities or equipment such as cars, trolley buses and motor buses, or other craft, in the form customarily used in such cases and appropriate to effect such purchase, and may dispose of such equipment trust certificates in such manner as it may determine to be for the best interests of the Authority. Each vehicle covered by an equipment trust certificate shall have the name of the owner or lessor plainly marked upon both sides thereof, followed by the words "Owner and Lessor."

#### Payments

47. All monies required to be paid by the Authority under the provisions of such agreements, leases and equipment trust certificates shall be payable solely from the revenue to be derived from the operation of the transit system or from such grants, loans, appropriations or other revenues, as may be available to the Board under the provisions of this Title. Payment for such facilities or equipment, or rentals thereof, may be made in installments, and the deferred installments may be evidenced by equipment trust certificates as aforesaid, and title to such facilities or equipment may not vest in the Authority until the equipment trust certificates are paid.

#### Procedure

48. The agreement to purchase facilities or equipment by the Board may direct the vendor to sell and assign the equipment to a bank or trust company, duly authorized to transact business in any of the signatory States, or to the Housing and Home Finance Administrator, as trustee, lessor or vendor, for the benefit and security of the equipment trust certificates and may direct the trustee to deliver the facilities and equipment to one or more designated officers of the Board and may authorize the trustee simultaneously therewith to execute and deliver a lease of the facilities or equipment to the Board.

#### Agreements and Leases

49. The agreements and leases shall be duly acknowledged before some person authorized by law to take acknowledgements of deeds and in the form

required for acknowledgement of deeds and such agreements, leases, and equipment trust certificates shall be authorized by resolution of the Board and shall contain such covenants, conditions and provisions as may be deemed necessary or appropriate to insure the payment of the equipment trust certificates from the revenues to be derived from the operation of the transit system and other funds.

The covenants, conditions and provisions of the agreements, leases and equipment trust certificates shall not conflict with any of the provisions of any resolution or trust agreement securing the payment of bonds or other obligations of the Authority then outstanding or conflict with or be in derogation of the rights of the holders of any such bonds or other obligations.

### Law Governing

50. The equipment trust certificates issued hereunder shall be governed by Laws of the District of Columbia and for this purpose the chief place of business of the Authority shall be considered to be the District of Columbia. The filing of any documents required or permitted to be filed shall be governed by the Laws of the District of Columbia.

## ARTICLE XI

### OPERATION OF FACILITIES

#### Operation by Contract or Lease

51. Any facilities and properties owned or controlled by the Authority may be operated by the Authority directly or by others pursuant to contract or lease as the Board may determine.

#### The Operating Contract

52. Without limitation upon the right of the Board to prescribe such additional terms and provisions as it may deem necessary and appropriate, the operating contract shall:

- (a) specify the services and functions to be performed by the Contractor;
- (b) provide that the Contractor shall hire, supervise and control all personnel required to perform the services and functions assumed by it under the operating contract and that all such personnel shall be employees of the Contractor and not of the Authority;
- (c) require the Contractor to assume the obligations of the labor contract or contracts of any transit company which may be acquired by the Authority and assume the pension obligations of any such transit company;
- (d) require the Contractor to comply in all respects with the labor policy set forth in Article XIV of this Title;
- (e) provide that no transfer of ownership of the capital stock, securities or interests in any Contractor, whose principal business is the operating contract, shall be made without written approval of the Board and the certificates or other instruments representing such stock, securities or interest shall contain a statement of this restriction;

(f) provide that the Board shall have the sole authority to determine the rates or fares to be charged, the routes to be operated and the service to be furnished;

(g) specify the obligations and liabilities which are to be assumed by the Contractor and those which are to be the responsibility of the Authority;

(h) provide for an annual audit of the books and accounts of the Contractor by an independent certified public accountant to be selected by the Board and for such other audits, examinations and investigations of the books and records, procedures and affairs of the Contractor at such times and in such manner as the Board shall require, the cost of such audits, examinations and investigations to be borne as agreed by the parties in the operating contract; and

(i) provide that no operating contract shall be entered into for a term in excess of five years; provided, that any such contract may be renewed for successive terms, each of which shall not exceed five years. Any such operating contract shall be subject to termination by the Board for cause only.

#### Compensation for Contractor

53. Compensation to the Contractor under the operating contract may, in the discretion of the Board, be in the form of (1) a fee paid by the Board to the Contractor for services, (2) a payment by the Contractor to the Board for the right to operate the system, or (3) such other arrangement as the Board may prescribe; provided, however, that the compensation shall bear a reasonable relationship to the benefits to the Authority and to the estimated costs the Authority would incur in directly performing the functions and duties delegated under the operating contract; and provided, further, that no such contract shall create any right in the Contractor (1) to make or change any rate or fare or alter or change the service specified in the contract to be provided or (2) to seek judicial relief by any form of original action, review or other proceedings from any rate or fare or service prescribed by the Board. Any assertion, or attempted assertion, by the Contractor of the right to make or change any rate or fare or service prescribed by the Board shall constitute cause for termination of the operating contract. The operating contract may provide incentives for efficient and economical management.

#### Selection of Contractor

54. The Board shall enter into an operating contract only after formal advertisement and negotiations with all interested and qualified parties, including private transit companies rendering transit service within the Zone; provided, however, that, if the Authority acquires transit facilities from any agency of the federal or District of Columbia governments, in accordance with the provisions of Article VII, Section 20 of this Title, the Authority shall assume the obligations of any operating contract which the transferor agency may have entered into.

## ARTICLE XII

## COORDINATION OF PRIVATE AND PUBLIC FACILITIES

## Declaration of Policy

55. It is hereby declared that the interest of the public in efficient and economical transit service and in the financial well-being of the Authority and of the private transit companies requires that the public and private segments of the regional transit system be operated, to the fullest extent possible, as a coordinated system without unnecessary duplicating service.

## Implementation of Policy

56. In order to carry out the legislative policy set forth in Section 55 of this Article XII

## (a) The Authority —

(1) except as herein provided, shall not, directly or through a Contractor, perform transit service by bus or similar motor vehicles;

(2) shall, in cooperation with the private carriers and WMATC, coordinate to the fullest extent practicable, the schedules for service performed by its facilities with the schedules for service performed by private carriers; and

(3) shall enter into agreements with the private carriers to establish and maintain, subject to approval by WMATC, through routes and joint fares and provide for the division thereof, or, in the absence of such agreements, establish and maintain through routes and joint fares in accordance with orders issued by WMATC directed to the private carriers when the terms and conditions for such through service and joint fares are acceptable to it.

(b) The WMATC, upon application, complaint, or upon its own motion, shall —

(1) direct private carriers to coordinate their schedules for service with the schedules for service performed by facilities owned or controlled by the Authority;

(2) direct private carriers to improve or extend any existing services or provide additional service over additional routes;

(3) authorize a private carrier, pursuant to agreement between said carrier and the Authority, to establish and maintain through routes and joint fares for transportation to be rendered with facilities owned or controlled by the Authority if, after hearing held upon reasonable notice, WMATC finds that such through routes and joint fares are required by the public interest; and

(4) in the absence of such an agreement with the Authority, direct a private carrier to establish and maintain through routes and joint fares with the Authority, if, after hearing held upon reasonable notice, WMATC finds that such through service and joint fares are required by the public interest; provided, however, that no such order, rule or regulation of WMATC shall be construed to require the Authority to establish and maintain any through route and joint fare.

(c) WMATC shall not authorize or require a private carrier to render any service, including the establishment or continuation of a joint fare for a

through route service with the Authority which is based on a division thereof between the Authority and private carrier which does not provide a reasonable return to the private carrier, unless the carrier is currently earning a reasonable return on its operation as a whole in performing transportation subject to the jurisdiction of WMATC. In determining the issue of reasonable return, WMATC shall take into account any income attributable to the carrier, or to any corporation, firm or association owned in whole or in part by the carrier, from the Authority whether by way of payment for services or otherwise.

(d) If the WMATC is unable, through the exercise of its regulatory powers over the private carriers granted in paragraph (b) hereof or otherwise, to bring about the requisite coordination of operations and service between the private carriers and the Authority, the Authority may in the situations specified in paragraph (b) hereof, cause such transit service to be rendered by its Contractor by bus or other motor vehicle, as it shall deem necessary to effectuate the policy set forth in Section 55 hereof. In any such situation, the Authority, in order to encourage private carriers to render bus service to the fullest extent practicable, may, pursuant to agreement, make reasonable subsidy payments to any private carrier.

(e) The Authority may acquire the capital stock or transit facilities of any private transit company and may perform transit service, including service by bus or similar motor vehicle, with transit facilities so acquired, or with transit facilities acquired pursuant to article VII, section 20. Upon acquisition of the capital stock or the transit facilities of any private transit company, the Authority shall undertake the acquisition as soon as possible of the capital stock or the transit facilities of each of the other private transit companies within the zone requesting such acquisition. Lack of such request, however, shall not be construed to preclude the Authority from acquiring the capital stock or the transit facilities of any such company pursuant to Section 82 of Article XVI.

#### Rights of Private Carriers Unaffected

57. Nothing in this Title shall restrict or limit such rights and remedies, if any, that any private carrier may have against the Authority arising out of acts done or actions taken by the Authority hereunder. In the event any court of competent jurisdiction shall determine that the Authority has unlawfully infringed any rights of any private carrier or otherwise caused or permitted any private carrier to suffer legally cognizable injury, damages or harm and shall award a judgment therefor, such judgment shall constitute a lien against any and all of the assets and properties of the Authority.

#### Financial Assistance to Private Carriers

58.(a) The Board may accept grants from and enter into loan agreements with the Housing and Home Finance Administrator, pursuant to the provisions of the Urban Mass Transportation Act of 1964 (78 Stat. 302), or with any successor agency or under any law of similar purport, for the purpose of rendering financial assistance to private carriers.

(b) An application by the Board for any such grant or loan shall be based on and supported by a report from WMATC setting forth for each private carrier to be assisted (1) the equipment and facilities to be acquired, constructed, reconstructed, or improved, (2) the service proposed to be rendered by such equipment and facilities, (3) the improvement in service expected from such facilities and equipment, (4) how the use of such facilities and equipment will be coordinated with the transit facilities owned by the Authority, (5) the ability of the affected private carrier to repay any such loans or grants and (6) recommend terms for any such loans or grants.

(c) Any equipment or facilities acquired, constructed, reconstructed or improved with the proceeds of such grants or loans shall be owned by the Authority and may be made available to private carriers only by lease or other agreement which contain provisions acceptable to the Housing and Home Finance Administrator assuring that the Authority will have satisfactory continuing control over the use of such facilities and equipment.

### ARTICLE XIII

#### JURISDICTION; RATES AND SERVICE

##### Washington Metropolitan Area Transit Commission

59. Except as provided herein, this Title shall not affect the functions and jurisdiction of WMATC, as granted by Titles I and II of this Compact, over the transportation therein specified and the persons engaged therein and the Authority shall have no jurisdiction with respect thereto.

#### Public Facilities

60. Service performed by transit facilities owned or controlled by the Authority, and the rates and fares to be charged for such service, shall be subject to the sole and exclusive jurisdiction of the Board and, notwithstanding any other provision in this Compact contained, WMATC shall have no authority with respect thereto, or with respect to any contractor in connection with the operation by it of transit facilities owned or controlled by the Authority. The determinations of the Board with respect to such matters shall not be subject to judicial review nor to the processes of any court.

#### Standards

61. Insofar as practicable, and consistent with the provision of adequate service at reasonable fares, the rates and fares and service shall be fixed by the Board so as to result in revenues which will:

(a) pay the operating expenses and provide for repairs, maintenance and depreciation of the transit system owned or controlled by the Authority;

(b) provide for payment of all principal and interest on outstanding revenue bonds and other obligations and for payment of all amounts to sinking funds and other funds as may be required by the terms of any indenture or loan agreement;

(c) provide for the purchase, lease or acquisition of rolling stock, including provisions for interest, sinking funds, reserve funds, or other funds required for payment of any obligations incurred by the Authority for the acquisition of rolling stock; and

(d) provide funds for any purpose the Board deems necessary and desirable to carry out the purposes of this Title.

### Hearings

62. (a) The Board shall not raise any fare or rate, nor implement a major service reduction, except after holding a public hearing with respect thereto.

(b) Any signatory, any political subdivision thereof, any agency of the federal government and any person, firm or association served by or using the transit facilities of the Authority and any private carrier may file a request with the Board for a hearing with respect to any rates or charges made by the Board or any service rendered with the facilities owned or controlled by the Authority. Such request shall be in writing, shall state the matter on which a hearing is requested and shall set forth clearly the matters and things on which the request relies. As promptly as possible after such a request is filed, the Board, or such officer or employee as it may designate, shall confer with the protestant with respect to the matters complained of. After such conference, the Board, if it deems the matter meritorious and of general significance, may call a hearing with respect to such request.

(c) The Board shall give at least 15 days notice for all public hearings. The notice shall be given by publication in a newspaper of daily circulation throughout the Transit Zone and such notice shall be published once a week for 2 successive weeks. The notice period shall start with the first day of publication. Notices of public hearings shall be posted in accordance with regulations promulgated by the Board.

(d) Prior to calling a hearing on any matter specified in this section, the Board shall prepare and file at its main office and keep open for public inspection its report relating to the proposed action to be considered at such hearing. Upon receipt by the Board of any report submitted by WMATC, in connection with a matter set for hearing, pursuant to the provisions of Section 63 of this Article XIII, the Board shall file such report at its main office and make it available for public inspection. For hearings called by the Board pursuant to paragraph (b), above, the Board also shall cause to be lodged and kept open for public inspection the written request upon which the hearing is granted and all documents filed in support thereof.

### Reference of Matters to WMATC

63. To facilitate the attainment of the public policy objectives for operation of the publicly and privately owned or controlled transit facilities as stated in Article XII, Section 55, prior to the hearing provided for by Section 62 hereof—

(a) The Board shall refer to WMATC for its consideration and recommendations, any matter which the Board considers may affect the operation of the publicly and privately owned or controlled transit facilities as a coordinated



regional transit system and any matter for which the Board has called a hearing, pursuant to Section 62 of this Article XIII, except that temporary or emergency changes in matters affecting service shall not be referred; and

(b) WMATC, upon such reference of any matter to it, shall give the referred matter preference over any other matters pending before it and shall, as expeditiously as practicable, prepare and transmit its report thereon to the Board. The Board may request WMATC to reconsider any part of its report or to make any supplemental reports it deems necessary. All of such reports shall be advisory only.

(c) Any report submitted by WMATC to the Board shall consider, without limitation, the probable effect of the matter or proposal upon the operation of the publicly and privately owned or controlled transit facilities as a coordinated regional system, passenger movements, fare structures, service and the impact on the revenues of both the public and private facilities.

#### ARTICLE XIV

##### LABOR POLICY

##### Construction

64. The Board shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors in the construction, alteration or repair, including painting and decorating, of projects, buildings and works which are undertaken by the Authority or are financially assisted by it, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a — 276a-5), and every such employee shall receive compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in any workweek in excess of eight hours in any workday or forty hours in any workweek, as the case may be. A provision stating the minimum wages thus determined and the requirement that overtime be paid as above provided shall be set out in each project advertisement for bids and in each bid proposal form and shall be made a part of the contract covering the project, which contract shall be deemed to be a contract of the character specified in Section 103 of the Contract Work Hours Standards Act (76 Stat. 357), as now or as may hereafter be in effect. The Secretary of Labor shall have, with respect to the administration and enforcement of the labor standards specified in this provision, the supervisory, investigatory and other authority and functions set forth in Reorganization Plan No. 14 of 1950 (15 F.R. 3176, 64 Stat. 1267, 5 U.S.C. 133z-15), and section 2 of the Act of June 13, 1934, as amended (48 Stat. 948, as amended; 40 U.S.C. 276 (c)). The requirements of this section shall also be applicable with respect to the employment of laborers and mechanics in the construction, alteration or repair, including painting and decorating, of the transit facilities owned or controlled by the Authority where such activities are performed by a Contractor pursuant to agreement with the operator of such facilities.

## Equipment and Supplies

65. Contracts for the manufacture or furnishing of materials, supplies, articles and equipment shall be subject to the provisions of the Walsh-Healey Public Contracts Act (41 U.S.C. 35 et seq.), as now or as may hereafter be in effect.

## Operations

66.(a) The rights, benefits, and other employee protective conditions and remedies of section 13(c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1609(c)), as determined by the Secretary of Labor shall apply to the operation by the Washington Metropolitan Area Transit Authority of any mass transit facilities owned or controlled by it and to any contract or other arrangement for the operation of transit facilities. Whenever the Authority shall operate any transit facility or enter into any contractual or other arrangements for the operation of such transit facility the Authority shall extend to employees of affected mass transportation systems first opportunity for transfer and appointment as employees of the Authority in accordance with seniority, in any nonsupervisory job in respect to such operations for which they can qualify after a reasonable training period. Such employment shall not result in any worsening of the employee's position in his former employment nor any loss of wages, hours, working conditions, seniority, fringe benefits and rights and privileges pertaining thereto.

(b) The Authority shall deal with and enter into written contracts with employees as defined in section 152 of title 29, United States Code, through accredited representatives of such employees or representatives of any labor organization authorized to act for such employees concerning wages, salaries, hours, working conditions, and pension or retirement provisions.

(c) In case of any labor dispute involving the Authority and such employees where collective bargaining does not result in agreement, the Authority shall submit such dispute to arbitration by a board composed of three persons, one appointed by the Authority, one appointed by the labor organization representing the employees, and a third member to be agreed upon by the labor organization and the Authority. The member agreed upon by the labor organization and the Authority shall act as chairman of the board. The determination of the majority of the board of arbitration, thus established shall be final and binding on all matters in dispute. If after a period of ten days from the date of the appointment of the two arbitrators representing the Authority and the labor organization, the third arbitrator has not been selected, then either arbitrator may request the Federal Mediation and Conciliation Service to furnish a list of five persons from which the third arbitrator shall be selected. The arbitrators appointed by the Authority and the labor organization, promptly after the receipt of such list shall determine by lot the order of elimination, and thereafter each shall in that order alternately eliminate one name until only one name remains. The remaining person on the list shall be the third arbitrator. The term "labor dispute" shall be broadly construed and shall include any controversy concerning wages, salaries, hours, working

conditions, or benefits including health and welfare, sick leave, insurance or pension or retirement provisions but not limited thereto, and including any controversy concerning any differences or questions that may arise between the parties including but not limited to the making or maintaining of collective bargaining agreements, the terms to be included in such agreements, and the interpretation or application of such collective bargaining agreements and any grievance that may arise and questions concerning representation. Each party shall pay one-half of the expenses of such arbitration.

(d) The Authority is hereby authorized and empowered to establish and maintain a system of pensions and retirement benefits for such officers and employees of the Authority as may be designated or described by resolution of the Authority; to fix the terms of and restrictions on admission to such system and the classifications therein; to provide that persons eligible for admission in such pension system shall not be eligible for admission to, or receive any benefits from, any other pension system (except social security benefits), which is financed or funded, in whole or in part, directly or indirectly by funds paid or appropriated by the Authority to such other pension system, and to provide in connection with such pension system, a system of benefits payable to the beneficiaries and dependents of any participant in such pension system after the death of such participant (whether accidental or otherwise, whether occurring in the actual performance of duty or otherwise, or both) subject to such exceptions, conditions, restrictions and classifications as may be provided by resolution of the Authority. Such pension system shall be financed or funded by such means and in such manner as may be determined by the Authority to be economically feasible. Unless the Authority shall otherwise determine, no officer or employee of the Authority and no beneficiary or dependent of any such officer or employee shall be eligible to receive any pension or retirement or other benefits both from or under any such pension system and from or under any pension or retirement system established by an acquired transportation system or established or provided for, by or under the provisions of any collective bargaining agreement between the Authority and the representatives of its employees.

(e) Whenever the Authority acquires existing transit facilities from a public or privately owned utility either in proceeding by eminent domain or otherwise, the Authority shall assume and observe all existing labor contracts and pension obligations. When the Authority acquires an existing transportation system, all employees who are necessary for the operation thereof by the Authority shall be transferred to and appointed as employees of the Authority, subject to all the rights and benefits of this Title. These employees shall be given seniority credit and sick leave, vacation, insurance and pension credits in accordance with the records or labor agreements from the acquired transportation system. Members and beneficiaries of any pension or retirement system or other benefits established by the acquired transportation system shall continue to have rights, privileges, benefits, obligations and status with respect to such established system. The Authority shall assume the obligations of any transportation system acquired by it with regard to wages, salaries, hours, working conditions, sick leave, health and welfare and pension or

retirement provisions for employees. It shall assume the provisions of any collective bargaining agreement between such acquired transportation system and the representatives of its employees. The Authority and the employees, through their representatives for collective bargaining purposes, shall take whatever action may be necessary to have pension trust funds presently under the joint control of the acquired transportation system and the participating employees through their representative transferred to the trust fund to be established, maintained and administered jointly by the Authority and the participating employees through their representatives. No employee of any acquired transportation system who is transferred to a position with the Authority shall by reason of such transfer be placed in any worse position with respect to workmen's compensation, pension, seniority, wages, sick leave, vacation, health and welfare insurance or any other benefits, than he enjoyed as an employee of such acquired transportation system.

## ARTICLE XV

### RELOCATION ASSISTANCE

#### Relocation Program and Payments

67. Section 7 of the Urban Mass Transportation Act of 1964, and as the same may from time to time be amended, and all regulations promulgated thereunder, are hereby made applicable to individuals, families, business concerns and nonprofit organizations displaced from real property by actions of the Authority without regard to whether financial assistance is sought by or extended to the Authority under any provision of that Act; provided, however, that in the event real property is acquired for the Authority by an agency of the federal government, or by a State or local agency or instrumentality, the Authority is authorized to reimburse the acquiring agency for relocation payments made by it.

#### Relocation of Public or Public Utility Facilities

68. Notwithstanding the provisions of Section 67 of this Article XV, any highway or other public facility or any facilities of a public utility company which will be dislocated by reason of a project deemed necessary by the Board to effectuate the authorized purposes of this Title shall be relocated if such facilities are devoted to a public use, and the reasonable cost of relocation, if substitute facilities are necessary, shall be paid by the Board from any of its monies.

## ARTICLE XVI

### GENERAL PROVISIONS

#### Creation and Administration of Funds

69.(a) The Board may provide for the creation and administration of such funds as may be required. The funds shall be disbursed in accordance with

rules established by the Board and all payments from any funds shall be reported to the Board. Monies in such funds and other monies of the Authority shall be deposited, as directed by the Board, in any branch or subsidiary of any state or national bank which has operations within the Zone, and having a total paid-in capital of at least one million dollars (\$1,000,000). The trust department of any such state or national bank may be designated as a depository to receive any securities acquired or owned by the Authority. The restriction with respect to paid-in capital may be waived for any such bank which agrees to pledge federal securities to protect the funds and securities of the Authority in such amounts and pursuant to such arrangements as may be acceptable to the Board.

(b) Any monies of the Authority may, in the discretion of the Board and subject to any agreement or covenant between the Authority and the holders of any of its obligations limiting or restricting classes of investments, be invested in the following:

(1) Direct obligations of or obligations guaranteed by the United States of America;

(2) Bonds, debentures, notes or other evidences of indebtedness issued by agencies of the United States of America, including but not limited to the following: Bank for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Federal National Mortgage Association; Student Loan Marketing Association; Government National Mortgage Association; Tennessee Valley Authority; or United States Postal Service;

(3) Securities that qualify as lawful investments and may be accepted as security for fiduciary, trust and public funds under the control of the United States or any officer or officers thereof, or securities eligible as collateral for deposits of monies of the United States, including United States Treasury tax and loan accounts;

(4) Domestic and Eurodollar certificates of deposit; and

(5) Bonds, debentures, notes or other evidences of indebtedness issued by a domestic corporation (i.e., a corporation organized under the laws of one of the states of the United States), provided that such obligations are non-convertible and at the time of their purchase are rated in the highest rating categories by a nationally recognized bond rating agency.

#### Annual Independent Audit

70. (a) As soon as practical after the closing of the fiscal year, an audit shall be made of the financial accounts of the Authority. The audit shall be made by qualified certified public accountants selected by the Board, who shall have no personal interest, direct or indirect, in the financial affairs of the Authority or any of its officers or employees. The report of audit shall be prepared in accordance with generally accepted auditing principles and shall be filed with the Chairman and other officers as the Board shall direct. Copies of the report shall be distributed to each Director, the Congress, the Mayor and Council of the District of Columbia, the Governors of Virginia and Maryland, the

Washington Suburban Transit Commission, the Northern Virginia Transportation Commission, and the governing bodies of the political subdivisions located within the Transit Zone which are parties to commitments for participation in the financing of the Authority and shall be made available for public distribution.

(b) The financial transactions of the Board shall be subject to audit by the United States General Accounting Office in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General of the United States. The audit shall be conducted at the place or places where the accounts of the Board are kept.

(c) Any Director, officer or employee who shall refuse to give all required assistance and information to the accountants selected by the Board or who shall refuse to submit to them for examination such books, documents, records, files, accounts, papers, things or property as may be requested shall, in the discretion of the Board forfeit his office.

### Reports

71. The Board shall make and publish an annual report on its programs, operations and finances, which shall be distributed in the same manner provided by Section 70 of this Article XVI for the report of annual audit. It may also prepare, publish and distribute such other public reports and informational materials as it may deem necessary or desirable.

### Insurance

72. The Board may self-insure or purchase insurance and pay the premiums therefor against loss or damage to any of its properties; against liability for injury to persons or property; and against loss of revenue from any cause whatsoever. Such insurance coverage shall be in such form and amount as the Board may determine, subject to the requirements of any agreement arising out of issuance of bonds or other obligations by the Authority.

### Purchasing

73. (a)(1) Except as provided in subsections (b), (c), and (f) of this section, and except in the case of procurement procedures otherwise expressly authorized by statute, the Authority, in conducting a procurement of property, services, or construction, shall:

(A) obtain full and open competition through the use of competitive procedures in accordance with the requirements of this section; and

(B) use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.

(2) In determining the competitive procedure appropriate under the circumstances, the Authority shall:

(A) solicit sealed bids if:

(i) time permits the solicitation, submission, and evaluation of sealed bids;

(ii) the award will be made on the basis of price and other price-related factors;

(iii) it is not necessary to conduct discussions with the responding sources about their bids; and

(iv) there is a reasonable expectation of receiving more than one sealed bid; or

(B) request competitive proposals if sealed bids are not appropriate under subparagraph (A) of this paragraph.

(b) The Authority may provide for the procurement of property, services, or construction covered by this section using competitive procedures but excluding a particular source in order to establish or maintain an alternative source or sources of supply for that property, service, or construction if the Authority determines that excluding the source would increase or maintain competition and would likely result in reduced overall costs for procurement of property, services, or construction.

(c) The Authority may use procedures other than competitive procedures if:

(1) the property, services, or construction needed by the Authority are available from only one responsible source and no other type of property, services, or construction will satisfy the needs of the Authority; or

(2) the Authority's need for the property, services, or construction is of such an unusual and compelling urgency that the Authority would be seriously injured unless the Authority limits the number of sources from which it solicits bids or proposals; or

(3) the Authority determines that it is necessary in the public interest to use procedures other than competitive procedures in the particular procurement; or

(4) the property or services needed can be obtained at reasonable prices through federal or other governmental sources.

(d) For the purpose of applying subsection (c)(1) of this section:

(1) In the case of a contract to be awarded on the basis of acceptance of an unsolicited proposal, the property, services, or construction shall be deemed to be available from only one responsible source if the source has submitted an unsolicited proposal that demonstrates a concept:

(A) that is unique and innovative or, in the case of a service, for which the source demonstrates a unique capability to provide the service; and

(B) the substance of which is not otherwise available to the Authority and does not resemble the substance of a pending competitive procurement.

(2) In the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment or the continued provision of highly specialized services, the property, services, or construction may be deemed to be available from only the original source and may be procured through procedures other than competitive procedures if it is likely that an award to a source other than the original source would result in:

(A) substantial duplication of cost to the Authority that is not expected to be recovered through competition; or

(B) unacceptable delays in fulfilling the Authority's needs.

(e) If the Authority uses procedures other than competitive procedures to procure property, services, or construction under subsection (c)(2) of this section, the Authority shall request offers from as many potential sources as is practicable under the circumstances.

(f)(1) To promote efficiency and economy in contracting, the Authority may use simplified acquisition procedures for purchases of property, services, and construction.

(2) For the purposes of this subsection, simplified acquisition procedures may be used for purchases for an amount that does not exceed the simplified acquisition threshold adopted by the federal government.

(3) A proposed purchase or contract for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts in order to use the procedures under paragraph (1) of this subsection.

(4) In using simplified acquisition procedures, the Authority shall promote competition to the maximum extent practicable.

(g) The Board shall adopt policies and procedures to implement this section. The policies and procedures shall provide for publication of notice of procurements and other actions designed to secure competition where competitive procedures are used.

(h) The Authority, in its discretion, may reject any and all bids or proposals received in response to a solicitation.

#### Rights of Way

74. The Board is authorized to locate, construct and maintain any of its transit and related facilities in, upon, over, under or across any streets, highways, freeways, bridges and any other vehicular facilities, subject to the applicable laws governing such use of such facilities by public agencies. In the absence of such laws, such use of such facilities by the Board shall be subject to such reasonable conditions as the highway department or other affected agency of a signatory party may require; provided, however, that the Board shall not construct or operate transit or related facilities upon, over, or across any parkways or park lands without the consent of, and except upon the terms and conditions required by, the agency having jurisdiction with respect to such parkways and park lands, but may construct or operate such facilities in a subway under such parkways or park lands upon such reasonable terms and conditions as may be specified by the agency having jurisdiction with respect thereto.

#### Compliance with Laws, Regulations and Ordinances

75. The Board shall comply with all laws, ordinances and regulations of the signatories and political subdivisions and agencies thereof with respect to use of streets, highways and all other vehicular facilities, traffic control and regulation, zoning, signs and buildings.

#### Police

76. (a) The Authority is authorized to establish and maintain a regular police force, to be known as the Metro Transit Police, to provide protection for



its patrons, personnel, and Transit facilities. The Metro Transit Police shall have the powers and duties and shall be subject to the limitations set forth in this section. It shall be composed of both uniformed and plainclothes personnel and shall be charged with the duty of enforcing the laws of the Signatories, the laws, ordinances, and regulations of the political subdivisions thereof in the Transit Zone, and the rules and regulations of the Authority. The jurisdiction of the Metro Transit Police shall include all the Transit facilities (including bus stops) owned, controlled, or operated by the Authority. This restriction shall not limit the power of the Metro Transit Police to make arrests in the Transit Zone for violations committed upon, to, or against such Transit facilities committed from within or outside such Transit facilities while in hot or close pursuit, or to execute traffic citations and criminal process in accordance with subsection (c) of this section. The members of the Metro Transit Police shall have concurrent jurisdiction in the performance of their duties with the duly constituted law enforcement agencies of the Signatories and of the political subdivisions thereof in which any Transit facility of the Authority is located or in which the Authority operates any Transit service. On-duty Metro Transit Police officers are authorized to make arrests off of Transit facilities within the Transit Zone when immediate action is necessary to protect the health, safety, welfare, or property of an individual from actual or threatened harm or from an unlawful act. Nothing contained in this section shall either relieve any Signatory or political subdivision or agency thereof from its duty to provide police, fire, and other public safety service and protection, or limit, restrict, or interfere with the jurisdiction of, or the performance of, duties by the existing police, fire, and other public safety agencies. For purposes of this section, "bus stop" means that area within 150 feet of a Metrobus bus stop sign, excluding the interior of any building not owned, controlled, or operated by the Washington Metropolitan Area Transit Authority.

(b) A member of the Metro Transit Police shall have the same powers, including the power of arrest, and shall be subject to the same limitations, including regulatory limitations, in performance of his or her duties as a member of the duly constituted police force of the political subdivision in which the Metro Transit Police member is engaged in the performance of his or her duties. A member of the Metro Transit Police is authorized to carry and use only such weapons, including handguns, as are issued by the Authority. A member of the Metro Transit Police is subject to such additional limitations in the use of weapons as are imposed on the duly constituted police force for the political subdivision in which he or she is engaged in the performance of his or her duties.

(c) Members of the Metro Transit Police shall have the power to execute on the transit facilities owned, controlled, or operated by the Authority any traffic citation or any criminal process issued by any court of any signatory or of any political subdivision of a signatory, for any felony, misdemeanor, or other offense against the laws, ordinances, rules or regulations specified in subsection (a). With respect to offenses committed upon, to, or against the transit facilities owned, controlled, or operated by the Authority, the Metro Transit Police shall have the power to execute criminal process within the Transit Zone.

(d) Upon the apprehension or arrest of any person by a member of the Metro Transit Police pursuant to the provisions of subsection (b), the officer, as required by the law of the place of apprehension or arrest, shall either issue a summons or a citation against the person, book the person, or deliver the person to the duly constituted police or judicial officer of the signatory or political subdivision where the apprehension or arrest is made, for disposition as required by law.

(e) The Authority shall have the power to adopt rules and regulations for the safe, convenient, and orderly use of the Transit facilities owned, controlled, or operated by the Authority, including the payment and the manner of the payment of fares or charges therefor, the protection of the Transit facilities, the control of traffic and parking upon the Transit facilities, and the safety and protection of the riding public. In the event that any such rules and regulations contravene the laws, ordinances, rules, or regulations of a Signatory or any political subdivision thereof which are existing or subsequently enacted, these laws, ordinances, rules, or regulations of the Signatory or the political subdivision shall apply and the conflicting rule or regulation, or portion thereof, of the Authority shall be void within the jurisdiction of that Signatory or political subdivision. In all other respects the rules and regulations of the Authority shall be uniform throughout the Transit Zone. The rules and regulations established under this subsection shall be adopted by the Board following public hearings held in accordance with section 62(c) and (d) of this Compact. The final regulation shall be published in a newspaper of general circulation within the Transit Zone at least 15 days before its effective date. Any person violating any rule or regulation of the Authority shall be subject to arrest and, upon conviction by a court of competent jurisdiction, shall pay a fine of not more than \$250 and costs. Criminal violations of any rule or regulation of the Authority shall be prosecuted by the Signatory or political subdivision in which the violation occurred, in the same manner by which violations of laws, ordinances, rules and regulations of the Signatory or political subdivision are prosecuted.

(f) With respect to members of the Metro Transit Police, the Authority shall—

(1) establish classifications based on the nature and scope of duties and fix and provide for their qualifications, appointment, removal, tenure, term, compensation pension, and retirement benefits;

(2) provide for their training and for this purpose, the Authority may enter into contracts or agreements with any public or private organization engaged in police training, and this training and the qualifications of the uniformed and plainclothes personnel shall at least equal the requirements of each signatory and of the political subdivisions therein in the Transit Zone for their personnel performing comparable duties; and

(3) prescribe distinctive uniforms to be worn.

(g) The Authority shall have the power to enter into agreements with the signatories, the political subdivisions thereof in the Transit Zone, and public safety agencies located therein, including those of the Federal Government, for the delineation of the functions and responsibilities of the Metro Transit Police

and the duly constituted police, fire, and other public safety agencies, and for mutual assistance.

(h) Before entering upon the duties of office, each member of the Metro Transit Police shall take or subscribe to an oath or affirmation, before a person authorized to administer oaths, faithfully to perform the duties of that office.

#### Exemption from Regulation

77. Except as otherwise provided in this Title, any transit service rendered by transit facilities owned or controlled by the Authority and the Authority or any corporation, firm or association performing such transit service pursuant to an operating contract with the Authority, shall, in connection with the performance of such service, be exempt from all laws, rules, regulations and orders of the signatories and of the United States otherwise applicable to such transit service and persons, except that laws, rules, regulations and orders relating to inspection of equipment and facilities, safety and testing shall remain in force and effect; provided, however, that the Board may promulgate regulations for the safety of the public and employees not inconsistent with the applicable laws, rules, regulations or orders of the signatories and of the United States.

#### Tax Exemption

78. It is hereby declared that the creation of the Authority and the carrying out of the corporate purposes of the Authority is in all respects for the benefit of the people of the signatory states and is for a public purpose and that the Authority and the Board will be performing an essential governmental function, including, without limitation, proprietary, governmental and other functions, in the exercise of the powers conferred by this Title. Accordingly, the Authority and the Board shall not be required to pay taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession or supervision or upon its activities in the operation and maintenance of any transit facilities or upon any revenues therefrom and the property and income derived therefrom shall be exempt from all federal, State, District of Columbia, municipal and local taxation. This exemption shall include, without limitation, all motor vehicle license fees, sales taxes and motor fuel taxes.

#### Reduced Fares

79. The District of Columbia, the Northern Virginia Transportation District, the Washington Suburban Transit District and the component governments thereof, may enter into contracts or agreements with the Authority to make equitable payments for fares lower than those established by the Authority pursuant to the provisions of Article XIII hereof for any specified class or category of riders.

#### Liability for Contracts and Torts

80. The Authority shall be liable for its contracts and for its torts and those of its Directors, officers, employees and agent committed in the conduct of any

proprietary function, in accordance with the law of the applicable signatory (including rules on conflict of laws), but shall not be liable for any torts occurring in the performance of a governmental function. The exclusive remedy for such breach of contracts and torts for which the Authority shall be liable, as herein provided, shall be by suit against the Authority. Nothing contained in this Title shall be construed as a waiver by the District of Columbia, Maryland, Virginia and the counties and cities within the Zone of any immunity from suit.

### Jurisdiction of Courts

81. The United States District Courts shall have original jurisdiction, concurrent with the courts of Maryland, Virginia, and the District of Columbia, of all actions brought by or against the Authority and to enforce subpoenas issued under this Title. Any such action initiated in a State or District of Columbia court shall be removable to the appropriate United States District Court in the manner provided by 28 U.S.C. § 1446.

### Condemnation

82.(a) The Authority shall have the power to acquire by condemnation, whenever in its opinion it is necessary or advantageous to the Authority to do so, any real or personal property, or any interest therein, necessary or useful for the transit system authorized herein, except property owned by the United States, by a signatory, or any political subdivision thereof, whenever such property cannot be acquired by negotiated purchase at a price satisfactory to the Authority.

(b) Proceedings for the condemnation of property in the District of Columbia shall be instituted and maintained under §§ 16-1351 — 16-1366. Proceedings for the condemnation of property located elsewhere within the Zone shall be instituted and maintained, if applicable, pursuant to the provisions of the Act of August 1, 1888, as amended (25 Stat. 357, 40 U.S.C. 257) and the Act of June 25, 1948 (62 Stat. 935 and 937, 28 U.S.C. 1358 and 1403) or any other applicable Act; provided, however, that if there is no applicable Federal law, condemnation proceedings shall be in accordance with the provisions of the State law of the signatory in which the property is located governing condemnation by the highway agency of such state. Whenever the words "real property," "realty," "land," "easement," "right-of-way," or words of similar meaning are used in any applicable federal or state law relating to procedure, jurisdiction and venue, they shall be deemed, for the purposes of this Title, to include any personal property authorized to be acquired hereunder.

(c) Any award or compensation for the taking of property pursuant to this Title shall be paid by the Authority, and none of the signatory parties nor any other agency, instrumentality or political subdivision thereof shall be liable for such award or compensation.

### Enlargement and Withdrawal; Duration

83.(a) When advised in writing by the Northern Virginia Transportation Commission or the Washington Suburban Transit Commission that the

geographical area embraced therein has been enlarged, the Board, upon such terms and conditions as it may deem appropriate, shall by resolution enlarge the Zone to embrace the additional area.

(b) The duration of this Title shall be perpetual but any signatory thereto may withdraw therefrom upon two years' written notice to the Board.

(c) The withdrawal of any signatory shall not relieve such signatory, any transportation district, county or city or other political subdivision thereof from any obligation to the Authority, or inuring to the benefit of the Authority, created by contract or otherwise.

#### Amendments and Supplements

84. Amendments and supplements to this Title to implement the purposes thereof may be adopted by legislative action of any of the Signatory parties concurred in by all of the others. When one Signatory adopts an amendment or supplement to an existing section of the Compact, that amendment or supplement shall not be immediately effective, and the previously enacted provision or provisions shall remain in effect in each jurisdiction until the amendment or supplement is approved by the other Signatories and is consented to by Congress.

#### Construction and Severability

85. The provisions of this Title and of the agreements thereunder shall be severable and if any phrase, clause, sentence or provision of this Title or any such agreement is declared to be unconstitutional or the applicability thereof to any signatory party, political subdivision or agency thereof is held invalid, the constitutionality of the remainder of this Title or any such agreement and the applicability thereof to any other signatory party, political subdivision or agency thereof or circumstance shall not be affected thereby. It is the legislative intent that the provisions of this Title be reasonably and liberally construed.

#### Effective Date; Execution

86. This Title shall be adopted by the signatories in the manner provided by law therefor and shall be signed and sealed in four duplicate original copies. One such copy shall be filed with the Secretary of State of each of the signatory parties or in accordance with laws of the State in which the filing is made, and one copy shall be filed and retained in the archives of the Authority upon its organization. This Title shall become effective ninety days after the enactment of concurring legislation by or on behalf of the District of Columbia, Maryland and Virginia and consent thereto by the Congress and all other acts or actions have been taken, including the signing and execution of the Title by the Governors of Maryland and Virginia and the Commissioners of the District of Columbia.

(Nov. 6, 1966, 80 Stat. 1324, Pub. L. 89-774, § 1; July 13, 1972, 86 Stat. 466, Pub. L. 92-349, title III, § 301; Oct. 21, 1972, 86 Stat. 1000, Pub. L. 92-517,

title I, § 101; 1973 Ed., § 1-1431; June 4, 1976, 90 Stat. 672, Pub. L. 94-306, § 1 (1)-(4); June 11, 1976, D.C. Law 1-67, §§ 2, 3, DCR 501; Sept. 26, 1984, D.C. Law 5-122, § 2, 31 DCR 4049; March 21, 1995, D.C. Law 10-244, § 2, 42 DCR 234; Apr. 25, 1996, D.C. Law 11-261, § 5, 44 DCR; June 6, 1996, D.C. Law 11-138, § 4, 43 DCR 2142.)

**Cross references.** — As to availability of relocation payments and assistance to persons displaced by programs and projects of Washington Metropolitan Area Transit Authority, see § 5-834.

As to equal access to public conveyances for blind and physically disabled persons, see § 6-1702.

**Section references.** — This section is referred to in §§ 1-1177.1 and 1-2433 to 1-2436.

**Legislative history of Law 1-67.** — See note to § 1-2433.

**Legislative history of Law 5-122.** — See note to § 1-2437.1.

**Legislative history of Law 10-244.** — Law 10-244, the "Washington Metropolitan Area Transit Authority Compact Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-647, which was referred to the Committee on Regional Authorities and sequentially to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 21, 1994, respectively. Signed by the Mayor on December 30, 1994, it was assigned Act No. 10-390 and transmitted to both Houses of Congress for its review. D.C. Law 10-244 became effective on March 21, 1995.

**Legislative history of Law 11-138.** — See note to § 1-2411.

**Mayor to enter into agreements and effective date.** — Section 3 of D.C. Law 10-244 provided that the Mayor of the District of Columbia shall, for the District of Columbia, enter into agreements with the Commonwealth of Virginia and the State of Maryland to make technical amendments to Title III of the Washington Metropolitan Area Transit Regulation Compact, so long as the amended version of the Compact then substantially conforms to the amendments in section 2 of the act. The technical amendments shall become effective when the Mayor executes the agreements concerning the Compact.

**Effective date of §§ 2, 3, and 4 of Law 11-138.** — Section 5 of D.C. Law 11-138 provided that §§ 2, 3, and 4 shall take effect after those provisions have been adopted by the District of Columbia, the State of Maryland, and the Commonwealth of Virginia in a manner provided by law therefor, and have received the consent of Congress.

**References in text.** — The "Urban Mass Transportation Act of 1964" referred to in 58(a) is now codified at 49 U.S.C. § 5301 et seq.

"Contract Work Hours Standards Act" referred to in the second sentence of 64 is codified at 40 U.S.C. § 327 et seq. "Section 7 of the Urban Mass Transportation Act of 1964" referred to in 67 is now partly codified at 49 U.S.C. § 5324(a).

**Land for D.C. transportation facilities.** — Section 1 of Pub. L. 98-340 provided that the Architect of the Capitol and the District of Columbia is directed to enter into an agreement for the conveyance of certain real property, the Secretary of the Interior is directed to permit the District of Columbia and the Washington Metropolitan Area Transit Authority to construct, maintain, and operate certain transportation improvements on federal property, and the Architect of the Capitol is directed to provide the Washington Metropolitan Area Transit Authority access to certain real property.

**Adoption of amendments subject to Congressional consent.** — Pursuant to § 2 of D.C. Law 11-138, the District of Columbia adopted amendments to Article I of Title I and Articles III, VI, XIII, XIV, and XVI of Title III of the Washington Metropolitan Area Transit Regulation Compact as set forth in §§ 2 and 3 of the act, subject to the consent of Congress thereto and the fulfillment of the conditions in §§ 5 and 6 of the act.

**Editor's notes.** — Although the District of Columbia, the Commonwealth of Virginia, and the State of Maryland passed legislation amending various portions of the Compact in 1983-1984, Congress did not act upon these changes until 1988. Congressional approval was granted pursuant to H.J. Res. 480, Pub. L. 100-285, April 7, 1988. The Legislative History of H.J. Res. 480, H.R. Rep. 521, 100th Cong., 2d. Sess., explains that "H.J. Res. 480 represents the amendments ratified by each of the three jurisdictions which are substantially similar. . . . [P]rovisions which are not substantially similar are not included in H.J. Res. 480, and are therefore not granted the consent of the Congress." The version of § 76(e) as passed by the Council was not included in the Resolution because there were discrepancies between the provisions adopted by the District and that adopted by Maryland and Virginia. Since Congress did not enact the amended version of § 76(e), the 1976 version as set out above is still in effect. This version, which was enacted pursuant to Pub. L. 94-306, is contained in the Washington Metropolitan Area Transit Authority Compact (1988 ed.) published by WMATA.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(425) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Execution of Compact.** — The Compact set forth in this section was signed as follows: By the Governor of Maryland, November 17, 1966; by the Governor of Virginia, November 21, 1966; and by the President of the Board of Commissioners of the District of Columbia, November 22, 1966.

**Policy of Congress.** — Section 805 of the Act of December 15, 1971, 85 Stat. 659, Pub. L. 92-196, declared the policy of Congress that, to the extent that costs of the regional transit projects are not covered by the user charges, such costs would be equitably charged among the federal, District of Columbia, and participating local governments.

**Policy of Compact reflects need for administrative flexibility.** — The stated policy of the Compact reflects the recognition that complex legal and financial obstacles to the completion of the transit system demand administrative flexibility that allows limited tradeoffs as opposed to perfect equitable apportionment of obligations in each type of financing instrument. *Bootery, Inc. v. Washington Metro. Area Transit Auth.*, 326 F. Supp. 794 (D.D.C. 1971).

**Federal law governs interpretation of Compact unless Congress explicitly provides otherwise.** — Where Congress wanted state law to govern a question under the Washington Metropolitan Area Transit Authority (WMATA) Compact, such as in proprietary tort actions, it said so explicitly; where Congress has not so provided, federal law governs the interpretation of Compact terms. *Beebe v. Washington Metro. Area Transit Auth.*, 129 F.3d 1283 (D.C. Cir. 1997).

**Authority's decisions based on complete record.** — Decisions of the Washington Metropolitan Area Transit Authority must be based on a complete record expressing views of all recognized interests, particularly those interests expressly recognized by the Compact. *Bootery, Inc. v. Washington Metro. Area Transit Auth.*, 326 F. Supp. 794 (D.D.C. 1971).

**But statement of findings not necessary.** — The Board of Directors of the Authority is not required to make a statement of findings or reasons to support its decisions, since the Board is a quasi-legislative body engaged in the planning and construction of a rapid rail transit system, and, as such, its decisions are not subject to any constitutional or statutory due process requirement mandating findings or reasons. *Birnberg v. Washington Metro. Area Transit Auth.*, 389 F. Supp. 340 (D.D.C. 1975).

**Nature of public hearings flexible.** — Flexibility should be accorded Washington Metropolitan Area Transit Authority in determining precise nature of its public hearings on basis of technical considerations; cross-examination would be pointless, but counsel and experts for parties should be given opportunity to criticize Authority's proposals and to present their own alternatives and respond to criticisms of those alternatives. *Bootery, Inc. v. Washington Metro. Area Transit Auth.*, 326 F. Supp. 794 (D.D.C. 1971).

**And quorum of directors need not be present.** — It is not necessary that a quorum of the Board of Directors of the Authority be present at public hearings on transit system alignment nor that members of Board of Directors who attend the public hearings on transit system alignment be the same Board members who ultimately vote to adopt the alignment discussed at public hearings. *Birnberg v. Washington Metro. Area Transit Auth.*, 389 F. Supp. 340 (D.D.C. 1975).

**Opportunity to challenge Authority's proposals.** — It is the clear intent of the Compact that an affected party have adequate opportunity to challenge the Authority's proposals as they may adversely affect his or her interest. *Bootery, Inc. v. Washington Metro. Area Transit Auth.*, 326 F. Supp. 794 (D.D.C. 1971).

**Opportunity to address Board.** — Where counsel for business operators were present at meetings held by the Authority but were unable to respond to criticisms of their alternative plan because no notice had been given of the Authority's staff's position, and counsel was not allowed to respond on the date of a subsequent meeting, the Board of Directors of the Authority shirked its responsibility by providing inadequate opportunity for the business operators to address the Board itself, and the operators are entitled to a public hearing conducted by the Board and a de novo consideration by the

Board of such alternative proposal. *Bootery, Inc. v. Washington Metro. Area Transit Auth.*, 326 F. Supp. 794 (D.D.C. 1971).

**Maintenance of property.** — This section would not bar plaintiff's suit against transit authority for petroleum contamination since claims arose out of the maintenance of property, a proprietary rather than governmental function. *325-343 E. 56th St. Corp. v. Mobil Oil Corp.*, 906 F. Supp. 669 (D.D.C. 1995).

**Power to condemn limited property interest.** — Whether or not Congress explicitly or implicitly authorized the Authority to condemn cemetery property, the Authority could condemn a property interest in the cemetery for the limited purpose of making test borings to determine the feasibility of a tunnel under the cemetery. *Washington Metro. Area Transit Auth. v. One Parcel of Land*, 514 F.2d 1350 (D.C. Cir. 1975).

**Decision to build segment of system not arbitrary.** — The decision of the Board of Directors of the Authority to build a segment of the rapid rail transit system under a certain street was not arbitrary, capricious, or irrational. *Birnberg v. Washington Metro. Area Transit Auth.*, 389 F. Supp. 340 (D.D.C. 1975).

**Action against Authority qualifies as class action.** — Taxpayers' action to raise issues under the financial plan provided for by the Washington Metropolitan Area Transit Authority Compact qualifies as a class action since any inconsistency between the interests of the plaintiffs and those of other taxpayers is minimal and remote. *Bootery, Inc. v. Washington Metro. Area Transit Auth.*, 326 F. Supp. 794 (D.D.C. 1971).

**Standing.** — Leaseholding business operators who would be dislocated by the execution of a mass transit plan provided for by the Compact have standing to raise a due process issue under the Compact or the Constitution of the United States. *Bootery, Inc. v. Washington Metro. Area Transit Auth.*, 326 F. Supp. 794 (D.D.C. 1971).

The Compact itself provides sufficient basis for standing of leaseholding business operators who would be dislocated to review the business dislocation provisions of the mass transit plan. *Bootery, Inc. v. Washington Metro. Area Transit Auth.*, 326 F. Supp. 794 (D.D.C. 1971).

With respect to the financial plan provided by the Compact, plaintiffs' standing to sue the Authority to challenge the plan arises from their long-accepted standing as taxpayers, the Authority being an agency of the District of Columbia government supported in part by District tax revenues. *Bootery, Inc. v. Washington Metro. Area Transit Auth.*, 326 F. Supp. 794 (D.D.C. 1971).

Taxpayers of the District of Columbia do not have standing to challenge bond referenda in Maryland or Virginia. *Bootery, Inc. v. Washing-*

*ton Metro. Area Transit Auth.*, 326 F. Supp. 794 (D.D.C. 1971).

**Necessary and indispensable parties.** — The District of Columbia, its Mayor and its financial officer are necessary and indispensable parties to action challenging certain plans formulated by Washington Metropolitan Area Transit Authority pursuant to compact between Maryland, Virginia, and federal government on behalf of District of Columbia. *Bootery, Inc. v. Washington Metro. Area Transit Auth.*, 326 F. Supp. 794 (D.D.C. 1971).

**Scope of review of financial plan limited.** — Scope of reviewability in taxpayers' action challenging the financial plan of the Authority is limited to consideration of whether the Authority's actions did or might result in an illegal disposition of moneys of the District of Columbia or an illegal creation of debt that plaintiffs would hold in common with other District taxpayers, whether the Authority's actions were ultra vires or fraudulent, or arbitrary or capricious, totally lacking in factual basis. *Bootery, Inc. v. Washington Metro. Area Transit Auth.*, 326 F. Supp. 794 (D.D.C. 1971).

**Jurisdiction over actions involving Authority is held concurrently** by the Superior Court and the United States District Court. *Qasim v. Washington Metro. Area Transit Auth.*, App. D.C., 455 A.2d 904, cert. denied, 461 U.S. 929, 103 S. Ct. 2090, 77 L. Ed. 2d 300 (1983).

**District Court's threshold jurisdictional amount eliminated for actions involving Authority.** — Section 81 of the Compact eliminates the \$10,000 threshold for actions involving the Authority in the United States District Court. *Qasim v. Washington Metro. Area Transit Auth.*, App. D.C., 455 A.2d 904, cert. denied, 461 U.S. 929, 103 S. Ct. 2090, 77 L. Ed. 2d 300 (1983).

**Article XIV of Compact designed to promote "peaceful settlement of all labor disputes".** — The Compact's statutory intent in Article XIV was to provide the most efficacious means for "peaceful settlement of all labor disputes," so as to prevent work-stoppages which would disrupt transit services. *Office & Professional Employees Int'l Union, Local 2 v. Washington Metro. Area Transit Auth.*, 552 F. Supp. 622 (D.D.C. 1982), aff'd, 713 F.2d 865 (D.C. Cir. 1983).

**Obligation to bargain in good faith integral part of Compact.** — The obligation to bargain in good faith is as integral a part of the Compact as it is part of the National Labor Relations Act. The obligation imposed on the Washington Metropolitan Area Transit Authority is to "deal with" its employees, while under the National Labor Relations Act it is to "bargain collectively." *Office & Professional Employees Int'l Union, Local 2 v. Washington Metro.*



Area Transit Auth., 552 F. Supp. 622 (D.D.C. 1982), *aff'd*, 713 F.2d 865 (D.C. Cir. 1983).

**Common law of labor arbitration governs judicial review.** — The common law of labor arbitration must be the source for judicial standard of review of arbitral decisions under this Compact. *Office & Professional Employees Int'l, Local 2 v. Washington Metro. Area Transit Auth.*, 724 F.2d 133 (D.C. Cir. 1983).

**Courts to be available to enforce any award under Article XIV of Compact.** — The legislative history of Article XIV of the Compact clearly articulates congressional intent that the courts be available to enforce any award. *Office & Professional Employees Int'l Union, Local 2 v. Washington Metro. Area Transit Auth.*, 552 F. Supp. 622 (D.D.C. 1982), *aff'd*, 713 F.2d 865 (D.C. Cir. 1983).

**Term "deal with" imposes broad range of responsibilities upon Authority.** — The term "deal with" in § 66(b) of the Compact, by including certain exchanges between employer and employees which are outside the normal collective bargaining process, was not intended to wreak havoc with the principles of good faith governing negotiations over items inside the usual realm of collective bargaining. Thus, the use of the term in the Compact serves to broaden, rather than narrow, the range of responsibilities imposed upon the Washington Metropolitan Area Transit Authority. *Office & Professional Employees Int'l Union, Local 2 v. Washington Metro. Area Transit Auth.*, 552 F. Supp. 622 (D.D.C. 1982), *aff'd*, 713 F.2d 865 (D.C. Cir. 1983).

**Use of word "agent" in § 80 of Compact is unqualified** and there is no reason for distinguishing between "independent contractors" who are agents and "servants" who are agents. *Johnson v. Bechtel Assocs. Professional Corp.*, 717 F.2d 574 (D.C. Cir. 1983), *rev'd* on other grounds *sub nom. Washington Metro. Area Transit Auth. v. Johnson*, 467 U.S. 925, 104 S. Ct. 2827, 81 L. Ed. 2d 768 (1984).

**Exhaustion of administrative remedies.** — Employees must exhaust arbitration procedures before filing suit against the Washington Metropolitan Area Transit Authority. *Beebe v. Washington Metro. Area Transit Auth.*, 129 F.3d 1283 (D.C. Cir. 1997).

The Washington Metropolitan Area Transit Authority waived its defense of exhaustion of remedies when it failed to respond to the employee's grievance. *Beebe v. Washington Metro. Area Transit Auth.*, 129 F.3d 1283 (D.C. Cir. 1997).

**Plenary review of arbitration awards on the merits is barred** by the Compact's language. *Office & Professional Employees Int'l Union, Local 2 v. Washington Metro. Area Transit Auth.*, 552 F. Supp. 622 (D.D.C. 1982), *aff'd*, 713 F.2d 865 (D.C. Cir. 1983).

**Scope of judicial review of "final and binding" arbitration awards.** — In reviewing "final and binding" arbitration awards under the Compact, a court will examine the award to see whether it complies with the requirements of the Compact, to see whether it confines itself to matters within its jurisdiction, and to see whether fraud or corruption are involved. *Office & Professional Employees Int'l Union, Local 2 v. Washington Metro. Area Transit Auth.*, 552 F. Supp. 622 (D.D.C. 1982), *aff'd*, 713 F.2d 865 (D.C. Cir. 1983).

**Where union alleged breach of 3 collective bargaining agreements**, the union raised a "labor dispute" which must be submitted to an arbitration board under § 66(c) of the Compact. *Office & Professional Employees Int'l Union, Local 2 v. Washington Metro. Area Transit Auth.*, 569 F. Supp. 797 (D.D.C. 1983).

**Right to object to noncompliance with Compact waived by voluntarily proceeding before 1 arbitrator.** — Where the Washington Metropolitan Area Transit Authority voluntarily proceeded before 1 arbitrator, rather than 3 arbitrators as prescribed in § 66(c) of the Compact, it waived any right to object to any lack of compliance with the Compact. *Office & Professional Employees Int'l Union, Local 2 v. Washington Metro. Area Transit Auth.*, 552 F. Supp. 622 (D.D.C. 1982), *aff'd*, 713 F.2d 865 (D.C. Cir. 1983).

**Sovereign immunity.** — In signing the Washington Metropolitan Area Transit Authority (WMATA) Compact, Maryland, Virginia, and the District of Columbia conferred upon WMATA their respective sovereign immunities. *Beebe v. Washington Metro. Area Transit Auth.*, 129 F.3d 1283 (D.C. Cir. 1997).

**Section 76(b) inapplicable to issue of sovereign immunity.** — The language of § 76(b) of the Compact refers to powers and limitations in terms of the power of and limitation regarding the making of an arrest, or the carrying of a weapon, and to matters concerning Washington Metropolitan Area Transit Authority's internal operating procedures, but not to the applicability of sovereign immunity. *Hall v. Washington Metro. Area Transit Auth.*, App. D.C., 468 A.2d 970 (1983).

Section 76(b) of the Compact does not amend § 80 to require application of the immunity law of the District of Columbia to arrests by Washington Metropolitan Area Transit Authority (WMATA) transit police officers in the District. Therefore, the language of the Compact does not waive WMATA's immunity from suits for torts committed during the performance of governmental functions. *Keenan v. Washington Metro. Area Transit Auth.*, 643 F. Supp. 324 (D.D.C. 1986).

**Immunity despite Compact's "sue or be sued" clause.** — Defendant was immune from any award of punitive damages because even

though the Compact creating it contained a "sue or be sued" clause, another section in the compact established its immunity for any torts occurring in the performance of a governmental function. *Wainwright v. Washington Metro. Area Transit Auth.*, 958 F. Supp. 6 (D.D.C. 1997).

**Authority's immunity from tort action through purchase of subcontractors' worker's compensation insurance.** — For case discussing Washington Metropolitan Area Transit Authority (WMATA's) immunity from tort action where it, as general contractor, purchased "wrap-up" worker's compensation insurance on behalf of its subcontractors, see *Washington Metro. Area Transit Auth. v. Johnson*, 467 U.S. 925, 104 S. Ct. 2827, 81 L. Ed. 2d 768 (1984).

**The "governmental function" language of the Compact's § 80 concerns torts, and torts alone.** *Sanders v. Washington Metro. Area Transit Auth.*, 819 F.2d 1151 (D.C. Cir. 1987).

**"Governmental function" vs. "proprietary function."** — Tort suits involving a "governmental function" are quite dissimilar under § 80 from suits (including tort claims) involving a "proprietary function" in that the latter (but not the former) are controlled by "the law of the applicable signatory"; "governmental function" tort suits are to be governed by federal law as that law has been stated in the Tort Claims Act. *Sanders v. Washington Metro. Area Transit Auth.*, 819 F.2d 1151 (D.C. Cir. 1987); *Hawthorne v. Washington Metro. Area Transit Auth.*, 702 F. Supp. 285 (D.D.C. 1988).

Courts have interpreted § 80 of the Compact to mean that the signatories to the Compact — Maryland, Virginia, and the District of Columbia — have conferred their respective sovereign immunities on WMATA, and those entities have then partially waived those immunities in § 80 and the question whether the function in question is governmental or proprietary under § 80 is one of federal law. *Simpson v. Washington Metro. Area Transit Auth.*, 688 F. Supp. 765 (D.D.C. 1988).

**"Governmental function" vs. "proprietary function."** — Whether a function of the Washington Metropolitan Area Transit Authority (WMATA) is proprietary or governmental for immunity purposes is a question of federal law because the WMATA Compact is an act of Congress. *Wainwright v. Washington Metro. Area Transit Auth.*, 903 F. Supp. 133 (D.D.C. 1995).

**Adoption of programs without official proceeding may be within governmental discretion.** — Where the Washington Metropolitan Area Transit Authority (WMATA) has consistently held its Washington Metropolitan Area Transit Authority Noise and Vibration Control Program out as embodying its noise

level guidelines and has actually followed the program's limits, it would be unduly formalistic to require WMATA to hold an official proceeding before it may 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).

**Actions regarding contracts are discretionary functions entitled to immunity.** — Under the governmental-proprietary function test, the negotiation and execution of a contract, specifically a settlement agreement, is a discretionary function, and, therefore, a governmental function for which it an agency retains its sovereign immunity against awards of prejudgment interest. *Kingston Constructors, Inc. v. Washington Metro. Area Transit Auth.*, 860 F. Supp. 886 (D.D.C. 1994).

**Actions regarding reorganization of procurement office are discretionary functions.** — The Washington Metropolitan Area Transit Authority's appointment of an individual to oversee the reorganization of the Office of Procurement, as well as later actions in the course of the reorganization, were discretionary activities for which the Authority was entitled to immunity from suit. *Beebe v. Washington Metro. Area Transit Auth.*, 129 F.3d 1283 (D.C. Cir. 1997).

**Operating subway system is proprietary function** under § 80 of the Compact for which tort liability may be imposed. *Heffez v. Washington Metro. Area Transit Auth.*, 569 F. Supp. 1551 (D.D.C. 1983), *aff'd*, 786 F.2d 431 (D.C. Cir. 1986).

**Operation of police force.** — Authority acts under color of state law for purposes of 42 U.S.C. § 1983 in the operation of its police force. *Heffez v. Washington Metro. Area Transit Auth.*, 569 F. Supp. 1551 (D.D.C. 1983), *aff'd*, 786 F.2d 431 (D.C. Cir. 1986).

The maintenance and operation of the Metro Transit Police is a governmental function for which Authority enjoys immunity from tort liability under § 80 of the Compact. *Heffez v. Washington Metro. Area Transit Auth.*, 569 F. Supp. 1551 (D.D.C. 1983), *aff'd*, 786 F.2d 431 (D.C. Cir. 1986).

Since § 76 of the Compact enables and authorizes Washington Metropolitan Area Transit Authority (WMATA) to maintain a police force with significant police power to protect passengers and property, and the Compact grants WMATA the power to promulgate rules and regulations to assure the safety and protection of the riding public which are enforceable by the WMATA police force, WMATA's operation of its police force and those police activities are governmental functions and, as such, are immune from suit. *Simpson v. Washington Metro. Area Transit Auth.*, 688 F. Supp. 765 (D.D.C. 1988).

Operation of Washington Metropolitan Area

Transit Authority's police force is a quintessentially governmental function. *Hawthorne v. Washington Metro. Area Transit Auth.*, 702 F. Supp. 285 (D.D.C. 1988).

The signatories structured the Washington Metropolitan Area Transit Authority to enable it to enjoy the special constitutional protection of the states, thereby rendering plaintiff's claim, which alleges that WMATA negligently and intentionally failed to properly supervise its police force in violation of 42 U.S.C. § 1983 and the Fourth and Fifth Amendments, barred by the Eleventh Amendment. *Strange v. Chumas*, 580 F. Supp. 160 (D.D.C. 1983).

Plaintiff's claim alleging that Washington Metropolitan Area Transit Authority negligently and intentionally failed to properly supervise its police force, arising out of his arrest by a WMATA transit police officer concededly "acting under color of law and his authority as a WMATA transit officer," falls squarely within the sovereign immunity retained by WMATA in § 80 of the Compact since the operation of the WMATA police force "is a governmental function" within the meaning of § 80 of the Compact. *Strange v. Chumas*, 580 F. Supp. 160 (D.D.C. 1983).

Since § 80 of the Compact provides immunity for the acts of Washington Metropolitan Area Transit Authority employees when they are performing a governmental function, no liability can attach to the Authority for alleged false arrest made by WMATA police based on respondeat superior theory. *Hall v. Washington Metro. Area Transit Auth.*, App. D.C., 468 A.2d 970 (1983).

Action taken by a transit police officer to collect a fare is a governmental rather than a proprietary function since the officer is performing the governmental function of enforcing the law. *Keenan v. Washington Metro. Area Transit Auth.*, 643 F. Supp. 324 (D.D.C. 1986).

Washington Metropolitan Area Transit Authority 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).

**Washington Metropolitan Area Transit Authority enjoys Eleventh Amendment immunity.** *Morris v. Washington Metro. Area Transit Auth.*, 781 F.2d 218 (D.C. Cir. 1986).

**Washington Metropolitan Area Transit Authority a District agency.** — Agencies created by interjurisdictional compacts which are approved by Congress are not necessarily federal agencies, and such agencies can be, and often are, agencies of each of the signatory parties; for the purposes of a prosecution under § 22-712, Washington Metropolitan Area Transit Authority is a District of Columbia agency. *Colbert v. United States*, App. D.C., 601 A.2d 603 (1992).

**Immunity in nuisance suits.** — Because Washington Metropolitan Area Transit Authority (WMATA) benefits from the state-level immunity of Maryland and Virginia, claim that WMATA cannot assert immunity in nuisance suits is incorrect. *Souders v. Washington Metro. Area Transit Auth.*, 48 F.3d 546 (D.C. Cir. 1995).

**Immunity in hiring, training, and supervision of employees.** — Because decisions concerning the hiring, training, and supervision of transit authority employees are discretionary, the exercise of such decisions is a governmental function, and thus immune from judicial review. *Burkhart v. Washington Metro. Area Transit Auth.*, 112 F.3d 1207 (D.C. Cir. 1997).

**Waiver of immunity.** — There is no language in the Compact granting Washington Metropolitan Area Transit Authority's attorneys or any other officials the authority to waive its eleventh amendment immunity. *Keenan v. Washington Metro. Area Transit Auth.*, 643 F. Supp. 324 (D.D.C. 1986).

In agreeing wholly to compensate contractor for any costs sustained as a result of modifications in the work it wanted performed, Washington Metropolitan Area Transit Authority waived its immunity from prejudgment interest. *General Ry. Signal Co. v. Washington Metro. Area Transit Auth.*, 875 F.2d 320 (D.C. Cir. 1989), cert. denied, 494 U.S. 1056, 110 S. Ct. 1524, 108 L. Ed. 2d 764 (1990).

**Immunity waived for ministerial acts of supervision and training.** — The Washington Metropolitan Area Transit Authority is deemed to have waived its immunity for the ministerial acts of supervision and training. *Wainwright v. Washington Metro. Area Transit Auth.*, 903 F. Supp. 133 (D.D.C. 1995).

**Crowd control.** — Washington Metropolitan Area Transit Authority (WMATA) is immune from suit concerning allegations of failure to control crowds since crowd control certainly falls squarely within the functions of the WMATA police force. *Simpson v. Washington Metro. Area Transit Auth.*, 688 F. Supp. 765 (D.D.C. 1988).

**Drug testing of employees.** — The defendant's administration of the compulsory drug tests, as well as Washington Metropolitan Transit Authority's policy decisions to terminate those employees who tested positive for the presence of drugs or alcohol were governmental functions. The regulations and activities in question, including the discharge and removal of employees from service who failed the test, constituted governmental activity for the common good and in the public interest. *Sanders v. Washington Metro. Area Transit Auth.*, 652 F. Supp. 765 (D.D.C. 1986), aff'd, 819 F.2d 1151 (D.C. Cir. 1987).

The adoption of the general policy of testing

for drugs or alcohol immediately after an on-the-job accident or unusual operating incident was grounded in the social, political, and regulatory activities of Washington Metropolitan Area Transit Authority, and so the WMATA was immune from suit on constitutional and 42 U.S.C. § 1983 grounds where these grounds were all general attacks on the testing plan itself, and not on the manner of testing in a particular case. These challenges to the testing plan all invoked judicial "second-guessing," through a tort suit, of "administrative decisions grounded in social, economic and political policy" and therefore invokes "governmental" and "regulatory" functions; the Compact bars such suits. *Sanders v. Washington Metro. Area Transit Auth.*, 819 F.2d 1151 (D.C. Cir. 1987).

**Design and planning of a transportation system.** — The provision of mass transportation by the Transit Authority is itself a proprietary activity, but the design and planning of a transportation system are governmental activities because they involve quasi-legislative policy decisions which are discretionary in nature and should not be second-guessed by a jury. *McKethan v. Washington Metro. Area Transit Auth.*, App. D.C., 588 A.2d 708 (1991).

**Employee acting on safety directives.** — Sovereign immunity of the Washington Metropolitan Area Transit Authority did not bar a suit premised on the alleged negligence of its driver in carrying out express safety directives intended for the protection of its passengers. *Washington Metro. Area Transit Auth. v. O'Neill*, App. D.C., 633 A.2d 834 (1993).

**Designing and placing of traffic controls and security gates is governmental.** — Decisions regarding the type of security gate or surveillance system to install in the Metro system has been held to be a governmental function and thus subject to immunity under the Washington Metropolitan Area Transit Authority Compact. Sovereign immunity also applies to the planning decisions involved in determining the locations of traffic controls. *Nathan v. Washington Metro. Area Transit Auth.*, 653 F. Supp. 247 (D.D.C. 1986).

**Design of platforms, etc.** — Washington Metropolitan Area Transit Authority (WMATA) is immune from allegations of negligently designing the distance between the subway car and the platform. It is clear that WMATA's design decision concerning the distance of the gap between the platform and the subway train constitutes a discretionary decision and falls squarely within the parameters of WMATA's governmental functions. *Simpson v. Washington Metro. Area Transit Auth.*, 688 F. Supp. 765 (D.D.C. 1988).

**Design of escalators.** — Washington Metropolitan Area Transit Authority's (WMATA) policy decisions and judgments regarding the design of escalators and width of slots in esca-

lator treads are governmental functions. *Jones v. Washington Metro. Area Transit Auth.*, 742 F. Supp. 24 (D.D.C. 1990).

The Washington Metropolitan Area Transit Authority has not waived immunity for escalator design defects and failure to warn. *Wainwright v. Washington Metro. Area Transit Auth.*, 903 F. Supp. 133 (D.D.C. 1995).

**Maintenance of traffic controls is proprietary.** — The maintenance of traffic controls is a proprietary function and not subject to sovereign immunity. *Nathan v. Washington Metro. Area Transit Auth.*, 653 F. Supp. 247 (D.D.C. 1986).

**Operation of a transportation system or implementation of a design.** — The negligent operation of the transportation system or the negligent implementation of a design may be characterized as proprietary and the Transit Authority would not be immune from such negligence. *McKethan v. Washington Metro. Area Transit Auth.*, App. D.C., 588 A.2d 708 (1991).

**Maintenance of buses.** — Washington Metropolitan Area Transit Authority's (WMATA) decision to use 3/32 inch glass to replace broken windows on its bus is a protected policy decision; therefore WMATA was immune from suit for personal injuries caused by shattered, flying glass because choosing glass to be used in bus window is a governmental function. *Warren v. Washington Metro. Area Transit Auth.*, 880 F. Supp. 14 (D.D.C. 1995).

**Injury occurring while waiting at bus stop.** — Where a car crashed into a group of people waiting at a bus stop, the Transit Authority owed no special duty of care to those injured because they were not passengers at the time of the accident. *McKethan v. Washington Metro. Area Transit Auth.*, App. D.C., 588 A.2d 708 (1991).

**Causation evidence.** — Where injured claimant failed to present expert testimony on causation, the court should not have allowed this claim to go to the jury. *Lewis v. Washington Metro. Area Transit Auth.*, 19 F.3d 677 (D.C. Cir. 1994).

**Superseding cause.** — Intervening criminal conduct of two intoxicated, argumentative bus passengers did not amount to a superseding cause that, as a matter of law, broke the chain of causation and freed the Washington Metropolitan Area Transit Authority from liability. *Washington Metro. Area Transit Auth. v. O'Neill*, App. D.C., 633 A.2d 834 (1993).

**Claim for "negligent termination" is "unresolved labor dispute".** — For Washington Metropolitan Area Transit Authority employees, a claim for "negligent termination" is required to be submitted, if unsettled, to final and binding arbitration. Section 66(c) of the Compact explicitly so declares as to all unresolved "labor disputes," Congress intended to impose

such compulsory arbitration and the D.C. Circuit Court of Appeals has given the term "labor dispute" in the Compact a broad coverage. *Sanders v. Washington Metro. Area Transit Auth.*, 819 F.2d 1151 (D.C. Cir. 1987).

**Tax exemption.** — The Authority's immunity from taxation was not infringed because a component of its electric rate served to reimburse the Potomac Electric Power Company for the gross receipts tax it must pay to the District. *Washington Metro. Area Transit Auth. v. Public Serv. Comm'n*, App. D.C., 486 A.2d 682 (1984).

The assessment upon the Washington Metropolitan Area Transit Authority for a special fund from which the Secretary of Labor makes a variety of payments to injured workers is a user fee and not tax exempt under § 78. *Brook v. Washington Metro. Area Transit Auth.*, 796 F.2d 481 (D.C. Cir. 1986), cert. denied, 481 U.S. 1013, 107 S. Ct. 1887, 95 L. Ed. 2d 494 (1987).

**Evidence seized by Authority police officer acting outside geographic limits** of his jurisdiction violated the Fourth Amendment. *United States v. Foster*, 566 F. Supp. 1403 (D.D.C. 1983).

**Punitive damages.** — Punitive damages may not be assessed against the Washington Metropolitan Area Transit Authority where there is no evidence of extraordinary circumstances. *Teart v. Washington Metro. Area Transit Auth.*, 686 F. Supp. 12 (D.D.C. 1988).

**Title VII claims.** — Enactment of § 66(c) of the Washington Metropolitan Transit Authority Compact does not preclude an employee from pursuing Title VII claims in federal court, with its concomitant discovery rights, absent Congressional specification that arbitration was to be the sole forum for such claims. *Gary v. Washington Metro. Area Transit Auth.*, 886 F. Supp. 78 (D.D.C. 1995).

**Washington Area Metro Transit Authority not subject to Human Rights Act.** — The Washington Metropolitan Area Transit Authority (WMATA) is not subject to the District's Human Rights Act on the grounds that it is an interstate compact agency and the instrumentality of three separate jurisdictions; furthermore, pursuant to its compact, one signatory

may not impose its legislative enactment upon the entity created by it without the express consent of the other signatories and of the Congress of the United States. *Lucero-Nelson v. Washington Metro. Area Transit Auth.*, 1 F. Supp. 2d 1 (D.D.C. 1998).

**Cited in** *Vogel v. Washington Metro. Area Transit Auth.*, 533 F.2d 13 (D.C. Cir. 1976); *Otis Elevator Co. v. Washington Metro. Area Transit Auth.*, 432 F. Supp. 1089 (D.D.C. 1976); *General Ry. Signal Co. v. Washington Metro. Area Transit Auth.*, 527 F. Supp. 359 (D.D.C. 1979), aff'd, 664 F.2d 296 (D.C. Cir. 1980), cert. denied, 452 U.S. 915, 101 S. Ct. 3049, 69 L. Ed. 2d 418 (1981); *Gillot v. Washington Metro. Area Transit Auth.*, 507 F. Supp. 454 (D.D.C. 1981); *Ludolph v. Bechtel Assocs. Professional Corp.*, 542 F. Supp. 630 (D.D.C. 1982); *Fields v. Washington Metro. Area Transit Auth.*, 743 F.2d 890 (D.C. Cir. 1984); *Donovan v. Washington Metro. Area Transit Auth.*, 614 F. Supp. 1419 (D.D.C. 1985), aff'd sub nom. *Brock v. Washington Metro. Area Transit Auth.*, 796 F.2d 481 (D.C. Cir. 1986), cert. denied, 481 U.S. 1013, 107 S. Ct. 1887, 95 L. Ed. 2d 494 (1987); *McDonald v. United States*, App. D.C., 496 A.2d 274 (1985); *George Hyman Constr. Co. v. Washington Metro. Area Transit Auth.*, 621 F. Supp. 898 (D.D.C. 1985), aff'd, 816 F.2d 753 (D.C. Cir. 1987); *Harvey v. Washington Metro. Area Transit Auth.*, 814 F.2d 764 (D.C. Cir. 1987); *Clarke v. Washington Metro. Area Transit Auth.*, 654 F. Supp. 712 (D.D.C. 1985), aff'd, 808 F.2d 137 (D.C. Cir. 1987); *McKenna v. Washington Metro. Area Transit Auth.*, 670 F. Supp. 7 (D.D.C. 1986), aff'd, 829 F.2d 186 (D.C. Cir. 1987); *McKenna v. Washington Metro. Area Transit Auth.*, 829 F.2d 186 (D.C. Cir. 1987); *Beatty v. Washington Metro. Area Transit Auth.*, 860 F.2d 1117 (D.C. Cir. 1988); *Speed v. United States*, App. D.C., 562 A.2d 124 (1989); *Nello L. Teer Co. v. Washington Metro. Area Transit Auth.*, 921 F.2d 300 (D.C. Cir. 1990); *Washington Metro. Area Transit Auth. v. Brown*, App. D.C., 619 A.2d 1188 (1993); *Whitaker v. Washington Metro. Area Transit Auth.*, 889 F. Supp. 505 (D.D.C. 1995); *Democratic Cent. Comm'n v. Washington Metro. Area Transit Comm'n*, 84 F.3d 451 (D.C. Cir. 1996).

## § 1-2432. Authority of Council to enact acts adopting Compact amendments.

The Council of the District of Columbia shall have authority to enact any act adopting on behalf of the District of Columbia amendments to the Washington Metropolitan Area Transit Regulation Compact, but in no case shall any such amendment become effective until after it has been approved by Congress. (1973 Ed., § 1-1431-1; June 4, 1976, 90 Stat. 675, Pub. L. 94-306, § 4.)

**§ 1-2433. Consent of Council to Compact amendments.**

(a) The District of Columbia hereby consents to, adopts, and enacts amendments to Articles I and XVI of Title III of the Washington Metropolitan Area Transit Regulation Compact as set out in § 1-2431.

(b) The Mayor of the District of Columbia is authorized and directed to enter into and execute on behalf of the District of Columbia amendments, substantially as set forth in subsection (a) of this section, to Title III of the Washington Metropolitan Area Transit Regulation Compact with the Commonwealth of Virginia and the State of Maryland, which amendments shall become effective immediately upon execution of same. (1973 Ed., § 1-1431-1a; June 11, 1976, D.C. Law 1-67, §§ 2, 3, 23 DCR 501, 510.)

**Legislative history of Law 1-67.** — Law 1-67 was introduced in Council and assigned Bill No. 1-125, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on February 24, 1976 and March 9, 1976, respectively. Signed by the Mayor on April 1, 1976, it was assigned Act No. 1-104 and transmitted to both Houses of Congress for its review.

**References in text.** — The amendments referred to in subsection (a) of this section are to §§ 1 and 76 of the Compact.

**Cited in Office & Professional Employees Int'l Union, Local 2 v. Washington Metro. Area Transit Auth.,** 552 F. Supp. 622 (D.D.C. 1982), *aff'd*, 713 F.2d 865 (D.C. Cir. 1983).

**§ 1-2434. Congressional consent to amendments — Articles I, III, VII, IX, XI, XIV, and XVI of Title III.**

(a) The Congress hereby consents to amendments to Articles I, III, VII, IX, XI, XIV, and XVI of Title III of the Washington Metropolitan Area Transit Regulation Compact substantially as set out in § 1-2431.

(b) The Mayor of the District of Columbia is authorized and directed to enter into and execute on behalf of the District of Columbia amendments, substantially as set forth in subsection (a) of this section, to Title III of the Washington Metropolitan Area Transit Regulation Compact with the States of Virginia and Maryland. (July 13, 1972, 86 Stat. 466, Pub. L. 92-349, title III, § 301; 1973 Ed., § 1-1431a.)

**References in text.** — The amendments referred to in subsection (a) of this section are to §§ 1(g), 5(a), 21, 35, 39, 51, 66, and 79.

**Change in government.** — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**§ 1-2435. Same — Articles XII and XVI of Title III.**

(a) The Congress hereby consents to amendments to Articles XII and XVI of Title III of the Washington Metropolitan Area Transit Regulation Compact substantially as set out in § 1-2431.

(b) The Mayor of the District of Columbia is authorized and directed to enter into and execute on behalf of the District of Columbia amendments, substantially as set forth above, to Title III of the Washington Metropolitan Area Transit Regulation Compact with the States of Virginia and Maryland. (Oct. 21, 1972, 86 Stat. 1000, Pub. L. 92-517, title I, § 101; 1973 Ed., § 1-1431b.)

**References in text.** — The amendments referred to in subsection (a) of this section are to §§ 56(e) and 82(a) of the Compact.

**Change in government.** — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

### § 1-2436. Same — Articles I and XVI of Title III.

(a) The Congress hereby consents to, and adopts and enacts for the District of Columbia, amendments to Articles I and XVI of Title III of the Washington Metropolitan Area Transit Regulation Compact as set out in § 1-2431, which amendments have been adopted substantially by the Commonwealth of Virginia and the State of Maryland.

(b) The Mayor of the District of Columbia is authorized and directed to enter into and execute on behalf of the District of Columbia amendments, substantially as set forth in subsection (a) of this section, to Title III of the Washington Metropolitan Area Transit Regulation Compact with the State of Maryland and the Commonwealth of Virginia, which amendments shall become effective immediately upon execution of same. (1973 Ed., § 1-1431c; June 4, 1976, 90 Stat. 672, Pub. L. 94-306, §§ 1, 2.)

**References in text.** — The amendments referred to in subsection (a) of this section are to §§ 1 and 76 of the Compact.

### § 1-2437. Mayor directed to execute Compact amendments; appropriations.

The Mayor of the District of Columbia is authorized and directed to enter into and execute an amendment to the Compact substantially as set forth above with the States of Virginia and Maryland and is further authorized and directed to carry out and effectuate the terms and provisions of said Title III, and there are hereby authorized to be appropriated out of District of Columbia funds such amounts as are necessary to carry out the obligations of the District of Columbia in accordance with the terms of the said Title III. (Nov. 6, 1966, 80 Stat. 1352, Pub. L. 89-774, § 2; 1973 Ed., § 1-1432.)

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia.

These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**§ 1-2437.1. Mayor to enter agreements to make certain technical amendments; effective date of technical amendments.**

The Mayor of the District of Columbia shall, for the District of Columbia, enter agreements with the Commonwealth of Virginia and the State of Maryland to make technical amendments to Title III of the Washington Metropolitan Area Transit Regulation Compact, so long as the amended version of the Compact then substantially conforms to the amendments in § 2 of the Washington Metropolitan Area Transit Authority Compact Amendment Act of 1984. The technical amendments shall become effective when the Mayor executes the agreements concerning the Compact. (Sept. 26, 1984, D.C. Law 5-122, § 3, 31 DCR 4049.)

**Legislative history of Law 5-122.** — Law 5-122, the “Washington Metropolitan Area Transit Authority Compact Amendment Act of 1984,” was introduced in Council and assigned Bill No. 5-360, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on June 26, 1984 and July 10, 1984, respectively. Signed by the Mayor on July

13, 1984, it was assigned Act No. 5-174 and transmitted to both Houses of Congress for its review.

**References in text.** — The “Washington Metropolitan Area Transit Authority Compact Amendment Act of 1984,” referred to at the end of the first sentence of this section, is D.C. Law 5-122.

**§ 1-2438. Transfer of functions, duties, property, and records of National Capital Transportation Agency to Washington Metropolitan Area Transit Authority.**

(a) To assure uninterrupted progress in the development of the facilities authorized by the National Capital Transportation Act of 1965, the transfer of the functions and duties of the National Capital Transportation Agency (herein referred to as the Agency) to the Washington Metropolitan Area Transit Authority (herein referred to as the Authority) as required by § 1-1408(b) shall take place on September 30, 1967.

(b) Upon the effective date of the transfer of functions and duties authorized by subsection (a) of this section, the President is authorized to transfer to the Authority such real and personal property, studies, reports, records, and other assets and liabilities as are appropriate in order that the Authority may assume the functions and duties of the Agency and, further, the President shall make provision for the transfer to the Authority of the unexpended balance of the appropriations, and of other funds, of the Agency for use by the Authority but such unexpended balances so transferred shall be used only for the purpose



for which such appropriations were originally made. Subsequent to said effective date, there is authorized to be appropriated to the Department of Housing and Urban Development, for payment to the Authority, any unappropriated portion of the authorization specified in § 1-2422(1). There is also authorized to be appropriated to the District of Columbia out of the General Fund of the District of Columbia, for payment to the Authority, any unappropriated portion of the authorization specified in § 1-2422(2). Any such appropriations shall be used only for the purposes for which such authorizations were originally made.

(c) Pending the assumption by the Authority of the functions and duties of the Agency, the Agency is authorized and directed, in the manner herein set forth, fully to cooperate with and assist the Authority, the Northern Virginia Transportation Commission and the Washington Suburban Transit Commission in the development of plans for the extensions, new lines and related facilities required to expand the basic system authorized by the National Capital Transportation Act of 1965 into a regional system, but pending such transfer of functions and duties, nothing in this subchapter shall be construed to impair the performance by the Agency of the functions and duties imposed by the National Capital Transportation Act of 1965.

(d) In order to provide the cooperation and assistance specified in subsection (c) of this section, the Agency is authorized to perform, on a reimbursable basis, planning, engineering and such other services for the Authority, as the Authority may request, or to obtain such services by contract, but all such assistance and services shall be rendered in accordance with policy determinations made by the Authority and shall be advisory only.

(e) Amounts received by the Agency from the Authority as provided in subsection (d) of this section shall be available for expenditure by the Agency in performing services for the Authority. (Nov. 6, 1966, 80 Stat. 1352, Pub. L. 89-774, § 3; 1973 Ed., § 1433.)

**References in text.** — “The National Capital Transportation Act of 1965,” referred to in subsections (a) and (c) of this section, is the Act of September 8, 1965, 79 Stat. 663, Pub. L. 89-173.

Section 1-1408, referred to near the end of subsection (a) of this section, was repealed by the Act of December 9, 1969, 83 Stat. 322, Pub. L. 91-143, § 8(a)(1).

**Transfer of functions.** — Section 1(a)(3) of Reorganization Plan No. 2 of 1968, transferred the functions of the Department of Housing and Urban Development, set forth in subsection (b) of this section, to the Secretary of Transportation.

## § 1-2439. Jurisdiction of courts; removal of actions.

The United States district courts shall have original jurisdiction, concurrent with the courts of Maryland and Virginia, of all actions brought by or against the Authority and to enforce subpoenas issued pursuant to the provisions of Title III. Any such action initiated in a state court shall be removable to the appropriate United States district court in the manner provided by § 1446 of Title 28, United States Code. (Nov. 6, 1966, 80 Stat. 1353, Pub. L. 89-774, § 4; 1973 Ed., § 1-1434.)

**Appropriations authorized.** — Public Law 104-194, 110 Stat. 2362, the District of Columbia Appropriations Act, 1997, provided for construction projects an increase of \$46,923,000 (including an increase of \$34,000,000 for the highway trust fund, reallocations and rescissions for a net rescission of \$120,496,000 from local funds appropriated under this heading in prior fiscal years and an additional \$133,419,000 in Federal funds), as authorized by §§ 43-1512 through 43-1519; §§ 43-1524, 43-1527 and 43-1654; and §§ 9-219 and 47-3404; including acquisition of sites, preparation of plans and specifications, conducting preliminary surveys, erection of structures, including building improvement and alteration and treatment of grounds, to remain available until expended: Provided, That funds for use of each capital project implementing agency shall be managed and controlled in accordance with all procedures and limitations established under the Financial Management System: Provided further, That all funds provided by this appropriation title shall be available only for the specific projects and purposes intended: Provided further, That notwithstanding the foregoing, all authorizations for capital outlay projects, except those projects covered by the first sentence of section 23(a) of the Federal-Aid Highway Act of 1968, approved August 23, 1968 (82 Stat. 827; Public Law 90-495; D.C. Code, sec. 7-134, note), for which funds are provided by this appropriation title, shall expire on September 30, 1998, except authorizations for

projects as to which funds have been obligated in whole or in part prior to September 30, 1998: Provided further, That upon expiration of any such project authorization the funds provided herein for the project shall lapse.

**Ancillary jurisdiction.** — An action against the District of Columbia for damages caused by an auto accident with a D.C. police car is not ancillary to an action against the Washington Metropolitan Area Transit Authority for a bus driver's part in the accident so as to confer jurisdiction over the District on the U.S. District Court. *Christmas v. Washington Metro. Area Transit Auth.*, 621 F. Supp. 355 (D.D.C. 1985).

**Pendant parties.** — Where there was no independent basis for jurisdiction over the District of Columbia, this section does not confer federal jurisdiction in an action against the District and the Authority for damages in an accident caused by a Metro bus driver and a district policeman. *Christmas v. Washington Metro. Area Transit Auth.*, 621 F. Supp. 355 (D.D.C. 1985).

**Cited in** *Harvey v. Washington Metro. Area Transit Auth.*, 814 F.2d 764 (D.C. Cir. 1987); *Hubbard v. Monsanto Co.*, 736 F. Supp. 11 (1990); *Nello L. Teer Co. v. Washington Metro. Area Transit Auth.*, 921 F.2d 300 (D.C. Cir. 1990); *Mergentime Corp. v. Washington Metro. Area Transit Auth.*, 775 F. Supp. 14 (D.D.C. 1991); *Colbert v. United States*, App. D.C., 601 A.2d 603 (1992).

## § 1-2440. Amendment of laws and reorganization plans.

All laws or parts of laws of the United States and of the District of Columbia inconsistent with the provisions of Title III are hereby amended for the purpose of this subchapter to the extent necessary to eliminate such inconsistencies and to carry out the provisions of this subchapter and Title III and all laws or parts of laws and all reorganization plans of the United States are hereby amended and made applicable for the purpose of this subchapter to the extent necessary to carry out the provisions of this subchapter and Title III. (Nov. 6, 1966, 80 Stat. 1353, Pub. L. 89-774, § 5(a); 1973 Ed., § 1-1435.)

**Cited in** *Kayfirst Corp. v. Washington Term. Co.*, 813 F. Supp. 67 (D.D.C. 1993).

## § 1-2441. Reservation of right to alter, amend or repeal subchapter; submission of reports; scope of Presidential and Congressional inquiry; audits.

(a) The right to alter, amend or repeal this subchapter is hereby expressly reserved.

(b) The Authority shall submit to Congress and the President copies of all annual and special reports made to the Governors, the Mayor of the District of Columbia and/or the legislatures of the compacting States.

(c) The President and the Congress or any committee thereof shall have the right to require the disclosure and furnishing of such information by the Authority as they may deem appropriate. Further, the President and Congress or any of its committees shall have access to all books, records and papers of the Authority as well as the right of inspection of any facility used, owned, leased, regulated or under the control of said Authority.

(d) In carrying out the audits provided for in § 70(b) of the Compact, the representatives of the General Accounting Office shall have access to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Board and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, agents, and custodians. (Nov. 6, 1966, 80 Stat. 1353, Pub. L. 89-774, § 6; 1973 Ed., § 1-1436.)

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

### *Subchapter IV-A. Washington Metropolitan Area Transit Authority Safety Regulation.*

#### **§ 1-2445.1. Definitions.**

For the purposes of this subchapter, the term:

(1) "Act" means the Federal Transit Act, approved July 9, 1964 (78 Stat. 302; 49 U.S.C. 5301 et seq.).

(2) "Agreement" means the agreement executed by the Mayor, on behalf of the District of Columbia, with the Commonwealth of Virginia and the State of Maryland for the creation and operation of a joint state oversight agency.

(3) "APTA Manual" means the American Public Transit Association Manual for the Development of Rail Transit System Safety Program Plans as that is referenced in 49 C.F.R. § 659.5.

(4) "Federal Transit Administration" means the Federal Transit Administration of the U.S. Department of Transportation.

(5) "Joint state oversight agency" means the agency for the regulation of the safety of WMATA's rail fixed guideway system that the District of Columbia, Commonwealth of Virginia, and State of Maryland are required to create and operate under section 28 of the Act, as a condition for the continuation of federal grant-in-aid assistance under that Act.

(6) "Plan" means the system safety program plan referenced in 49 C.F.R. § 659.5, including the security portion of that plan.

(7) "Public Works" means the District of Columbia Department of Public Works.

(8) "Rail fixed guideway system" means a rail mass transportation system as defined in 49 C.F.R. § 659.5.

(9) "Standard" means the system safety program standard referenced in 49 C.F.R. § 659.5, including the security portion of that standard.

(10) "Unacceptable hazardous condition" means the condition referenced in 49 C.F.R. § 659.5.

(11) "WMATA" means the Washington Metropolitan Area Transit Authority created pursuant to the Washington Metropolitan Area Transit Regulation Compact, approved November 6, 1966 (80 Stat. 1324; § 1-2431). (Sept. 23, 1997, D.C. Law 12-20, § 2, 44 DCR 4023; Apr. 20, 1999, D.C. Law 12-264, § 13, 46 DCR 2118.)

**Effect of amendments.** — D.C. Law 12-264 validated a previously made technical correction in (3).

**Temporary addition of subchapter.** — Sections 2 through 8 of D.C. Law 11-261 contained provisions to regulate, on a temporary basis, the safety and security of the rail fixed guideway system operated by the Washington Metropolitan Area Transit Authority by creating and operating a joint entity among the District of Columbia, Commonwealth of Virginia, and State of Maryland to oversee this regulation and by authorizing the Mayor of the District of Columbia to enter into and implement an agreement with Virginia and Maryland to achieve these purposes.

Section 10(b) of D.C. Law 11-261 provided that the act shall expire after 225 days of its having taken effect.

**Emergency act amendments.** — For temporary creation of a joint entity among the District of Columbia, Commonwealth of Virginia, and State of Maryland to regulate the safety and security of the rail fixed guideway system operated by the Washington Metropolitan Area Transit Authority, see §§ 2-8 of the Washington Metropolitan Area Transit Authority Safety Regulation Legislative Review Emergency Act of 1997 (D.C. Act 12-58, March 31, 1997, 44 DCR 2230).

Section 10 of D.C. Act 12-58 provides for the application of the act.

**Legislative history of Law 11-261.** — Law 11-261, the "Washington Metropolitan Area Transit Authority Safety Regulation Temporary Act of 1996," was introduced in Council and assigned Bill No. 11-975. The Bill was adopted

on first and second readings on December 3, 1996 and January 7, 1997, respectively. Signed by the Mayor on January 23, 1997, it was assigned Act No. 11-528 and transmitted to both Houses of Congress for its review. D.C. Law 11-261 became effective on April 25, 1997.

**Legislative history of Law 12-20.** — Law 12-20, the "Washington Metropolitan Area Transit Authority Safety Regulation Act of 1997," was introduced in Council and assigned Bill No. 12-30, which was referred to the Committee on Local, Regional, and Federal Affairs. The Bill was adopted on first and second readings on May 6, 1997, and June 3, 1997, respectively. Signed by the Mayor on June 18, 1997, it was assigned Act No. 12-97 and transmitted to both Houses of Congress for its review. D.C. Law 12-20 became effective on September 23, 1997.

**Legislative history of Law 12-264.** — Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

**References in text.** — Section 28 of the Federal Transit Act, referred to in paragraph (5) of this section, was formerly codified at 49 U.S.C. Appx. § 1624 prior to repeal by Act July 5, 1994, P.L. 103-272, § 7(b), 108 Stat. 1379. For the present similar provision, see 49 U.S.C. § 5330.

### § 1-2445.2. Authorization for interstate agreement.

The Mayor is hereby authorized to execute, on behalf of the District of Columbia, an agreement with the Commonwealth of Virginia and the State of Maryland for the creation and operation of a joint state oversight agency. Any such agency shall be an instrumentality of the District of Columbia, the Commonwealth of Virginia, and the State of Maryland. Any agreement executed by the Mayor to establish the agency shall, at a minimum, contain provisions that substantially satisfy the requirements set forth in § 1-2445.4. (Sept. 23, 1997, D.C. Law 12-20, § 3, 44 DCR 4023.)

**Section references.** — This section is referred to in §§ 1-2445.4, 1-2445.5, and 1-2445.7. **Legislative history of Law 12-20.** — See note to § 1-2445.1.

### § 1-2445.3. Appointment of District representatives.

The Mayor shall appoint all members to the joint state oversight agency who represent the District of Columbia. Those members shall serve at the pleasure of the Mayor (Sept. 23, 1997, D.C. Law 12-20, § 4, 44 DCR 4023.)

**Legislative history of Law 12-20.** — See note to § 1-2445.1.

### § 1-2445.4. Requirements for agreement.

Any agreement that the Mayor executes pursuant to § 1-2445.2 shall contain provisions that substantially satisfy all of the following requirements:

(1) The joint state oversight agency shall consist of 6 voting members. Each party to the agreement shall appoint 2 members.

(2) Three members of the joint state oversight agency, 1 from each party to the agreement, shall constitute a quorum for the purpose of approving action by the agency.

(3) All actions of the joint state oversight agency shall be approved by majority vote of the members. Such vote shall consist of more than ½ of the total number of members in attendance and shall include at least 1 affirmative vote by a representative of each party.

(4) A chairperson shall be elected, by majority vote, from among the members of the joint state oversight agency. The term of the chairperson shall be specified in the agreement. The chairperson shall have such responsibilities, consistent with the requirements of this section, as the agreement provides.

(5) The joint state oversight agency shall be responsible for:

(A) Adopting a standard that satisfies the criteria in the APTA Manual;

(B) Requiring WMATA to develop and implement a plan that satisfies the standard in subparagraph (A) of this paragraph;

(C) Adopting a standard that requires WMATA to address the personal security of passengers and employees in its rail fixed guideway system;

(D) Requiring WMATA to develop and implement a plan that satisfies the standard in subparagraph (C) of this paragraph;

(E) Monitoring the implementation of the plans in subparagraphs (B) and (D) of this paragraph;

(F) Requiring WMATA to conduct internal safety audits for its rail fixed guideway system and to report the results of these audits;

(G) Requiring WMATA to report accidents and unacceptable hazardous conditions in its rail fixed guideway system;

(H) Establishing minimum procedures for investigating accidents and unacceptable hazardous conditions in WMATA's rail fixed guideway system;

(I) Investigating, or requiring WMATA to investigate, any such accidents or conditions;

(J) Requiring WMATA to develop and implement corrective action plans that address accidents and unacceptable hazardous conditions in its rail fixed guideway system;

(K) Conducting on-site safety reviews of WMATA's rail fixed guideway system; and

(L) Making reports as required under section 28 of the Act and under 49 C.F.R. § 659.

(6) The joint state oversight agency shall have authority to contract with a consultant as it deems necessary to carry out its responsibilities. All actual costs associated with such a contract shall be shared equally, on a ½ basis, by each party to the agreement.

(7) Any party to the agreement shall be entitled unilaterally to withdraw from it on no more than 60 days written notice to the other parties. Any party that withdraws shall be responsible for its pro rata share of any actual costs incurred for a consultant up to the effective date of termination, in accordance with paragraph (6) of this section. (Sept. 23, 1997, D.C. Law 12-20, § 5, 44 DCR 4023.)

**Section references.** — This section is referred to in §§ 1-2445.2, 1-2445.5, and 1-2445.7.

**Legislative history of Law 12-20.** — See note to § 1-2445.1.

**References in text.** — Section 28 of the Federal Transit Act, referred to in paragraph

(5)(L) of this section, was formerly codified at 49 U.S.C. Appx. § 1624 prior to repeal by Act July 5, 1994, P.L. 103-272, § 7(b), 108 Stat. 1379. For the present similar provision, see 49 U.S.C. § 5330.

## § 1-2445.5. Amendments to agreement.

The Mayor may execute, on behalf of the District of Columbia, amendments to the agreement authorized by § 1-2445.2 so long as the agreement, as amended, continues to contain provisions that substantially satisfy the requirements in § 1-2445.4. (Sept. 23, 1997, D.C. Law 12-20, § 6, 44 DCR 4023.)

**Legislative history of Law 12-20.** — See note to § 1-2445.1.

## § 1-2445.6. Procurement law inapplicable.

Chapter 11A of Title 1 shall not apply to contracts of the joint state oversight agency. (Sept. 23, 1997, D.C. Law 12-20, § 7, 44 DCR 4023.)

**Legislative history of Law 12-20.** — See note to § 1-2445.1.

### § 1-2445.7. Authorization for a District program.

(a) If the Mayor at any time determines that the agreement authorized by § 1-2445.2 is not in the best interest of the District, the Mayor may terminate the District's participation in the agreement and its duty to perform the responsibilities set out in § 1-2445.4(5) within the District.

(b) If the Mayor assumes the responsibilities set out in § 1-2445.4(5) pursuant to a determination made under subsection (a) of this section, the Mayor may promulgate any necessary rules. (Sept. 23, 1997, D.C. Law 12-20, § 8, 44 DCR 4023.)

**Legislative history of Law 12-20.** — See note to § 1-2445.1.

## *Subchapter V. Adopted Regional System.*

### § 1-2451. Definitions.

For the purposes of this subchapter:

(1) The term "adopted regional system" means that system described in the Transit Authority's report entitled "Adopted Regional Rapid Rail Transit Plan and Program, March 1, 1968 (revised February 7, 1969)," as that system may hereafter be altered, revised, or amended in accordance with the Compact.

(2) The term "Compact" means the Washington Metropolitan Area Transit Authority Compact (80 Stat. 1324, Public Law 89-774).

(3) The term "Transit Authority" means the Washington Metropolitan Area Transit Authority established under Article III of the Compact.

(4) The term "Agreement" means the Initial Bond Repayment Participation Agreement executed by the Transit Authority and the United States Department of Transportation on September 18, 1979, and amendments thereto, including the Supplemental Agreement described in § 302 of the Initial Bond Repayment Participation Agreement.

(5) The term "local participating governments" means those governments which comprise the Washington Metropolitan Transit Zone, as defined by paragraph 3 of Article III of Title III of the Washington Metropolitan Area Transit Authority Compact. (Dec. 9, 1969, 83 Stat. 320, Pub. L. 91-143, § 2; 1973 Ed., § 1-1441; Jan. 3, 1980, 93 Stat. 1323, Pub. L. 96-184, § 3(a).)

**Cross references.** — As to authorization for relocation payments and assistance to persons displaced by programs of Washington Metropolitan Area Transit Authority, see § 5-834.

As to requirement of equal access for blind and physically disabled persons to public conveyances, see § 6-1702.

**Section references.** — This section is referred to in §§ 1-2422 and 1-2466.

**Appropriations authorized.** — Public Law 104-194, 110 Stat. 2362, the District of Colum-

bia Appropriations Act, 1997, provided for construction projects an increase of \$46,923,000 (including an increase of \$34,000,000 for the highway trust fund, reallocations and rescissions for a net rescission of \$120,496,000 from local funds appropriated under this heading in prior fiscal years and an additional \$133,419,000 in Federal funds), as authorized by §§ 43-1512 through 43-1519; §§ 43-1524, 43-1527 and 43-1654; and §§ 9-219 and 47-3404; including acquisition of sites, preparation

of plans and specifications, conducting preliminary surveys, erection of structures, including building improvement and alteration and treatment of grounds, to remain available until expended: Provided, That funds for use of each capital project implementing agency shall be managed and controlled in accordance with all procedures and limitations established under the Financial Management System: Provided further, That all funds provided by this appropriation title shall be available only for the specific projects and purposes intended: Provided further, That notwithstanding the forego-

ing, all authorizations for capital outlay projects, except those projects covered by the first sentence of section 23(a) of the Federal-Aid Highway Act of 1968, approved August 23, 1968 (82 Stat. 827; Public Law 90-495; D.C. Code, sec. 7-134, note), for which funds are provided by this appropriation title, shall expire on September 30, 1998, except authorizations for projects as to which funds have been obligated in whole or in part prior to September 30, 1998: Provided further, That upon expiration of any such project authorization the funds provided herein for the project shall lapse.

## § 1-2452. Federal contributions.

(a) To provide the federal share of the cost of the adopted regional system, which system supersedes that heretofore authorized by the Congress in subchapter III of this chapter, the Secretary of Transportation is authorized to make annual contributions to the Transit Authority in amounts sufficient to finance in part the cost of the adopted regional system; except that the aggregate amount of federal contributions for the adopted regional system, including the \$100,000,000 authorized to be appropriated by § 1-2422(1), shall not exceed the lower amount of \$1,147,044,000 or two thirds of the net project cost of the adopted regional system.

(b) Federal contributions for the adopted regional system shall be subject to the following limitations and conditions:

(1) The work for which contributions are authorized shall be subject to the provisions of the Compact and shall be carried out substantially in accordance with the plans and schedules for the adopted regional system; and

(2) The aggregate amount of such federal contributions on or prior to the last day of any given fiscal year shall be matched by the local participating governments by payment of the local share of capital contributions required for the period ending with the last day of such year in a total amount not less than 50 per centum of the amount of such federal contributions.

(c) There is authorized to be appropriated to the Secretary of Transportation, without fiscal year limitation, an amount not to exceed \$1,047,044,000 to carry out the purposes of this section. The appropriations authorized by this subsection shall be in addition to the appropriations authorized by § 1-2422(1). (Dec. 5, 1969, 83 Stat. 320, Pub. L. 91-143, § 3; 1973 Ed., § 1-1442.)

**Section references.** — This section is referred to in §§ 1-2462 and 1-2463.

**Appropriations authorized.** — Public Law 104-194, 110 Stat. 2362, the District of Columbia Appropriations Act, 1997, provided for construction projects an increase of \$46,923,000 (including an increase of \$34,000,000 for the highway trust fund, reallocations and rescissions for a net rescission of \$120,496,000 from local funds appropriated under this heading in prior fiscal years and an additional \$133,419,000 in Federal funds), as authorized by §§ 43-1512 through 43-1519; §§ 43-1524,

43-1527 and 43-1654; and §§ 9-219 and 47-3404; including acquisition of sites, preparation of plans and specifications, conducting preliminary surveys, erection of structures, including building improvement and alteration and treatment of grounds, to remain available until expended: Provided, That funds for use of each capital project implementing agency shall be managed and controlled in accordance with all procedures and limitations established under the Financial Management System: Provided further, That all funds provided by this appropriation title shall be available only for the



specific projects and purposes intended: Provided further, That notwithstanding the foregoing, all authorizations for capital outlay projects, except those projects covered by the first sentence of section 23(a) of the Federal-Aid Highway Act of 1968, approved August 23, 1968 (82 Stat. 827; Public Law 90-495; D.C. Code, sec. 7-134, note), for which funds are provided

by this appropriation title, shall expire on September 30, 1998, except authorizations for projects as to which funds have been obligated in whole or in part prior to September 30, 1998: Provided further, That upon expiration of any such project authorization the funds provided herein for the project shall lapse.

### § 1-2453. Funding of facilities for the handicapped.

The Secretary of Transportation is authorized to make payments to the Washington Metropolitan Area Transit Authority in amounts sufficient to finance 80 per centum of the cost of providing such facilities for the subway and rapid rail transit system authorized in this subchapter as may be necessary to make such subway and system accessible by the handicapped through implementation of Public Laws 90-480 and 91-205 (Chapter 51 of Title 42, United States Code). There is authorized to be appropriated, to carry out this section, an amount not to exceed \$65,000,000. (1973 Ed., § 1-1442a; Aug. 13, 1973, 87 Stat. 271, Pub. L. 93-87, title I, § 140.)

**Cross references.** — As to requirement of equal access to public conveyances, see § 6-1702.

### § 1-2454. District of Columbia contributions.

(a) To provide the District of Columbia share of the cost of the adopted regional system, the Mayor of the District of Columbia is authorized to contract with the Transit Authority to make annual capital contributions. To carry out the purposes of this section there is authorized to be appropriated out of the General Fund of the District of Columbia, an amount, without fiscal year limitation, not to exceed such sums as may be necessary.

(b) The appropriations authorized by subsection (a) of this section shall be in addition to the appropriations authorized on behalf of the District of Columbia by § 1-2422(2).

(c) The Mayor of the District of Columbia is further authorized to contract with the Transit Authority and to pay in accordance with the terms thereof for the service to be provided to the District of Columbia by the adopted regional system. (Dec. 9, 1969, 83 Stat. 321, Pub. L. 91-143, § 4; July 13, 1972, 86 Stat. 466, Pub. L. 92-349, title II, § 201(a); 1973 Ed., § 1-1443; Aug. 14, 1979, 93 Stat. 388, Pub. L. 96-57.)

**Section references.** — This section is referred to in § 1-2466.

**Appropriations authorized.** — Public Law 104-194, 110 Stat. 2362, the District of Columbia Appropriations Act, 1997, provided for construction projects an increase of \$46,923,000 (including an increase of \$34,000,000 for the highway trust fund, reallocations and rescissions for a net rescission of \$120,496,000 from local funds appropriated under this heading in prior fiscal years and an additional

\$133,419,000 in Federal funds), as authorized by §§ 43-1512 through 43-1519; §§ 43-1524, 43-1527 and 43-1654; and §§ 9-219 and 47-3404; including acquisition of sites, preparation of plans and specifications, conducting preliminary surveys, erection of structures, including building improvement and alteration and treatment of grounds, to remain available until expended: Provided, That funds for use of each capital project implementing agency shall be managed and controlled in accordance with all

procedures and limitations established under the Financial Management System: Provided further, That all funds provided by this appropriation title shall be available only for the specific projects and purposes intended: Provided further, That notwithstanding the foregoing, all authorizations for capital outlay projects, except those projects covered by the first sentence of section 23(a) of the Federal-Aid Highway Act of 1968, approved August 23, 1968

(82 Stat. 827; Public Law 90-495; D.C. Code, sec. 7-134, note), for which funds are provided by this appropriation title, shall expire on September 30, 1998, except authorizations for projects as to which funds have been obligated in whole or in part prior to September 30, 1998: Provided further, That upon expiration of any such project authorization the funds provided herein for the project shall lapse.

## § 1-2455. Financing of District contributions by general obligation bonds [Charter Provision].

Notwithstanding any provision of law to the contrary, beginning with fiscal year 1976 the District share of the cost of the adopted regional system described in this subchapter may be payable from the proceeds of the sale of District general obligation bonds issued pursuant to this title. (1973 Ed., § 1-1443a; Dec. 24, 1973, 87 Stat. 808, Pub. L. 93-198, title IV, § 489.)

**Charter provisions.** — This section of the D.C. Code is § 489 of the District Charter as enacted by Title IV of the District of Columbia Self-Government and Governmental Reorganization Act, December 24, 1973, 87 Stat. 820, Pub. L. 93-198. The District of Columbia Self-Government and Governmental Reorganization Act is set out in its entirety in Volume 1.

**Cross references.** — As to general obligation bonds, see § 47-321 et seq.

**References in text.** — "This title," referred to near the end of the section, is title IV of the District of Columbia Self-Government and Governmental Reorganization Act.

## § 1-2456. Approval for construction required.

(a) No portion of the adopted regional system shall be constructed within the United States Capitol grounds except upon approval of the Commission for Extension of the United States Capitol.

(b) Construction of the adopted regional system in, on, under, or over public space in the District of Columbia under the jurisdiction of the Mayor of the District of Columbia shall, in the interest of public convenience and safety, be performed in accordance with schedules agreed upon between the Transit Authority and the Mayor, to the end that such construction work will be coordinated with other construction work in such public space; and the Mayor shall so exercise his jurisdiction and control over such public space as to facilitate the Transit Authority's use and occupation thereof for construction of the adopted regional system. (Dec. 9, 1969, 83 Stat. 322, Pub. L. 91-143, § 5; 1973 Ed., § 1-1444.)

**Appropriations authorized.** — Public Law 104-194, 110 Stat. 2362, the District of Columbia Appropriations Act, 1997, provided for construction projects an increase of \$46,923,000 (including an increase of \$34,000,000 for the highway trust fund, reallocations and rescissions for a net rescission of \$120,496,000 from local funds appropriated under this heading in prior fiscal years and an additional \$133,419,000 in Federal funds), as authorized

by §§ 43-1512 through 43-1519; §§ 43-1524, 43-1527 and 43-1654; and §§ 9-219 and 47-3404; including acquisition of sites, preparation of plans and specifications, conducting preliminary surveys, erection of structures, including building improvement and alteration and treatment of grounds, to remain available until expended: Provided, That funds for use of each capital project implementing agency shall be managed and controlled in accordance with all

procedures and limitations established under the Financial Management System: Provided further, That all funds provided by this appropriation title shall be available only for the specific projects and purposes intended: Provided further, That notwithstanding the foregoing, all authorizations for capital outlay projects, except those projects covered by the first sentence of section 23(a) of the Federal-Aid Highway Act of 1968, approved August 23, 1968

(82 Stat. 827; Public Law 90-495; D.C. Code, sec. 7-134, note), for which funds are provided by this appropriation title, shall expire on September 30, 1998, except authorizations for projects as to which funds have been obligated in whole or in part prior to September 30, 1998: Provided further, That upon expiration of any such project authorization the funds provided herein for the project shall lapse.

## § 1-2457. Disposal of excess revenues.

To the extent that revenues or other receipts derived from or in connection with the ownership or operation of the adopted regional system (other than service payments under transit service agreements executed between the Transit Authority and local political subdivisions, the proceeds of bonds or other evidences of indebtedness issued by the Transit Authority, and capital contributions received by the Transit Authority) are excess to the amounts necessary to make all payments, including debt service, operating and maintenance expenses, and deposits in reserves required or permitted by the terms of any contract of the Transit Authority with or for the benefit of holders of its bonds, notes, or other evidences of indebtedness issued for any purpose relating to the adopted regional system, other than extensions thereof, two thirds of such excess revenues shall, at the end of each fiscal year, beginning with the fiscal year in which the adopted regional system (exclusive of extensions) is first put into substantially full revenue service, be paid into the Treasury of the United States as miscellaneous receipts. (Dec. 9, 1969, 83 Stat. 322, Pub. L. 91-143, § 6; 1973 Ed., § 1-1445.)

**Appropriations authorized.** — Public Law 104-194, 110 Stat. 2362, the District of Columbia Appropriations Act, 1997, provided for construction projects an increase of \$46,923,000 (including an increase of \$34,000,000 for the highway trust fund, reallocations and rescissions for a net rescission of \$120,496,000 from local funds appropriated under this heading in prior fiscal years and an additional \$133,419,000 in Federal funds), as authorized by §§ 43-1512 through 43-1519; §§ 43-1524, 43-1527 and 43-1654; and §§ 9-219 and 47-3404; including acquisition of sites, preparation of plans and specifications, conducting preliminary surveys, erection of structures, including building improvement and alteration and treatment of grounds, to remain available until expended: Provided, That funds for use of each capital project implementing agency shall be managed and controlled in accordance with all

procedures and limitations established under the Financial Management System: Provided further, That all funds provided by this appropriation title shall be available only for the specific projects and purposes intended: Provided further, That notwithstanding the foregoing, all authorizations for capital outlay projects, except those projects covered by the first sentence of section 23(a) of the Federal-Aid Highway Act of 1968, approved August 23, 1968 (82 Stat. 827; Public Law 90-495; D.C. Code, sec. 7-134, note), for which funds are provided by this appropriation title, shall expire on September 30, 1998, except authorizations for projects as to which funds have been obligated in whole or in part prior to September 30, 1998: Provided further, That upon expiration of any such project authorization the funds provided herein for the project shall lapse.

## § 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 approval 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 (including payments under § 1-2459) 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).)

**Section references.** — This section is referred to in §§ 1-2460, 1-2461, and 1-2464. referred to in (a)(1)(A), was repealed by Pub. L. 96-184, § 3(c), effective January 3, 1980.

**References in text.** — Section 1-2459, re-

### § 1-2459. Periodic payments to Authority.

Repealed.

(Dec. 9, 1969, Pub. L. 91-143, § 10; July 13, 1972, 86 Stat. 465, Pub. L. 92-349, title I, § 101; 1973 Ed., § 1-1447; Jan. 3, 1980, 93 Stat. 1323, Pub. L. 96-184, § 3(c).)

### § 1-2460. Authorization of appropriations.

(a) There are authorized to be appropriated to the Secretary of Transportation such amounts as may be necessary to enable him to discharge his responsibilities under guarantees issued by him under § 1-2458 and to make the payments to the Transit Authority in accordance with § 1-2464. Amounts appropriated under this section shall be available without fiscal year limitation.

(b) If at any time the moneys available to the Secretary of Transportation are insufficient to enable him to discharge his responsibilities under guarantees issued by him under § 1-2458 or to make payments to the Transit Authority in accordance with § 1-2464, he shall issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary of the Treasury. Redemption of such notes or obligations shall be made by the Secretary of Transportation from appropriations available under subsection (a) of this section. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury shall purchase any notes or other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act and the purposes for which securities may be issued under that Act are extended to include any purchase of such notes or obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions,

purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. (Dec. 9, 1969, Pub. L. 91-143, § 11; July 13, 1972, 86 Stat. 465, Pub. L. 92-349, title I, § 101; 1973 Ed., § 1-1448; Jan. 3, 1980, 93 Stat. 1323, Pub. L. 96-184, § 3(d).)

**References in text.** — “The Second Liberty Bond Act,” referred to in the fourth sentence of subsection (b) of this section, is the Act of September 24, 1917, 40 Stat. 288, ch. 56.

### **§ 1-2461. Obligations as lawful investments.**

(a) Obligations issued by the Transit Authority which are guaranteed by the Secretary of Transportation under § 1-2458 shall be lawful investments, and may be accepted as security for fiduciary, trusts, and public funds, the investment or deposit of which shall be under the authority or control of the United States or of any officer or officers thereof, and shall be deemed to be exempt securities within the meaning of laws administered by the Securities and Exchange Commission to the same extent as securities which are issued by the United States.

(b) Any building association, building and loan association, or savings and loan association, incorporated or unincorporated, organized and operating under the laws of the District of Columbia, or any federal savings and loan association, may invest its funds in obligations of the Transit Authority which are guaranteed by the Secretary of Transportation under § 1-2458. (Dec. 9, 1969, Pub. L. 91-143, § 12; July 13, 1972, 86 Stat. 466, Pub. L. 92-349, title I, § 101; 1973 Ed., § 1-1449.)

### **§ 1-2462. Appropriation for Arlington Cemetery and Smithsonian transit stations.**

(a) The Secretary of Transportation shall make payments to the Transit Authority in such amounts as may be requisitioned from time to time by the Transit Authority sufficient, in the aggregate, to finance the cost of designing, constructing, and equipping: (1) A rail rapid transit station partially under Memorial Drive designed to serve the Arlington Cemetery with 2 entrances surfacing adjacent to the sidewalks north and south of Memorial Drive and east of Jefferson Davis Highway; and (2) an additional entrance in the vicinity of the northeast end of the Smithsonian Station surfacing on the Mall south of Adams Drive; except that the aggregate amount of such payments shall not exceed \$7,385,000.

(b) There is authorized to be appropriated to the Secretary of Transportation, without fiscal year limitation, an amount not to exceed \$7,385,000 to carry out the purposes of this section. The appropriations authorized in this subsection shall not be subject to the provisions of this subchapter requiring contributions by the local governments and shall be in addition to the appropriations authorized by § 1-2452(c). (Dec. 9, 1969, Pub. L. 91-143, § 13; Oct. 21, 1972, 86 Stat. 1004, Pub. L. 92-517, title VI, § 601; 1973 Ed., § 1-1450.)

### § 1-2463. Authorization of additional federal contributions for construction.

(a) The Secretary of Transportation is authorized to make grants to the Transit Authority, in addition to the contributions authorized by § 1-2452, for the purpose of financing in part the cost of construction of the adopted regional system.

(b) Federal grants under subsection (a) of this section for the adopted regional system shall be subject to § 1-2465 and to the following limitations and conditions:

(1) The work for which such grants are authorized shall be subject to the provisions of the Compact and shall be for projects included in the adopted regional system.

(2) The aggregate amount of such federal grants made during any fiscal year shall be matched by the local participating governments by payment of capital contributions for such year in a total amount that is not less than 25 per centum of the amount of such federal grants and shall be provided in cash from sources other than federal funds or revenues from the operation of public mass transportation systems. Any public or private transit system funds so provided shall be solely from undistributed cash surpluses, replacement or depreciation funds or revenues available in cash, or new capital.

(3) Such grants shall be subject to terms and conditions that the Secretary may deem appropriate for constructing the adopted regional system in a cost-effective manner.

(c) There is authorized to be appropriated to the Secretary of Transportation for the purpose of making grants under subsection (a) of this section an aggregate amount not to exceed \$1,700,000,000, except that no appropriation pursuant to this authorization shall be enacted for any fiscal year prior to fiscal year 1982.

(d) Amounts appropriated pursuant to the authorization under subsection (c) of this section:

(1) Shall remain available until expended, if so provided in appropriation acts; and

(2) Shall be in addition to, and not in lieu of, amounts available to the Transit Authority under the Urban Mass Transportation Act of 1964, as amended, and § 103(e)(4) of Title 23, United States Code. (Dec. 9, 1969, 83 Stat. 320, Pub. L. 91-143, § 14; Jan. 3, 1980, 93 Stat. 1320, Pub. L. 96-184, § 2.)

**Section references.** — This section is referred to in § 1-2465.

**References in text.** — Section 103(e)(4) of Title 23, United States Code, referred to in

(d)(2), no longer exists after the substantial revision of § 103 by Pub. L. 105-178, Title I, §§ 1106(b), 1212(a)(2)(A), June 9, 1998, 12 Stat. 131, 193.

### § 1-2464. Payment of bonds.

(a)(1) The Transit Authority shall maintain a sinking fund to be used for the accumulation of assets for payment of principal on bonds issued by the Transit Authority and guaranteed by the Secretary as provided in § 1-2458. The fund

shall be administered in accordance with the provisions of the Compact providing for funds established by the Transit Authority, and moneys in the fund may be invested by the Transit Authority in accordance with the Compact and with the Agreement.

(2) The Transit Authority shall use assets of the fund to pay the principal paid or to be paid after October 1, 1979, on bonds issued by the Transit Authority.

(3)(A) Subject to the conditions of the Agreement, the Secretary of Transportation is authorized to make contributions to the Transit Authority, or its fiscal agent, in amounts sufficient to provide for the payment of two thirds of the principal paid or to be paid after June 30, 1979, on bonds issued by the Transit Authority which are guaranteed by the Secretary as provided in § 1-2458.

(B) There are authorized to be appropriated beginning in fiscal year 1981 such sums as are necessary to carry out the requirements of subparagraph (A) of this paragraph.

(4) Subject to the conditions of the Agreement, the local participating governments shall make payments to the Transit Authority in amounts sufficient to allow the Transit Authority to make contributions to the fund established pursuant to paragraph (1) of this subsection in amounts sufficient to provide for the payment of one third of the principal paid or to be paid after June 30, 1979, on bonds issued by the Transit Authority which are guaranteed by the Secretary as provided in § 1-2458.

(b)(1) The Transit Authority shall maintain a Bond Interest Fund to be used for the accumulation of assets for the timely payment of interest on bonds issued by the Transit Authority and guaranteed by the Secretary as provided in § 1-2458. The fund shall be administered in accordance with the provisions of the Compact providing for funds established by the Transit Authority, and moneys in the fund may be invested by the Transit Authority in accordance with the Compact and with the Agreement.

(2)(A) Subject to the conditions of the Agreement, the Secretary of Transportation is authorized to make contributions to the Transit Authority or its fiscal agent, in amounts sufficient to provide for the payment of two thirds of the total amount of interest paid or to be paid after June 30, 1979, on bonds issued by the Transit Authority which are guaranteed by the Secretary as provided in § 1-2458.

(B) There are authorized to be appropriated beginning in fiscal year 1981 such sums as are necessary to carry out the provisions of subparagraph (A) of this paragraph.

(3) With respect to interest payments due prior to July 3, 1983, the Secretary of Transportation, if requested by the Transit Authority, may make accelerated interest payments in amounts sufficient to provide for the payment, as any payment becomes due, of not more than an additional 18½ per centum of the interest due on such bonds at the time of such payment, so long as the total amount of contributions by the Secretary under this subsection does not exceed the amount specified in paragraph (2) of this subsection. Unless otherwise provided in amendments to the Agreement, any accelerated



payments made shall bear interest from the date of accelerated payment until liquidation at a rate to be determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding United States marketable obligations which have maturities comparable to the period of time between the time of accelerated payment and the time of liquidation.

(4) Subject to the conditions of the Agreement, the local participating governments shall make payments to the Transit Authority in amounts sufficient to allow the Transit Authority to make contributions to the fund established pursuant to paragraph (1) of this subsection in amounts sufficient to provide for the payment of one third of the interest paid or to be paid after June 30, 1979, on bonds issued by the Transit Authority which are guaranteed by the Secretary as provided in § 1-2458.

(5) If as a result of the retirement of the principal of such bonds (or of any portion of such principal) before maturity the total amount of contributions by the Secretary of Transportation after June 30, 1979, for payment of interest on such bonds is at any time in excess of two thirds of the net present value of the total amount of interest paid or to be paid on such bonds after such date, the Transit Authority shall pay to the Secretary the difference between the total amount contributed by the Secretary and two thirds of the net present value of the total amount of interest paid or to be paid on such bonds after such date. (Dec. 9, 1969, 83 Stat. 320, Pub. L. 91-143, § 15; Jan. 3, 1980, 93 Stat. 1320, Pub. L. 96-184, § 2.)

**Section references.** — This section is referred to in §§ 1-2460, 1-2465, and 1-2466.

### **§ 1-2465. Requirement that local participating governments have stable and reliable source of revenue for contributions.**

(a) The Secretary of Transportation shall not make any grant under § 1-2463(a) for the cost of construction of the adopted regional system, until the Secretary has determined that the local participating governments, or signatories (as defined in subparagraph (d) of paragraph 1 of Article I of Title III of the Washington Metropolitan Area Transit Authority Compact) to the Compact, have provided a stable and reliable source of revenue sufficient to meet both:

(1) Their payments to the Transit Authority under subsections (a)(4) and (b)(4) of § 1-2464, relating to payment of the principal and interest on bonds issued by the Transit Authority; and

(2) That part of the cost of operating and maintaining the adopted regional system that is in excess of revenues received by the Transit Authority from the operation of the system and any amount to be contributed for operating expenses by the Secretary of Transportation under any other provision of law.

(b) The Transit Authority, in consultation with each governmental entity that is a local participating government or signatory to the Compact as referred to in subsection (a) of this section, for the purposes of this subchapter,

shall submit a program to the Secretary of Transportation on or before September 30, 1980, showing how each such governmental entity will have in place on or before August 15, 1982, a stable and reliable source of revenue to provide for its contributions:

(1) For payments to the Washington Metropolitan Area Transit Authority for the payment of principal and interest on bonds issued by the Transit Authority; and

(2) For the cost of operating and maintaining the adopted regional system of the Washington Metropolitan Area Transit Authority. (Dec. 9, 1969, 83 Stat. 320, Pub. L. 91-143, § 16; Jan. 3, 1980, 93 Stat. 1320, Pub. L. 96-184, § 2.)

**Section references.** — This section is referred to in § 1-2463.

### **§ 1-2465.1. Authorization of additional federal contributions for construction.**

(a) The Secretary of Transportation is authorized to make grants to the Transit Authority, in addition to the contributions authorized by sections 3 and 14, for the purpose of financing in part the cost of construction of the Adopted Regional System.

(b) Federal grants under subsection (a) for the Adopted Regional System shall be subject to the following limitations and conditions:

(1) The work for which such grants are authorized shall be subject to the provisions of the Compact and shall be for projects included in the Adopted Regional System.

(2) The aggregate amount of such Federal grants made during any fiscal year shall be matched by the local participating governments by payment of capital contributions of not less than 60 percent of the amount of such Federal grants and shall be provided in cash from sources other than Federal funds or revenues from the operation of public mass transportation systems. Any public or private transit system funds so provided shall be solely from undistributed cash surpluses, replacement or depreciation funds or reserves available in cash, or new capital.

(3) Such grants shall be subject to terms and conditions that the Secretary may deem appropriate for constructing the Adopted Regional System in a cost-effective manner which maximizes the rate at which appropriated funds can be utilized to complete all segments for which funds have been authorized.

(c) In addition to funds authorized under section 14, there is authorized to be appropriated to the Secretary of Transportation for the purpose of making grants to complete the Adopted Regional System as provided in subsection (a) an aggregate amount not to exceed \$1,300,000,000 to be available in increments over 8 fiscal years beginning in fiscal year 1992, or until expended.

(d) Amounts appropriated pursuant to the authorization under subsection (c) —

(1) shall remain available until expended; and

(2) shall be in addition to, and not in lieu of, amounts available to the Transit Authority under the Urban Mass Transportation Act of 1964, as

amended, and section 103(e)(4) of title 23, United States Code. (Dec. 9, 1969, Pub. L. 91-143, § 17a, as added Nov. 15, 1990, 104 Stat. 2733, Pub. L. 101-551, § 2.)

**References in text.** — “Sections 3 and 14”, referred to in (a), and “section 14”, referred to in (c), are section 3 of 83 Stat. 320, Pub. L. 91-143, December 9, 1969, and section 14 of Pub. L. 91-143, as added January 3, 1980, 93 Stat. 1320, Pub. L. 96-184.

“Urban Mass Transportation Act of 1964”

referred to in (d)(2), is codified at 49 U.S.C. § 5301 et seq.

Section 103(e)(4) of Title 23, United States Code referred to in (d)(2) no longer exists after the substantial revision of § 103 by Pub. L. 105-178, Title I, §§ 1106(b), 1212(a)(2)(A), June 9, 1998, 112 Stat. 131, 193.

## § 1-2466. Establishment of Metrorail/Metrobus Account.

(a) The Mayor of the District of Columbia shall establish within the General Fund an account classification to be known as the “Metrorail/Metrobus Account”.

(b) The following revenues shall be deposited in the General Fund and allocated to the Metrorail/Metrobus Account:

(1) All grant funds earned by the District of Columbia, after September 30, 1981, for eligible transit operating expenses of the Washington Metropolitan Area Transit Authority (“WMATA”) pursuant to § 5 of the Urban Mass Transportation Act of 1964 (49 U.S.C. § 1604).

(2) All revenues earned, after September 30, 1981, from the taxes, fees, and civil fines and penalties imposed by the following sections:

(A)(i) Section 47-2002(1), (2), and (3), except as provided in sub-subparagraph (ii) of this subparagraph;

(ii) Beginning January 1, 1999, sales tax increment revenues (as defined in § 1-2293.1(27)) shall be excluded from the revenues described in sub-subparagraph (i) of this subparagraph;

(B) Section 47-2202(1), (2) and (3);

(C) Sections 47-2301 through 47-2322;

(D) Section 40-601 et seq., except the booting, towing, and storage fees imposed by § 40-703(k)(4);

(E) Section 40-812;

(F) Section 40-805(5);

(G) Section 40-724; and

(H) Repealed.

(3) All revenues earned, after September 30, 1983, pursuant to § 40-104.

(4) All revenues earned, after September 30, 1983, pursuant to § 40-703(j).

(c) Revenues earned from the tax imposed pursuant to § 47-1501 shall be deposited in the General Fund and allocated to the Metrorail/Metrobus Account classification in such amounts that shall be necessary to cover additional expenditures pursuant to paragraphs (1) and (2) of subsection (e) of this section.

(d) If revenues are insufficient to cover applicable expenditures as required in this subchapter, funding shall be made available from other General Fund revenues to cover the necessary additional amounts as needed pursuant to paragraphs (1) and (2) of subsection (e) of this section.

(e) Subject to the availability of appropriations for such purposes, amounts allocated to the Metrorail/Metrobus Account classification shall be used for the following purposes:

(1) First, for the payment of the District of Columbia's share of:

(A) The cost of operating and maintaining the adopted regional system, as defined in § 1-2451(1) pursuant to § 1-2454(c);

(B) An amount equal to the Washington Metropolitan Area Transit Authority's ("WMATA") contribution to the sinking fund established by § 1-2464(a)(1) pursuant to § 1-2464(a)(4) payable through the year 2014. These funds shall be used by WMATA to make debt service payments on the new bonds issued to refund the local share of the federally guaranteed transit revenue bonds;

(C) An amount equal to the Washington Metropolitan Area Transit Authority's contribution to the bond interest fund established by § 1-2464(b)(1), pursuant to § 1-2464(b)(4) payable through the year 2014. These funds shall be used by WMATA to make debt service payments on the new bonds issued to refund the local share of the federally guaranteed transit revenue bonds; and

(D) Metrorail construction management costs;

(2) Second, for the payment of:

(A) The District of Columbia's share of the Washington Metropolitan Area Transit Authority's Metrobus capital program;

(B) The subsidy required by § 44-220(b);

(C) The subsidy to the Washington Metropolitan Area Transit Authority for reduced fares for the elderly; and

(D) Debt service on amounts borrowed from the United States Treasury for the District of Columbia's share of Metrorail construction costs;

(3) Third, for other authorized expenditures of the District of Columbia government. (Apr. 30, 1982, D.C. Law 4-103, § 2, 29 DCR 1395; Mar. 16, 1993, D.C. Law 9-202, § 2, 39 DCR 9221; Mar. 25, 1993, D.C. Law 9-250, § 2, 40 DCR 771; Mar. 21, 1995, D.C. Law 10-242, § 13, 42 DCR 86; Aug. 5, 1997, 111 Stat. 781, Pub. L. 105-33, § 11702(a)(1) and (2); Apr. 27, 1999, D.C. Law 12-271, § 3, 46 DCR 3615.)

**Cross references.** — As to organization of fund structure utilized by District, see § 47-373.

**Effect of amendments.** — Section 11702(a) of P.L. 105-33 repealed (b)(2)(H).

Section 11702(a)(2) of Pub. L. 105-33, 111 Stat. 781, repealed (b)(2)(H).

D.C. Law 12-271 rewrote (b)(2)(A).

**Emergency act amendments.** — For temporary amendment of section, see § 3 of the Tax Increment Financing Emergency Amendment Act of 1998 (D.C. Act 12-562, January 22, 1999, 46 DCR 2104).

Section 5 of D.C. Act 12-562 provides that the provisions of the act shall apply to any project approved by the Council pursuant to § 5 of the Tax Increment Financing Authorization Act of 1998, effective September 11, 1998 (D.C. Law

12-143; to be codified at D.C. Code § 1-2293.4), after the effective date of this act.

**Legislative history of Law 4-103.** — Law 4-103, the "Stable and Reliable Source of Revenues for WMATA Act of 1982," was introduced in Council and assigned Bill No. 4-61, which was referred to the Committee on Finance and Revenue and the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on February 9, 1982 and February 23, 1982, respectively. Signed by the Mayor on March 10, 1982, it was assigned Act No. 4-164 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 9-202.** — Law 9-202, the "Stable and Reliable Source of Revenues for WMATA Act of 1982 Temporary Amendment Act of 1992," was introduced in

Council and assigned Bill No. 9-583, which was retained by Council. The Bill was adopted on first and second readings on July 7, 1992 and November 4, 1992, respectively. Signed by the Mayor on November 25, 1992, it was assigned Act No. 9-327 and transmitted to both Houses of Congress for its review. D.C. Law 9-202 became effective on March 16, 1993.

**Legislative history of Law 9-250.** — Law 9-250, the “Stable and Reliable Source of Revenues for WMATA Act of 1982 Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-584, which was referred to the Committee on Regional Authorities. The Bill was adopted on first and second readings on December 1, 1992 and December 15, 1992, respectively. Signed by the Mayor on January 14, 1993, it was assigned Act No. 9-396 and transmitted to both Houses of Congress for its review. D.C. Law 9-250 became effective on March 25, 1993.

**Legislative history of Law 10-242.** — Law 10-242, the “Clean Air Compliance Fee Act of 1994,” was introduced in Council and assigned Bill No. 10-610, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 1,

1994, and December 6, 1994, respectively. Signed by the Mayor on December 28, 1994, it was assigned Act No. 10-387 and transmitted to both Houses of Congress for its review. D.C. Law 10-242 became effective on March 21, 1995.

**Legislative history of Law 12-271.** — Law 12-271, the “Tax Increment Financing Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-829, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 24, 1998, it was assigned Act No. 12-590 and transmitted to both Houses of Congress for its review. D.C. Law 12-271 became effective on April 27, 1999.

**References in text.** — Section 47-1501, referred to in subsection (c) of this section, was repealed Feb. 28, 1987, by D.C. Law 6-212, § 24.

The “Urban Mass Transportation Act of 1964 (49 U.S.C. § 1604),” referred to in (b)(1), is now codified at 49 U.S.C. § 5301 et seq.

**Cited in** *Frain v. District of Columbia*, App. D.C., 572 A.2d 447 (1990).

## § 1-2467. Annual report of Account.

The Mayor of the District of Columbia shall, by November 1 of each year, submit a report to the Council of the District of Columbia delineating the revenues deposited in the Metrorail/Metrobus Account and the amounts, purposes, and expenditures from the Metrorail/Metrobus Account. (Apr. 30, 1982, D.C. Law 4-103, § 4, 29 DCR 1395.)

**Legislative history of Law 4-103.** — Law 4-103, the “Stable and Reliable Source of Revenues for WMATA Act of 1982,” was introduced in Council and assigned Bill No. 4-61, which was referred to the Committee on Finance and Revenue and the Committee on Transportation

and Environmental Affairs. The Bill was adopted on first and second readings on February 9, 1982 and February 23, 1982, respectively. Signed by the Mayor on March 10, 1982, it was assigned Act No. 4-164 and transmitted to both Houses of Congress for its review.

## *Subchapter VI. Acquisition of Mass Transit Bus Systems.*

### § 1-2471. Acquisition of bus companies; franchise cancelled; charter bus service by Authority; corporate status of D.C. Transit System, Inc.

(a) Based on the findings set forth in § 2 of this Act, it is the sense of the Congress that the Washington Metropolitan Area Transit Authority (hereafter in this subchapter referred to as the “Transit Authority”) should initiate negotiations as soon as possible with the ownership of D.C. Transit System, Incorporated (and its subsidiary, the Washington, Virginia, and Maryland Coach Company), the Alexandria, Barcroft, and Washington Transit Company, and the WMA Transit Company for acquisition by the Transit Authority of

capital stock or facilities, plant, equipment, real and personal property of such bus companies of whatever nature, whether owned directly or indirectly, used or useful for mass transportation by bus of passengers within the Washington metropolitan area. It is further the sense of the Congress that representatives of the Transit Authority should participate in any labor contract negotiations undertaken prior to acquisition by the Transit Authority of such bus companies.

(b) The franchise to operate a system of mass transportation of passengers for hire granted to D.C. Transit System, Incorporated, by the Act of July 24, 1956 (70 Stat. 598) is hereby canceled, effective upon the date immediately preceding the date on which the Transit Authority acquires the transit facilities of D.C. Transit System, Incorporated.

(c)(1) The Transit Authority, and any transit company owned or controlled by the Transit Authority, may operate charter service by bus in accordance with Title III of the Washington Metropolitan Area Transit Regulation Compact only between any point within the transit zone and any point in the State of Maryland or Virginia, or a point within 250 miles of the Zero Mile Stone located on the Ellipse.

(2) For the purposes of this subsection, the term "transit zone" means the area designated in § 3 of Title III of the Washington Metropolitan Area Transit Regulation Compact.

(d)(1) D.C. Transit System, Incorporated, a corporation of the District of Columbia, may:

(A) Continue to exist as such a corporation and amend its charter in any manner provided under the laws of the District of Columbia;

(B) Avail itself of the provisions of Chapter 3 of Title 29 in respect to a change of its name; and

(C) Become incorporated or reincorporated in any manner provided under the laws of the District of Columbia.

(2) Nothing in this Act shall be construed so as to cause or require the corporate dissolution of D.C. Transit System, Incorporated. (Oct. 21, 1972, 86 Stat. 1001, Pub. L. 92-517, title I, § 102; 1973 Ed., § 1-1461.)

**Section references.** — This section is referred to in § 1-2472.

to in subsections (a) and (d)(2), is the Act of October 21, 1972, 86 Stat. 1001, Pub. L. 92-517.

**References in text.** — "This Act," referred

## § 1-2472. Payment by Mayor of District's share of acquisition cost authorized.

The Mayor of the District of Columbia is authorized to contract with the Transit Authority for payment to it of the District's share of the cost to the Transit Authority of acquiring:

(1) The private bus companies referred to in § 1-2471(a); and

(2) Any rolling stock, real estate, or other capital resources required for the operation of bus service in the District of Columbia either at the time of acquisition of such bus companies or at some future time. (Oct. 21, 1972, 86 Stat. 1002, Pub. L. 92-517, title II, § 201(a); 1973 Ed., § 1-1462.)

**Change in government.** — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia

Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

### § 1-2473. Capital grant assistance.

The Transit Authority, for the purpose of effecting the acquisition of the mass transit bus system or systems as contemplated by this subchapter, together with such improvements or replacement of acquired equipment and facilities as may be found necessary or desirable by the Secretary of Transportation (hereafter in §§ 1-2473 to 1-2475 referred to as the "Secretary") in conjunction with such acquisition and within a reasonable time thereafter, not to exceed 6 months, is eligible for capital grant assistance pursuant to § 3 of the Urban Mass Transportation Act of 1964. For this purpose, the Transit Authority shall be considered a "local public body" within the meaning of that section and, accordingly, the Secretary may authorize and approve capital grant assistance to the Transit Authority in the maximum amount provided for in the Urban Mass Transportation Act of 1964 toward the cost of acquisition of such bus system or systems, including the cost of improvements to or replacement of acquired equipment and facilities approved by the Secretary in conjunction with such acquisition. Such assistance shall be provided from funds available to the Urban Mass Transportation Administration of the Department of Transportation. (Oct. 21, 1972, 86 Stat. 1002, Pub. L. 91-517, title III, § 301; 1973 Ed., § 1-1463.)

**Section references.** — This section is referred to in § 1-2474.

**References in text.** — "Section 3 of the Urban Mass Transportation Act of 1964" was

formerly codified at 49 U.S.C. § 1602. See now, generally, 49 U.S.C. § 5309.

### § 1-2474. Immediate grants.

(a) If the Secretary should determine that immediate action is urgently required to protect the public interest in the national capital area, he may waive any or all provisions of the Urban Mass Transportation Act of 1964 (except § 13(c) thereof), and immediately grant to the Transit Authority from funds available to the Urban Mass Transportation Administration of the Department of Transportation such sums as are contemplated under § 1-2473.

(b) The Secretary, after determining that immediate action is necessary in the public interest in accordance with subsection (a) of this section, may, in accordance with subsection (c) of this section, advance from funds available to the Urban Mass Transportation Administration of the Department of Transportation such funds as he determines to be necessary for payment to the Transit Authority to provide temporary financing for that portion of the cost of acquisition of the mass transit bus system or systems contemplated by this subchapter, together with associated improvements to or replacement of

acquired equipment and facilities, which are not provided for by the Secretary pursuant to § 1-2473. For this purpose, such advance shall not be construed as a loan made under § 3 of the Urban Mass Transportation Act of 1964. Funds advanced pursuant to this section shall be considered as "other than federal funds" within the meaning of § 4(a) of the Urban Mass Transportation Act of 1964.

(c) The Secretary shall not advance funds under this section until he has determined that the Transit Authority has the capacity and ability to arrange for repayment of such advance in accordance with § 1-2475. (Oct. 21, 1972, 86 Stat. 1002, Pub. L. 92-517, title III, § 302; 1973 Ed., § 1-1464.)

**Section references.** — This section is referred to in §§ 1-2473 and 1-2475.

throughout this section, is now codified at 49 U.S.C. § 5301 et seq.

**References in text.** — The "Urban Mass Transportation Act of 1964," referred to

### § 1-2475. Repayment of advances.

The advance authorized under § 1-2474(b) shall be repaid by the Transit Authority to the Urban Mass Transportation Administration of the Department of Transportation from contributions by the District of Columbia and other local government jurisdictions or from other non-federal sources as may be available to the Transit Authority and which were not estimated to be available for financing the mass transit rail rapid system authorized by subchapter V of this chapter. Repayment of such advance may be deferred by the Secretary of Transportation, at the request of the Transit Authority, but not beyond the end of the fiscal year following the fiscal year in which the advance was made. Repayment shall be made with interest at a rate to be determined by the Secretary of the Treasury calculated in accordance with the formula set forth in § 3(c) of the Urban Mass Transportation Act of 1964. Principal and interest repaid pursuant to this section shall be credited to the Urban Mass Transportation Fund and shall be considered a restoration of obligational authority available to the Secretary under § 4(c) of the Urban Mass Transportation Act of 1964. (Oct. 21, 1972, 86 Stat. 1003, Pub. L. 92-517, title III, § 303; 1973 Ed., § 1-1465.)

**Section references.** — This section is referred to in §§ 1-2473 and 1-2474.

section, is now codified at 49 U.S.C. § 5301 et seq.

**References in text.** — The "Urban Mass Transportation Act of 1964," referred to in this

### § 1-2476. Jurisdiction for condemnation proceedings.

(a) The United States District Court for the District of Columbia shall have complete and exclusive jurisdiction over any proceedings by the Transit Authority for the condemnation of property, wherever situated, of D.C. Transit System, Incorporated (including its subsidiary, the Washington, Virginia, and Maryland Coach Company), the Alexandria, Barcroft, and Washington Transit Company, and the WMA Transit Company. Such proceedings shall be instituted and maintained in accordance with the provisions of this section and the



provisions of subchapter IV of Chapter 13 of Title 16, except that the court may appoint a commission in accordance with Rule 71A(h) of the Federal Rules of Civil Procedure in connection with the issue of compensation arising out of any such proceedings.

(b) Any such condemnation proceedings shall be commenced by the Attorney General of the United States, upon the request of the Transit Authority, by filing with the United States District Court for the District of Columbia a complaint and declaration of taking containing a description of the land and other assets to be taken, together with a sum of money deposited with the Registrar of such Court in accordance with the applicable provisions of law set forth in subsection (a) of this section. Upon such filing and deposit, title to the possession of the assets described in any such complaint and declaration of taking shall pass to the Transit Authority and the value of the assets so acquired shall be determined as of that date.

(c) The trial of any such condemnation proceedings shall be a preferred cause and shall be commenced at the earliest date convenient to the Court.

(d) Any proceeding brought by the Transit Authority under this section against the Alexandria, Barcroft, and Washington Transit Company shall be transferred, upon motion made by such Transit Company, to the United States District Court for the Eastern District of Virginia, and such District Court shall have, upon such transfer, complete and exclusive jurisdiction over such proceeding. Any action brought by the Transit Authority under this section against the WMA Transit Company, shall be transferred, upon motion made by the WMA Transit Company, to the United States District Court for the District of Maryland, and such District Court shall have, upon such transfer, complete and exclusive jurisdiction over such proceeding. (Oct. 21, 1972, 86 Stat. 1003, Pub. L. 92-517, title IV, § 401; 1973 Ed., § 1-1466.)

### **§ 1-2477. Authority of Comptroller General.**

The Comptroller General of the United States shall have access to all books, records, papers, and accounts and operations of the Transit Authority, and any company with which the Transit Authority is conducting negotiations under this subchapter, and any company eligible to receive or receiving any funds authorized by this subchapter. The Comptroller General is authorized to inspect any facility or real or personal property of the Transit Authority or of such companies. (Oct. 21, 1972, 86 Stat. 1004, Pub. L. 92-517, title V, § 501; 1973 Ed., § 1-1467.)

### *Subchapter VII. Woodrow Wilson Bridge and Tunnel Compact.*

### **§ 1-2481. Authority to enter into Compact.**

The Mayor is hereby authorized to execute, on behalf of the District of Columbia, the Woodrow Wilson Bridge and Tunnel Compact ("Compact") with the Commonwealth of Virginia and the State of Maryland, which Compact shall be as it appears in § 1-2483. (Feb. 28, 1996, D.C. Law 11-96, § 2, 42 DCR 7185.)

**Section references.** — This section is referred to in § 1-2483.

**Legislative history of Law 11-96.** — Law 11-96, the “Woodrow Wilson Bridge and Tunnel Compact Authorization Act of 1995,” was introduced in Council and assigned Bill No. 11-104, which was referred to the Committee on Public Services and Regional Authorities. The Bill was

adopted on first and second readings on November 7, 1995, and December 5, 1995 respectively. Signed by the Mayor on December 19, 1995, it was assigned Act No. 11-179 and transmitted to both Houses of Congress for its review. D.C. Law 11-96 became effective on February 28, 1996.

## § 1-2482. Preamble to Compact.

(1) Whereas, traffic congestion imposes serious economic burdens in the Washington, D.C., metropolitan area, costing commuters an estimated \$1,000 each per year.

(2) Whereas, the average length of commute in the Washington, D.C., metropolitan area is second only to metropolitan New York, demonstrating the severity of traffic congestion.

(3) Whereas, the Woodrow Wilson Memorial Bridge was designed to carry 70,000 vehicles per day, but carries an actual load of 160,000 vehicles per day.

(4) Whereas, the volume of traffic in the metropolitan Washington, D.C., area is expected to increase by more than 70% between 1990 and 2020.

(5) Whereas, the deterioration of the Woodrow Wilson Memorial Bridge and the growing population in the metropolitan Washington, D.C., area account for a large part of traffic congestion, and identifying alternatives to this vital link in the interstate highway system and the Northeast corridor is critical to addressing the area’s traffic congestion.

(6) Whereas, the Woodrow Wilson Memorial Bridge is the only drawbridge on the regional interstate network, the only piece of the Capital Beltway with only 6 lanes, and the only segment with a remaining life span of only 10 years.

(7) Whereas, the existing Woodrow Wilson Memorial Bridge is the only part of the interstate system owned by the federal government, and, while the District of Columbia, Maryland, and Virginia maintain and operate the bridge, no entity has ever been granted full and clear responsibility for all aspects of this facility.

(8) Whereas, continued federal government ownership of the Woodrow Wilson Memorial Bridge will impede cohesive regional transportation planning as it relates to identifying alternative solutions for resolving problems of the existing Woodrow Wilson Memorial Bridge.

(9) Whereas, any change in the status of the Woodrow Wilson Memorial Bridge must take into account the interest of nearby communities, the commuting public, and other interested groups, as well as the interest of the federal government and the state and local governments involved.

(10) Whereas, in recognition of a need for a limited federal role in the management of this bridge and the growing local interest, the U.S. Secretary of Transportation has recommended a transfer of authority and ownership from the federal to the local and state level, consistent with the management of other bridges elsewhere in the nation.

(11) Whereas, a commission comprised of congressional, state, and local officials and transportation representatives has recommended transfer of the

Woodrow Wilson Memorial Bridge to an independent authority to be created by the State of Maryland, the Commonwealth of Virginia, and the District of Columbia.

(12) Whereas, a coordinated approach without regard to political and legal jurisdictional boundaries, through the cooperation of the State of Maryland, the Commonwealth of Virginia, and the District of Columbia by and through a common agency similar to other Washington, D.C., area authorities, is a proper and necessary step looking toward the alleviation of traffic problems related to the inadequacy of the existing Woodrow Wilson Memorial Bridge. (Feb. 28, 1996, D.C. Law 11-96, § 3, 42 DCR 7185.)

**Legislative history of Law 11-96.** — See note to § 1-2481.

## **§ 1-2483. Woodrow Wilson Bridge and Tunnel Compact.**

The Compact referred to in § 1-2481 shall be as follows:

Now, therefore, the District of Columbia, Commonwealth of Virginia, and State of Maryland, hereinafter referred to as “the signatories,” do hereby covenant and agree as follows:

### **WOODROW WILSON BRIDGE AND TUNNEL COMPACT**

#### **TITLE I**

#### **General Provisions**

#### **Article I**

There is hereby created the National Capital Region Woodrow Wilson Bridge and Tunnel Authority, hereinafter referred to as the “Authority”, which shall embrace the District of Columbia, the cities of Alexandria, Fairfax, and Falls Church, the counties of Arlington and Fairfax, and the political subdivisions of the Commonwealth of Virginia located within those counties, and the counties of Montgomery and Prince Georges in the State of Maryland and the political subdivisions of the State of Maryland located within those counties.

#### **Article II**

The Authority shall be an instrumentality and common agency of the District of Columbia, the Commonwealth of Virginia, and the State of Maryland and shall have the powers and duties set forth in this Compact and such additional powers and duties as may be conferred upon it by subsequent action of the governing authorities of the District of Columbia, the Commonwealth of Virginia, and the State of Maryland.

#### **Article III**

1. The Authority shall be governed by a Board of 13 members appointed as follows:

(a) Four members shall be appointed by, and serve at the pleasure of, the Governor of the Commonwealth of Virginia;

(b) Four members shall be appointed by, and serve at the pleasure of, the Governor of the State of Maryland, with the advice and consent of the Senate of Maryland;

(c) Four members shall be appointed by, and serve at the pleasure of, the Mayor of the District of Columbia, with the advice and consent of the Council of the District of Columbia; and

(d) One member shall be appointed by the U.S. Secretary of Transportation.

2. Members, other than members who are elected officials, shall have backgrounds in finance, construction lending, and infrastructure policy disciplines. One member each from the District of Columbia, the Commonwealth of Virginia, and the State of Maryland shall be an incumbent elected official. No other member shall hold elective or appointive public office.

3. (a) No Board member, officer, or employee shall:

(1) Be financially interested, either directly or indirectly, in any contract, sale, purchase, lease, or transfer of real or personal property to which the Board or the Authority is a party;

(2) In connection with services performed within the scope of his or her official duties, solicit or accept money or any other thing of value in addition to the compensation or expenses paid to him or her by the Authority; or

(3) Offer money or any other thing of value for, or in consideration of, obtaining an appointment, promotion, or privilege in his or her employment with the Authority.

(b) Any Board member, officer, or employee who shall willfully violate any provision of this section shall, in the discretion of the Board, forfeit his or her office or employment.

(c) Any contract or agreement made in contravention of this section may be declared void by the Board.

(d) Nothing in section 3 of this article shall be construed to abrogate or limit the applicability of any federal, state, or District of Columbia law which may be violated by any action proscribed by this section.

4. The Chairperson of the Authority shall be elected biennially by its members.

5. The members also may elect biennially a secretary and a treasurer, or a secretary-treasurer, who may be members of the Authority, and prescribe their duties and powers.

6. Each member shall serve a 6-year term, except that each signatory shall make its initial appointments as follows:

(a) Two members shall each be appointed for a 6-year term;

(b) One member shall be appointed for a 4-year term; and

(c) One member shall be appointed for a 2-year term.

7. The failure of a signatory or the U.S. Secretary of Transportation to appoint one or more members shall not impair the Authority's creation or preclude the Authority from functioning when vacancies occur, except that the minimum number of members required at any time for the Authority to function shall be seven.

8. Any person appointed to fill a vacancy shall serve for the unexpired term. No member of the Authority shall serve for more than two terms.

9. The members of the Authority, including nonvoting members, if any, shall not be personally liable for any act done, or action taken, in their capacities as members of the Authority, nor shall they be personally liable for any bond, note, or other evidence of indebtedness issued by the Authority. Except as provided in this Compact, only the Authority shall be liable for its contracts and for its torts and those of its agents, members, and employees. Nothing in this Compact shall be construed as a waiver by the District of Columbia, the Commonwealth of Virginia, or the State of Maryland of immunity from suit.

10. Seven members shall constitute a quorum, with the following exceptions:

(a) Eight affirmative votes shall be required to approve bond issues and the annual budget of the Authority;

(b) Two affirmative votes by members from the affected signatory shall be required to approve operations or matters solely intrastate or solely within the District of Columbia; and

(c) Any sole source procurement of property, services, or construction in excess of \$100,000 shall require the prior approval of a majority of the members.

11. Members shall serve without compensation and shall reside in the metropolitan Washington, D.C., area. Members shall be entitled to reimbursement for their expenses incurred in attending the meetings of the Authority and while otherwise engaged in the discharge of their duties as members of the Authority.

12. The Authority may employ such engineering, technical, legal, clerical, and other personnel on a regular, part-time, or consulting basis as in its judgment may be necessary for the discharge of its duties. The Authority shall not be bound by any statute or regulation of any signatory in the employment or discharge of any officer or employee of the Authority, except as may be contained in this compact.

13. The Authority may fix and provide for the qualification, appointment, removal, term, tenure, compensation, pension, and retirement rights of its officers and employees without regard to the laws of any of the signatories, and may establish, in its discretion, a personnel system based on merit and fitness and, subject to eligibility, participate in the pension and retirement plans of any signatory, or political subdivision or agency thereof, upon terms and conditions mutually acceptable.

14. The Authority shall establish its office for the conduct of its affairs at a location to be determined by the Authority and shall publish rules and regulations governing the conduct of its operations.

15. The Authority shall adopt procedures that are not in conflict with the applicable federal law on administrative procedures, open meetings, and public information.

Article IV

16. Nothing herein shall be construed:

(a) To amend, alter, or in any way affect the power of the signatories and the political subdivisions thereof to levy and collect taxes on property or income or to levy, assess, and collect franchise or other similar taxes or fees for the licensing of vehicles and the operation thereof; or

(b) To confer any exemption from taxes related to the sale of any material, equipment, or supplies purchased by or on behalf of the Authority.

Article V

17. This Compact shall be adopted by all the signatories in a manner provided by law therefor and shall be signed and sealed in four duplicate original copies. One such copy shall be filed with the Secretary of State of the State of Maryland, the Secretary of the Commonwealth of Virginia, and the Secretary of the District of Columbia in accordance with the laws of each. One copy shall be filed and retained in the archives of the Authority upon its organization. This Compact shall become effective 90 days after the enactment of concurring legislation by, or on behalf of, the District of Columbia, Maryland, and Virginia, and consent thereto by the Congress of the United States and when all other acts or actions have been taken, including the signing and execution of the Title by the Governors of Maryland and Virginia and the Mayor of the District of Columbia.

Article VI

18. Any signatory may withdraw from the Compact upon one year's written notice to that effect to the other signatories. In the event of a withdrawal of one of the signatories from the Compact, the Compact shall be terminated; provided, however, that no revenue bonds, notes, or other evidence of obligation issued pursuant to Article VI of Title II or any other financial obligations of the Authority remain outstanding and that the withdrawing signatory has made a full accounting of its financial obligations, if any, to the Authority and the other signatories.

19. Upon the termination of this Compact, the jurisdiction over the matters and persons covered by this Compact shall revert to the signatories and the federal government, as their interests may appear.

Article VII

20. Each of the signatories pledges to each of the other signatory parties faithful cooperation in the solution and control of transit and traffic problems with the Woodrow Wilson Memorial Bridge and, in order to effect such purposes, agrees to consider in good faith and request any necessary legislation to achieve the objectives of the Compact to the mutual benefit of the citizens living within the Washington, D.C., metropolitan area and for the advancement of the interests of the signatories hereto.

## Article VIII

21. The Authority shall not undertake the ownership of the existing Woodrow Wilson Memorial Bridge, or any duties or responsibilities associated herewith, until the Governors of Maryland and Virginia and the Mayor of the District of Columbia have entered into an agreement with the U.S. Secretary of Transportation establishing the federal share of the cost of a new Woodrow Wilson bridge or tunnel. Such federal funds shall be in addition to, and shall not diminish, the federal transportation funding allocated to the District of Columbia, the Commonwealth of Virginia, and the State of Maryland. Upon all parties' approval of this agreement, the Authority shall have sole responsibility for duties concerning ownership, construction, operation, and maintenance of the project, as hereinafter defined.

## Article IX

22. If any part or provision of this Compact or the application thereof to any person or circumstances be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Compact or the application thereof to other persons or circumstances, and the signatories hereby declare that they would have entered into this Compact or the remainder thereof had the invalidity of such provision or application thereof been apparent.

23. This Compact shall be liberally construed to effectuate the purposes for which it is created.

24. The United States District Courts shall have original jurisdiction, concurrent with the courts of the District of Columbia, Maryland, and Virginia, of all actions brought by or against the Authority. Any such action shall be removable to the appropriate United States District Court in the manner provided by 28 U.S.C. 1446.

## TITLE II

## Woodrow Wilson Memorial Bridge and Tunnel Revenue Bond Act

## Article I

## Definitions

25. As used in this title, the following words shall have the following meanings:

(a) "Cost," as applied to the project defined in this article, means the cost of acquisition of all lands, structures, rights-of-way, franchises, easements and other property rights and interests; the cost of lease payments; the cost of construction; the cost of demolishing, removing, or relocating any buildings or structures on lands acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, relocated, or reconstructed; the cost to relocate residents or businesses from properties acquired for the

project; the cost of any extensions, enlargements, additions, and improvements; the cost of all labor, materials, machinery and equipment, financing charges, and interest on all bonds prior to and during construction and, if deemed advisable by the Authority, of such construction; the cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, and other expenses necessary or incident to determining the feasibility or practicability of constructing the project, administrative expenses, provisions for working capital, and reserves for interest and for extensions, enlargements, additions, and improvements; the cost of bond insurance and other devices designed to enhance the credit worthiness of the bonds; and such other expenses as may be necessary or incidental to the construction of the project, the financing of such construction, and the planning of the project in operation.

(b) "Owner" shall include all persons as defined in section 2(5) of the General Legislative Procedures Act of 1975, effective September 23, 1975 (D.C. Law 1-17; D.C. Code § 1-230(5)), having any interest or title in property, rights, franchises, easements, and interests authorized to be acquired by this act.

(c) "Project" means the existing Woodrow Wilson Memorial Bridge and a new bridge or tunnel, or a bridge and tunnel project adjacent to the existing Woodrow Wilson Memorial Bridge and associated rail transit facilities, including any necessary work on highways directly connected to the existing Woodrow Wilson Memorial Bridge, to a new bridge or tunnel; administration, storage, and other buildings and facilities which the Authority may deem necessary for the operation of such project; and all property, rights, franchises, easements, and interests which may be acquired by the Authority for the construction or the operation of such project. Such project shall be substantially the same as that recommended by the Woodrow Wilson Bridge Improvement Study Coordination Committee established in 1992 by the Federal Highway Administration, and as included in the adopted Long Range Plan and Transportation Improvement Program of the National Capitol Region Transportation Planning Board.

## Article II

### Bonds Not to Constitute a Debt or Pledge of Taxing Power

26. Revenue bonds, notes, or other evidence of obligation issued under the provisions of this act shall not be deemed to constitute a debt or a pledge of the faith and credit of the Authority or of any signatory government or political subdivision thereof, but such bonds, notes, or other evidence of obligation shall be payable solely from the funds herein provided therefor from tolls and other revenues. The issuance of revenue bonds, notes, or other evidence of obligation, under the provisions of this act, shall not directly, indirectly, or contingently obligate the Authority, or any signatory government or political subdivision thereof, to levy or to pledge any form of taxation whatever therefor. All such revenue bonds, notes, or other evidence of obligation shall contain a statement on their face substantially to the foregoing effect.



## Article III

## Additional Powers of the Authority

27. Without in any manner limiting or restricting the powers heretofore given to the Authority, the Authority is hereby authorized and empowered:

(a) To establish, finance, construct, maintain, repair, and operate the project;

(b) Subject to the approval of the Governors of Maryland and Virginia and the Mayor of the District of Columbia of the agreement referred to in Article VIII of Title I, to assume full rights of ownership of the existing Woodrow Wilson Memorial Bridge;

(c) Subject to the approval of the Governors of Maryland and Virginia and the Mayor of the District of Columbia, and in accordance with the recommendations of the Woodrow Wilson Bridge Improvement Study Coordination Committee, to determine the location, character, size, and capacity of the project; to establish, limit, and control such points of ingress to and egress from the project as may be necessary or desirable in the judgment of the Authority to ensure the proper operation and maintenance of the project; and to prohibit entrance to such project from any point or points not so designated;

(d) To secure all necessary federal, state, and local authorizations, permits, and approvals for the construction, maintenance, repair, and operation of the project;

(e) To adopt and amend bylaws for the regulation of its affairs and the conduct of its business;

(f) To adopt and amend rules and regulations to carry out the powers granted by this article;

(g) To acquire, by purchase or condemnation, in the name of the Authority, and to hold and dispose of, real and personal property for the corporate purposes of the Authority;

(h) To acquire full information to enable it to establish, construct, maintain, repair, and operate the project;

(i) To employ consulting engineers, a superintendent or manager of the project, and such other engineering, architectural, construction and accounting experts, and inspectors, attorneys, and such other employees as may be deemed necessary, and within the limitations prescribed in this Compact, and to prescribe their powers and duties and to fix their compensation;

(j) To pay, from any available moneys, the cost of plans, specifications, surveys, estimates of cost and revenues, legal fees, and other expenses necessary or incident to determining the feasibility or practicability of financing, constructing, maintaining, repairing, and operating the project;

(k) To issue revenue bonds, notes, or other evidence of obligation of the Authority, for any of its corporate purposes, payable solely from the tolls and revenues pledged for their payment, and to refund its bonds, all as provided in this Compact;

(l) To fix and revise from time to time and to charge and collect tolls and other charges for the use of the project;

(m) To make and enter into all contracts or agreements, as the Authority may determine, which are necessary or incidental to the performance of its duties and to the execution of the powers granted under this Compact;

(n) To accept loans and grants of money, materials, or property at any time from the United States of America, the Commonwealth of Virginia, the State of Maryland, the District of Columbia, or any agency or instrumentality thereof;

(o) To adopt an official seal and alter the same at its pleasure;

(p) Subject to Article III, Section 9 of Title I of this Compact, to sue and be sued, plead and be impleaded, all in the name of the Authority;

(q) To exercise any power usually possessed by private corporations performing similar functions, including the right to expend, solely from funds provided under the authority of this Compact, such funds as may be considered by the Authority to be advisable or necessary in advertising its facilities and services to the traveling public; and

(r) To do all acts and things necessary or incidental to the performance of its duties and the execution of its powers under this Compact.

## Article IV

### Acquisition of Property

28. The Authority is hereby authorized and empowered to acquire by purchase, whenever it shall deem such purchase expedient, solely from funds provided under the authority of this Compact, such lands, structures, rights-of-way, property, rights, franchises, easements, and other interest in lands, including lands lying under water and riparian rights, which are located within the jurisdictions of the Washington, D.C., metropolitan area, as described in Article I of Title I of this Compact, as it may deem necessary or convenient for the construction and operation of the project, upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon between it and the owner thereof; and to take title thereto in the name of the Authority.

29. All counties, cities, towns, and other political subdivisions and all public agencies and authorities of the signatories, notwithstanding any contrary provision of law, are hereby authorized and empowered to lease, lend, grant, or convey to the Authority at the Authority's request, upon such terms and conditions as the proper authorities of such counties, cities, towns, political subdivisions, agencies, or authorities may deem reasonable and fair and without the necessity for any advertisement, order of court or other action or formality, other than the regular and formal action of the authorities concerned, any real property which may be necessary or convenient to the effectuation of the authorized purposes of the Authority, including public roads and other real property already devoted to public use.

30. Whenever a reasonable price cannot be agreed upon, or whenever the owner is legally incapacitated or is absent, unknown, or unable to convey valid title, the Authority is hereby authorized and empowered to acquire by condemnation or by the exercise of the power of eminent domain any lands,

property, rights, rights-of-way, franchises, easements, and other property deemed necessary or convenient for the construction or the efficient operation of the project or necessary in the restoration of public or private property damaged or destroyed.

31. Whenever the Authority acquires property under Article IV of this Title, it shall comply with the applicable federal law relating to relocation and relocation assistance. If there is no applicable federal law, the Authority shall comply with the applicable provision of state or District of Columbia law in which the property is located.

### Procurement

32. Except as provided in sections 33, 34, and 37, and except in the case of procurement procedures otherwise expressly authorized by federal statute, the Authority, in conducting a procurement of property, services, and construction, shall:

(a) Obtain full and open competition through the use of competitive procedures in accordance with the requirements of this section; and

(b) Use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement. In determining the competitive procedure appropriate under the circumstances, the Authority shall:

(1) Solicit sealed bids if:

(A) Time permits the solicitation, submission, and evaluation of sealed bids;

(B) The award will be made on the basis of price and other price-related factors;

(C) It is not necessary to conduct discussions with the responding sources about their bids; and

(D) There is a reasonable expectation of receiving more than one sealed bid; or

(2) Request competitive proposals if sealed bids are not appropriate under paragraph (1) of this subsection.

33. The Authority may provide for the procurement of property, services, or construction covered by this article using competitive procedures but excluding a particular source in order to establish or maintain an alternative source or sources of supply for that property, service, or construction if the Authority determines that excluding the source would increase or maintain competition and would likely result in reduced overall costs for procurement of property, services, and construction.

34. The Authority may use procedures other than competitive procedures if:

(a) The property, services, or construction needed by the Authority are available from only one responsible source and no other type of property, services, or construction will satisfy the needs of the Authority;

(b) The Authority's need for the property, services, or construction is of such an unusual and compelling urgency that the Authority would be seriously

injured unless the Authority limits the number of sources from which it solicits bids or proposals;

(c) The Authority determines that it is necessary in the public interest to use procedures other than competitive procedures in the particular procurement; or

(d) The property or services needed can be obtained through federal or other sources at reasonable prices.

35. For the purposes of applying section 34(a):

(a) In the case of a contract for property, services, or construction to be awarded on the basis of acceptance of an unsolicited proposal, the property, services, or construction shall be deemed to be available from only one responsible source if the source has submitted an unsolicited proposal that demonstrates a concept:

(1) That is unique and innovative or, in the case of a service, for which the source demonstrates a unique capability to provide the service; and

(2) The substance of which is not otherwise available to the Authority and does not resemble the substance of a pending competitive procurement; or

(b) In the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment or the continued provision of highly specialized services, the property, services, or construction may be deemed to be available from only the original source and may be procured through procedures other than competitive procedures if it is likely that award to a source other than the original source would result in:

(1) Substantial duplication of cost to the Authority that is not expected to be recovered through competition; or

(2) Unacceptable delays in fulfilling the Authority's needs.

36. If the Authority uses procedures other than the competitive procedures to procure property, services, or construction under section 34(b), the Authority shall request offers from as many potential sources as is practicable under the circumstances.

37. (a) To promote efficiency and economy in contracting, the Authority may use simplified acquisition procedures for purchases of property, services, or construction.

(b) For the purposes of this section, simplified acquisition procedures may be used for purchases for an amount that does not exceed the simplified acquisition threshold adopted by the federal government.

(c) A proposed purchase or contract for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts in order to use the procedures under subsection (a) of this section.

(d) In using simplified acquisition procedures, the Authority shall promote competition to the maximum extent practicable.

38. The Board shall adopt policies and procedures to implement sections 32-37 of this Article. The policies and procedures shall provide for publication of notice of procurements and other actions designed to secure competition where competitive procedures are used.

39. The Authority, in its discretion, may reject any and all bids or proposals received in response to a solicitation.

## Article V

## Incidental Powers

40. The Authority shall have power to construct grade separations at intersections of the project with public highways and to change and adjust the lines and grades of such highways so as to accommodate the same to the design of such grade separation. The cost of such grade separations, and any damage incurred in changing and adjusting the lines and grades of such highways, shall be ascertained and paid by the Authority as a part of the cost of the project. If the Authority shall find it necessary to change the location of any portion of any public highway, it shall cause the same to be reconstructed at such location as the Authority shall deem most favorable and of substantially the same type and in as good condition as the original highway. The cost of such reconstruction and any damage incurred in changing the location of any such highway shall be ascertained and paid by the Authority as a part of the cost of the project.

41. Subject to the approval by the highest ranking official of the jurisdiction in which the work is to take place, as the case may be, the Mayor of the District of Columbia, Governor of Maryland, or Governor of Virginia, any public highway affected by the construction of the project may be vacated or relocated by the Authority in the manner now provided by law for the vacation or relocation of public roads, and any damages awarded on account thereof shall be paid by the Authority as a part of the cost of the project.

42. In addition to the foregoing powers, the Authority and its authorized agents and employees may enter upon any lands, waters, and premises in the District of Columbia, Commonwealth of Virginia, and State of Maryland for the purpose of making surveys, soundings, drillings, and examinations as they may deem necessary or convenient for the purposes of this Compact, and such entry shall not be deemed a trespass, nor shall an entry for such purposes be deemed an entry under any condemnation proceedings which may be then pending. The Authority shall make reimbursement for any actual damage resulting to such lands, waters, and premises as a result of such activities.

43. The Authority shall also have power to make reasonable regulations for the installation, construction, maintenance, repair, renewal, relocation, and removal of tracks, pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances (herein called "public utility facilities") of any public utility in, on, along, over, or under the project. Whenever the Authority shall determine that it is necessary that any such public utility facilities which now are, or hereafter may be, located in, on, along, over, or under the project should be relocated in the project, or should be removed from the project, the public utility owning or operating such facilities shall relocate or remove the same in accordance with the order of the Authority, provided that the cost and expenses of such relocation or removal, including the cost of installing such facilities in a new location or new locations, and the cost of any lands, or any rights or interests in lands, and any other rights, acquired to accomplish such relocation or removal, shall be ascertained and paid by the Authority as a part of the cost of the project. In case of any such relocation or removal of facilities,

the public utility owning or operating the same, its successors or assigns, may maintain and operate such facilities, with the necessary appurtenances, in the new location or new locations, for as long a period, and upon the same terms and conditions, as it had the right to maintain and operate such facilities in their former location or locations.

44. The Authority may use all lands owned by the District of Columbia, Commonwealth of Virginia, and State of Maryland, including lands lying under water, which are necessary for the construction or operation of the project subject to approval of the highest-ranking official of the affected jurisdiction.

## Article VI

### Revenue Bonds

45. The Authority is hereby authorized to provide by resolution, at one time or from time to time, for the issuance of revenue bonds, notes, or other evidence of obligation of the Authority to pay all or a part of the cost of all or a part of the project.

## Article VII

### Trust Indenture

46. In the discretion of the Authority, any bonds, notes, or other evidence of obligation issued under the provisions of this Compact may be secured by a trust indenture by and between the Authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the District of Columbia, Commonwealth of Virginia, or State of Maryland. Such trust indenture or the resolution providing for the issuance of such bonds may pledge or assign the tolls and other revenues to be received, but shall not convey or mortgage the project or any part thereof.

## Article VIII

### Revenues

47. The Authority is hereby authorized to fix, revise, charge, and collect tolls for the use of the project, and to contract with any person, partnership, association, or corporation desiring the use thereof, and to fix the terms, conditions, rents, and rates of charges for such use.

48. Such tolls shall be so fixed and adjusted in respect of the aggregate of tolls from the project as to provide a fund sufficient with other revenues, if any, to pay the cost of maintaining, repairing, and operating such project, and the principal of, and the interest on, such bonds as the same shall become due and payable, and to create reserves for such purposes. Such tolls shall not be subject to supervision or regulation by any other authority, board, bureau, or agency of the District of Columbia, Commonwealth of Virginia, or State of Maryland. The tolls and all other revenues derived from the project in connection with which the bonds of any issue shall have been issued, except

such part thereof as may be necessary to pay such cost of maintenance, repair, and operation and to provide such reserves therefor as may be provided for in the resolution authorizing the issuance of such bonds or in the trust indenture securing the same, shall be set aside at such regular intervals as may be provided in such resolution or such trust indenture in a sinking fund which is hereby pledged to, and charged with, the payment of the principal of, and the interest on, such bonds as the same shall become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made. The tolls, other revenues, or other moneys so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust indenture by which a pledge is created need be filed or recorded except in the records of the Authority. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust indenture. Except as may otherwise be provided in such resolution or such trust indenture, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another.

## Article IX

### Trust Funds

49. All moneys received pursuant to the authority of this Compact, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this Compact. The resolution authorizing the bonds of any issue or the trust indenture securing such bonds shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes thereof, subject to such regulations as this Compact and such resolution or trust indenture may provide.

## Article X

### Remedies

50. Any holder of bonds, notes, or other evidence of obligation issued under the provisions of this Compact or any of the coupons appertaining thereto, and the trustee under any trust indenture, except to the extent the rights herein given may be restricted by such trust indenture or the resolution authorizing the issuance of such bonds, notes, or other evidence of obligation, may, either at law or in equity, by suit, action, mandamus, or other proceeding, protect and enforce any and all rights under the laws of the District of Columbia, Commonwealth of Virginia, and State of Maryland, or granted

hereunder or under such trust indenture or the resolution authorizing the issuance of such bonds, notes, or other evidence of obligation, and may enforce and compel the performance of all duties required by this Compact or by such trust indenture or resolution to be performed by the Authority or by any officer thereof, including the fixing, charging, and collecting of tolls.

## Article XI

### Tax Exemption

51. The exercise of the powers granted by this Compact will be in all respects for the benefit of the people of the District of Columbia, Commonwealth of Virginia, and State of Maryland and for the increase of their commerce and prosperity, and as the operation and maintenance of the project will constitute the performance of essential governmental functions, the Authority shall not be required to pay any taxes or assessments upon the project or any property acquired or used by the Authority under the provisions of this Compact or upon the income therefrom, and the bonds, notes, or other evidence of obligation issued under the provisions of this Compact, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation within the District of Columbia, Commonwealth of Virginia, and State of Maryland.

## Article XII

### Bonds Eligible for Investment

52. Bonds, notes, or other evidence of obligation issued by the Authority under the provisions of this Compact are hereby made securities in which all public officers and public bodies of the District of Columbia, Commonwealth of Virginia, and State of Maryland and their political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds, notes, or other evidence of obligation are hereby made securities which may properly and legally be deposited with, and received by, any District of Columbia, Commonwealth of Virginia, and State of Maryland municipal officer or any agency or political subdivision thereof for any purpose for which the deposit of bonds, notes, or other evidence of obligation is now or may hereafter be authorized by law.

## Article XIII

### Miscellaneous

53. Any action taken by the Authority under the provisions of this Compact may be authorized by resolution at any regular or special meeting, and each such resolution shall take effect immediately and need not be published or posted.



54. The project when constructed and opened to traffic shall be maintained and kept in good condition and repair by the Authority. The project shall also be policed and operated by such force of police, toll-takers, and other operating employees as the Authority may in its discretion employ. The Authority shall comply with all laws, ordinances, and regulations of the signatories and political subdivisions and agencies thereof with respect to the use of streets, highways, and all other vehicular facilities, traffic control and regulation, signs, and buildings.

55. An Authority police officer shall have all the powers granted to a peace officer and police officer of the District of Columbia, Commonwealth of Virginia, and the State of Maryland. However, an Authority police officer may exercise these powers only on property owned, leased, operated by, or under control of the Authority, and may not exercise these powers on any other property unless:

- (a) Engaged in fresh pursuit of a suspected offender;
- (b) Specially requested or permitted to do so in a political subdivision by its chief executive officer or its chief police officer; or
- (c) Ordered to do so by the Mayor of the District of Columbia, or the Governor of Maryland or Virginia.

56. All other police officers of the signatory parties and of each county, city, town, or other political subdivision of the District of Columbia, Commonwealth of Virginia, and State of Maryland through which the project, or portion thereof, extends shall have the same powers and jurisdiction within the limits of such projects as they have beyond such limits and shall have access to the project at any time for the purpose of exercising such powers and jurisdiction.

57. On or before the last day of September in each year, the Authority shall make an annual report of its activities for the preceding calendar year to the Governors of Maryland and Virginia and the Mayor of the District of Columbia. Each such report shall set forth a complete operating and financial statement covering its operations during the year. The Authority shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants and the cost thereof may be treated as a part of the cost of construction or operation of the project. The records, books, and accounts of the Authority shall be subject to examination and inspection by duly authorized representatives of the governing bodies of Maryland, Virginia, and the District of Columbia, and by any bondholder or bondholders at any reasonable time, provided the business of the Authority is not unduly interrupted or interfered with thereby.

58. Any member, agent, or employee of the Authority who contracts with the Authority or is interested, either directly or indirectly, in any contract with the Authority or in the sale of any property, either real or personal, to the Authority shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 1 year, or both.

59. Any person who uses the project and fails or refuses to pay the toll provided therefor shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not more than \$100 or by imprisonment for not more than 30 days, or both, and in addition thereto the Authority shall have a lien

upon the vehicle driven by such person for the amount of such toll and may take and retain possession thereof until the amount of such toll and all charges in connection therewith shall have been paid.

60. When one signatory adopts an amendment or supplement to an existing section of the Compact, that amendment or supplement shall not be immediately effective, and the previously enacted provision or provisions shall remain in effect in each jurisdiction until the amendment or supplement is approved by the other signatories and is consented to by Congress. (Feb. 28, 1996, D.C. Law 11-96, § 4, 42 DCR 7185.)

**Section references.** — This section is referred to in §§ 1-2481 and 1-2484.

**Legislative history of Law 11-96.** — See note to § 1-2481.

## § 1-2484. Compact provisions as law.

The following articles of the Compact set forth in § 1-2483 shall be a part of the law of the District of Columbia as in the case of any other act on the effective date of the Compact as described in Article V of Title I; Articles I, II, III, and VIII of Title I; and Articles I through XIII of Title II. Upon termination of the Compact as set forth in § 1-2483, the foregoing articles shall be repealed, and any other laws of the District superseded or suspended by virtue of conflict with these articles shall be reactivated without further legislative action. (Feb. 28, 1996, D.C. Law 11-96, § 5, 42 DCR 7185.)

**Emergency act amendments.** — For temporary addition of § 1-2485.1, see § 2 of the Potomac River Bridges Towing Compact Emergency Act of 1999 (D.C. Act 13-16, February 10, 1999, 46 DCR 2349).

For temporary authorization for the District to remove disabled vehicles from any portion of

the Potomac River Bridges, see §§ 2-6 of the Potomac River Bridges Towing Compact Emergency Act of 1999 (D.C. Act 13-16, February 10, 1999, 46 DCR 2349).

**Legislative history of Law 11-96.** — See note to § 1-2481.

## CHAPTER 25. HUMAN RIGHTS.

*Subchapter I. General Provisions:*

Sec.

- 1-2501. Intent of Council.
- 1-2502. Definitions.
- 1-2503. Exceptions.
- 1-2504. Severability.
- 1-2505. Discrimination based on pregnancy, childbirth, or related medical conditions.

*Subchapter II. Prohibited Acts of Discrimination.*

- 1-2511. Equal opportunities.
- 1-2512. Unlawful discriminatory practices in employment.
- 1-2513. Exceptions regarding seniority system and officer cadet programs.
- 1-2514. Reports furnished to Office.
- 1-2515. Unlawful discriminatory practices in real estate transactions.
- 1-2516. Blockbusting and steering.
- 1-2517. Acts of discrimination by broker or salesperson.
- 1-2518. Exceptions.
- 1-2519. Unlawful discriminatory practices in public accommodations.
- 1-2520. Unlawful discriminatory practices in educational institutions.
- 1-2521. Exceptions regarding sex discrimination and age.
- 1-2522. Posting of notice.
- 1-2523. Preservation of business records; contents; reports to Office.
- 1-2524. Affirmative action plans.
- 1-2525. Coercion or retaliation.

Sec.

- 1-2526. Aiding or abetting.
- 1-2527. Conciliation agreements.
- 1-2528. Resisting the Office or Commission.
- 1-2529. Falsifying documents and testimony.
- 1-2530. Arrest records.
- 1-2531. Compliance with chapter prerequisite for licenses.
- 1-2532. Discriminatory effects of practices.
- 1-2533. Sale of motor vehicle insurance.
- 1-2534. Motor vehicle rental companies.

*Subchapter III. Procedures.*

- 1-2541. Powers of Office and Commission; annual report by Mayor.
- 1-2542. Complaints; independent action by other District agencies.
- 1-2543. Establishment of procedure for complaints filed against District government.
- 1-2544. Filing of complaints and mediation.
- 1-2545. Investigation.
- 1-2546. Conciliation.
- 1-2547. Injunctive relief.
- 1-2548. Posting of notice of complaint in housing accommodation.
- 1-2549. Service of process.
- 1-2550. Notice of hearing.
- 1-2551. Hearing tribunal.
- 1-2552. Conduct of hearing.
- 1-2553. Decision and order.
- 1-2554. Judicial review.
- 1-2555. Enforcement of order.
- 1-2556. Private cause of action.
- 1-2557. Referral to licensing agencies.

*Subchapter I. General Provisions.***§ 1-2501. Intent of Council.**

It is the intent of the Council of the District of Columbia, in enacting this chapter, to secure an end in the District of Columbia to discrimination for any reason other than that of individual merit, including, but not limited to, discrimination by reason of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, and place of residence or business. (1973 Ed., § 6-2201; Dec. 13, 1977, D.C. Law 2-38, title I, § 101, 24 DCR 6038; June 28, 1994, D.C. Law 10-129, § 2(a), 41 DCR 2583; Apr. 20, 1999, D.C. Law 12-242, § 2(a), 46 DCR 952.)

**Cross references.** — As to the prohibition on the sale of alcoholic beverages to minors or intoxicated persons, see § 25-121.

**Section references.** — This section is re-

ferred to in §§ 1-607.51, 1-608.1, 1-609.1, 1-2541, 47-2853.17, and 47-2853.197.

**Effect of amendments.** — D.C. Law 12-242 inserted "familial status."

**Legislative history of Law 2-38.** — Law 2-38 was introduced in Council and assigned Bill No. 2-179, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on July 26, 1977 and September 13, 1977, respectively. Signed by the Mayor on September 28, 1977, it was assigned Act No. 2-83 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 10-129.** — Law 10-129, the "Human Rights Amendment Act 1994," was introduced in Council and assigned Bill No. 10-298, which was referred to the Committee on Public Services and Youth Affairs. The Bill was adopted on first and second readings on March 1, 1994, and April 12, 1994, respectively. Signed by the Mayor on April 28, 1994, it was assigned Act No. 10-228 and transmitted to both Houses of Congress for its review. D.C. Law 10-129 became effective on June 28, 1994.

**Legislative history of Law 12-242.** — Law 12-242, the "Human Rights Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-690, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on December 23, 1998, it was assigned Act No. 12-575 and transmitted to both Houses of Congress for its review. D.C. Law 12-242 became effective on April 20, 1999.

**Repeal of Law 12-138.** — Section 153 of Pub. L. 105-277, 112 Stat. 2681-146, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, provided that D.C. Law 12-138 is repealed October 21, 1998.

**Residency requirement for District employees.** — Section 2 of D.C. Law 12-138, repealed by § 153 of Pub. L. 105-277, had amended §§ 1-608.1 and 1-609.1, and enacted § 1-607.51, to require newly-hired District employees in the Career Service, Excepted Service, and Educational Service to establish and maintain residency in the District within 180 days of being hired, and to allow the Mayor to exempt hard to fill positions from the requirements of the act.

**Establishment of Department of Human Rights and Minority Business Development.** — See Mayor's Order 89-247, November 1, 1989.

**Purpose.** — The D.C. Council has provided the Office of Human Rights with the mandate to investigate discrimination in accordance with the statements of purpose in this section and § 1-2511 for the express reason of making appropriate recommendations for action, including legislation, against such discrimination. *Gersman v. Group Health Ass'n*, 725 F. Supp. 573 (D.D.C. 1989), *aff'd*, 931 F.2d 1565

(D.C. Cir. 1991), *supp. op.*, 975 F.2d 886 (D.C. Cir. 1992).

This chapter was enacted to eliminate all discrimination in the workplace, not just sexual or racial discrimination. *Daka, Inc. v. Breiner*, App. D.C., 711 A.2d 86 (1998).

**The D.C. Human Rights Act protects particular classes** rather than barring disparate treatment of any group. *Ortner v. Paralyzed Veterans of Am.*, 120 WLR 193 (Super. Ct. 1992).

**The eradication of sexual orientation discrimination is a compelling governmental interest.** *Gay Rights Coalition v. Georgetown Univ.*, App. D.C., 536 A.2d 1 (1987).

**Marital relationships.** — The City Council consciously chose not to make the language of the Human Rights Act applicable to regulation of the marital relationship. *Dean v. District of Columbia*, 120 WLR 769 (Super. Ct. 1991).

**Same-sex marriages.** — The Council of the District of Columbia did not intend for this act, the Human Rights Act, to change the fundamental definition of marriage. There cannot be discrimination against a same-sex marriage since, by independent statutory definition extended to the Human Rights Act, there can be no such thing. *Dean v. District of Columbia*, App. D.C., 653 A.2d 307 (1995).

**Exercise of religion defense does not provide exemption from this section.** — Georgetown University's free exercise defense does not exempt it from compliance with this section since the District of Columbia's compelling interest in eradicating sexual orientation discrimination outweighs any burden that equal provision of tangible benefits would impose on Georgetown's religious exercise. *Gay Rights Coalition v. Georgetown Univ.*, App. D.C., 536 A.2d 1 (1987).

**Discriminatory act outside the District.** — The Human Rights Act was intended to cover all discrimination concerning jobs located in the District of Columbia, even if the application and decision to discriminate were made outside the District. *Green v. Kinney Shoe Corp.*, 704 F. Supp. 259 (D.D.C. 1988).

**Compelling governmental interest outweighed burden on free exercise of religion.** — District of Columbia's compelling interest in the eradication of sexual orientation discrimination outweighed any burden imposed upon Georgetown University's exercise of religion by the forced equal provision of tangible benefits. *Gay Rights Coalition v. Georgetown Univ.*, App. D.C., 536 A.2d 1 (1987).

**Standing.** — District agency, Fair Employment Council, had standing to sue employer who allegedly was violating rights of applicants for compensatory damages for the frustration of its purpose in that it was required to divert resources to the investigation of the charges as well as employ additional counselors to assist

those whose rights had been violated by the employer. *Molovinsky v. Fair Emp. Council of Greater Wash., Inc.*, App. D.C., 683 A.2d 142 (1996).

Testers who were sent to apply at an employment agency to determine if violations of this chapter were taking place had standing to sue for the alleged violation of their rights under this act. *Molovinsky v. Fair Emp. Council of Greater Wash., Inc.*, App. D.C., 683 A.2d 142 (1996).

**Washington Area Metro Transit Authority not subject to Human Rights Act.** — The Washington Metropolitan Area Transit Authority (WMATA) is not subject to this chapter on the grounds that it is an interstate compact agency and the instrumentality of three separate jurisdictions; furthermore, pursuant to its compact, one signatory may not impose its legislative enactment upon the entity created by it without the express consent of the other signatories and of the Congress of the United States. *Lucero-Nelson v. Washington Metro. Area Transit Auth.*, 1 F. Supp. 2d 1 (D.D.C. 1998).

**Employment Retirement Income Security Act does not preempt state-law employment based claim** to recover the value of fringe benefits plaintiff lost when her employment was unlawfully terminated; preemption and removal to federal court would be proper if plaintiff had claimed improper processing of benefits, or that defendant terminated her employment in order to avoid providing her with ERISA-covered benefits, to keep her benefits from vesting, or for some other reason whose impropriety is directly connected to the ERISA-covered plan. *Schultz v. National Coalition of Hispanic Mental Health & Human Servs. Org.*, 678 F. Supp. 936 (D.D.C. 1988).

**Actuarially-based insurance rates.** — The Human Rights Act does not purport to regulate actuarially-based insurance rates within its anti-discrimination provisions. *National Org. for Women v. Mutual of Omaha Ins. Co.*, App. D.C., 531 A.2d 274 (1987).

**Effect of administrative determination.** — An Office of Human Rights determination is not entitled to preclusive effect because it is the result of a nonadversarial, nonadjudicative, investigatory procedure. *Rowe v. Kidd*, 731 F. Supp. 534 (D.D.C. 1990).

**Administrative review.** — An obvious purpose of the administrative review avenue is to afford persons claiming discrimination a less formal and expensive means of obtaining relief than through court proceedings. *Timus v. District of Columbia Dep't of Human Rights*, App. D.C., 633 A.2d 751 (1993).

**Rules of procedure.** — The Court of Appeals has jurisdiction to consider a challenge to the validity of the rule of procedure adopted by the agency administering this act, the District

of Columbia Office of Human Rights (OHR), and sustain the rule as a proper implementation of OHR's statutory mandate; but the Court lacks "contested case" jurisdiction to review claim of erroneous application of the rule. *Timus v. District of Columbia Dep't of Human Rights*, App. D.C., 633 A.2d 751 (1993).

**Statute of limitations.** — While District of Columbia employees must exhaust their administrative remedies under the Human Rights Act before seeking judicial review under § 1-2554, exhaustion of state administrative remedies is not a prerequisite to bringing a civil rights action, and since exhaustion is not a prerequisite to the initiation of a federal claim premised on 42 U.S.C. §§ 1981 and 1983, plaintiff cannot toll three-year statute of limitations for civil rights action by filing claim with Human Rights Commission. *Deskins v. Barry*, 729 F. Supp. 1 (D.D.C. 1989).

**Interpretation of Act with reference to federal law.** — In interpreting the District of Columbia Human Rights Act, the court has generally looked to cases from the federal courts involving claims brought under the Civil Rights Act of 1964 for guidance when appropriate. *Benefits Communication Corp. v. Klieforth*, App. D.C., 642 A.2d 1299 (1994).

**Different from federal statutes.** — Although the District of Columbia Human Rights Act is analogous to the ADEA and Title VII in some important aspects, it is different from the federal statutes in other significant ways. *East v. Graphic Arts Indus. Joint Pension Trust*, App. D.C., 718 A.2d 153 (1998).

**Federal cause of action required for jurisdiction.** — Once a district court determines that no substantial cause of action exists under federal civil rights statutes, it lacks a solid basis for subject matter jurisdiction. *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).

**Misuse of nation's discrimination laws.** — Management must have some freedom from a federal lawsuit in implementing a reorganization plan; where a simple internal restructuring in the workplace is the basis of plaintiff's claim, and no monetary loss can be shown, summary judgment was properly granted to the employer. *King v. Georgetown Univ. Hosp.*, 9 F. Supp. 2d 4 (D.D.C. 1998).

**Collective claims of discrimination.** — Where individual and collective claims are brought contemporaneously, courts should consider the collective claim prior to turning their attention to the individual claims. *Hyman v. First Union Corp.*, 980 F. Supp. 46 (D.D.C. 1997).

**Individual liability of supervisor.** — Title VII does not provide an appropriate analog for determining the scope of individual supervisor liability under the D.C. Human Rights Act.

*Martini v. Federal Nat'l Mtg. Ass'n*, 977 F. Supp. 464 (D.D.C. 1997).

Supervisors can be held liable in their individual capacities for their acts of discrimination. *Martini v. Federal Nat'l Mtg. Ass'n*, 977 F. Supp. 464 (D.D.C. 1997).

**Discriminatory conduct.** — When the sections of the Human Rights Act are analyzed as they relate to each other it is clear that the D.C. Council was legislating only against the discriminatory conduct specifically enumerated in § 1-2511. *Gersman v. Group Health Ass'n*, 725 F. Supp. 573 (D.D.C. 1989), *aff'd*, 931 F.2d 1565 (D.C. Cir. 1991), *supp. op.*, 975 F.2d 886 (D.C. Cir. 1992).

In areas where the D.C. Council has specifically prohibited discrimination it has nonetheless provided for exceptions after determining that legitimate grounds exist in some instances to permit discriminatory conduct. *Gersman v. Group Health Ass'n*, 725 F. Supp. 573 (D.D.C. 1989), *aff'd*, 931 F.2d 1565 (D.C. Cir. 1991), *supp. op.*, 975 F.2d 886 (D.C. Cir. 1992).

Where the statutory scheme establishes an executive agency to investigate and recommend whether the D.C. Council should enact future legislation to prohibit certain discriminatory conduct in accordance with § 1-2511, the Council could not have intended that discrimination in all aspects of economic life was covered under the section; otherwise, § 1-2541(b) would be gratuitous. *Gersman v. Group Health Ass'n*, 725 F. Supp. 573 (D.D.C. 1989), *aff'd*, 931 F.2d 1565 (D.C. Cir. 1991), *supp. op.*, 975 F.2d 886 (D.C. Cir. 1992).

Subdivision (a)(1) of § 1-2512 provides a basis for a cause of action for compensatory damages, even in the absence of a person applying for an existing vacancy or for a particular promotion, and even where there is no basis for an award of back pay in the particular circumstances; thus, simply telling a black employee who is working for her employer physically in the District of Columbia that her opportunities for transfer or promotion were precluded by the fact that she was black is a violation of the District of Columbia Human Rights Act. *Holt v. Life Care Servs. Corp.*, 121 WLR 1497 (Super. Ct. 1993).

**Discrimination based on physical condition.** — Where a landlord did not provide any evidence that it had a reasonable basis to believe that tenant posed a threat to repair people because of his AIDS condition, the landlord's memorandum to tenant which contained an implied threat that repair people would not perform any repairs in the apartment without certification from a qualified health authority involved facial discrimination on the basis of tenant's physical condition. *Joel Truitt Mgt., Inc. v. District of Columbia Comm'n on Human Rights*, App. D.C., 646 A.2d 1007 (1994).

**Discrimination based on age.** — Age-based hostile environment claims should be treated the same as any other harassment claims. *Daka, Inc. v. Breiner*, App. D.C., 711 A.2d 86 (1998).

**Purpose of second injury provision in § 36-308(6).** — The purpose of the second injury provision in § 36-308(6) is to encourage employers to hire and retain handicapped workers by limiting employers' liability for disabilities that result from the combination of pre-existing impairment and a subsequent work-related accident; in this way, the second injury provision provides a carrot to augment the stick of this section's prohibition against discrimination based on physical handicap. *Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 704 A.2d 295 (1997).

**Discriminatory failure to promote.** — While a discriminatory failure to promote, without more, is insufficient to establish a constructive discharge, it may be the basis for a finding of constructive discharge if the employee can show that she reasonably expected opportunities for advancement and that the employer's discriminatory actions or omissions essentially locked her into a position from which she could apparently obtain no relief. *Arthur Young & Co. v. Sutherland*, App. D.C., 631 A.2d 354 (1993).

A prima facie case of discrimination in the denial of a promotion normally consists of proof (1) that the plaintiff was a member of a protected class; (2) that he or she was qualified for the promotion; (3) that he or she was rejected upon seeking the promotion; and (4) that a substantial factor in that rejection was the plaintiff's membership in the protected class. *Arthur Young & Co. v. Sutherland*, App. D.C., 631 A.2d 354 (1993).

Sufficient evidence existed for a jury to reasonably find that employer's failure to promote plaintiff was discriminatory, and that the failure to promote her was a career-ending action, so that her resignation, when viewed in context with the other evidence of discriminatory animus, was actually a constructive discharge. *Arthur Young & Co. v. Sutherland*, App. D.C., 631 A.2d 354 (1993).

**Retaliation.** — In order to prove retaliation under the D.C. Human Rights Act, a plaintiff must show (a) that she was engaged in a protected activity, (b) that the employer took adverse action, and (c) that there was a causal connection between the two. *Saunders v. George Wash. Univ.*, 768 F. Supp. 843 (D.D.C. 1991).

Plaintiff proved retaliation where (1) she filed a lawsuit, (2) her employer denied her request for conversion, and (3) co-workers not only levelled serious and unfounded charges of academic dishonesty against her; one of them

admitted that she would have voted for plaintiff, but for the filing of this suit. *Saunders v. George Wash. Univ.*, 768 F. Supp. 843 (D.D.C. 1991).

Motion for a preliminary injunction was granted, and employer required to reinstate employee until trial on alleged violations of § 1981, where it was probable that employee would prove that her request for conversion was denied in retaliation for filing suit, and there was a significant threat of irreparable injury because a break in employee's employment with the university would harm her academic reputation in a manner that damages could not compensate, and the balance of harms weighed strongly in favor of injunctive relief. *Saunders v. George Wash. Univ.*, 768 F. Supp. 843 (D.D.C. 1991).

Because the D.C. Human Rights Act, § 1-2501 et seq., is not applicable to the Financial Control Board, plaintiffs' claim of unlawful retaliation failed. *Brewer v. District of Columbia Fin. Responsibility & Mgt. Assistance Auth.*, 953 F. Supp. 406 (D.D.C. 1997).

**Employee misconduct discovered post-termination.** — After-acquired knowledge of misconduct that would have been a legitimate reason for termination does not bar a plaintiff's recovery for a hostile environment claim because the employer could not have been motivated by knowledge it did not have and it cannot claim that the employee was fired for the non-discriminatory reason. *Hunter v. Ark Restaurants Corp.*, 3 F. Supp. 2d 9 (D.D.C. 1998).

**Safety regulations.** — The Human Rights Act delegates to the fact-finder the task of determining whether the asserted business purpose exists and, if so, whether safety regulations are uniformly applied and are reasonable. *Keenney v. Dixon*, 119 WLR 2637 (Super. Ct. 1991).

While expert testimony established the presence of facial hair may decrease the ability of firefighters to maintain an adequate seal between their masks and their faces, firefighters who wore beards because of folliculitis barbae provided irrefutable physical evidence that bearded firefighters could maintain a proper face-mask seal, therefore, such grooming regulations violated the Human Rights Act. *Kennedy v. Dixon*, 119 WLR 2637 (Super. Ct. 1991).

**Refusal to deal.** — Where plaintiff alleges the discriminatory refusal to deal, plaintiff must show at least the following: (1) that it is a member of a protected class; (2) that it applied for services which it was qualified to receive; (3) that the services were denied to plaintiff; and (4) that a substantial factor in the decision not to provide services was plaintiff's membership in the protected class. *Clifton Terrace Assocs. v. United Technologies Corp.*, 728 F. Supp. 24

(D.D.C. 1990), modified on other grounds, 929 F.2d 714 (1991).

**Prima facie case of discrimination resulting in resignation.** — Where worker was not fired but resigned from her position, to establish a prima facie case she was also required to establish that she was constructively discharged by her employer; the reason for this additional requirement is that, absent constructive discharge, a worker suffering from discrimination in the workplace has a duty to stay on the job and mitigate damages. *Arthur Young & Co. v. Sutherland*, App. D.C., 631 A.2d 354 (1993).

**Rights afforded by Act.** — Similar to Title VII of the federal Civil Rights Act, this chapter affords employees the right to work in an environment free from discriminatory intimidation, ridicule, and insult. *Daka, Inc. v. Breiner*, App. D.C., 711 A.2d 86 (1998).

**Constructive discharge.** — A constructive discharge occurs when an employer deliberately makes working conditions intolerable and drives the employee into an involuntary quit; there is, however, no requirement that the employer intend to force the employee to leave, as working conditions rise to the requisite level of intolerableness if they would lead a reasonable person to resign. *Arthur Young & Co. v. Sutherland*, App. D.C., 631 A.2d 354 (1993).

Constructive discharge does not require that an employee remain in an intolerable workplace for a particular period of time. *Arthur Young & Co. v. Sutherland*, App. D.C., 631 A.2d 354 (1993).

Proof of constructive discharge does not require evidence that the employer intended to force the employee to quit. *Arthur Young & Co. v. Sutherland*, App. D.C., 631 A.2d 354 (1993).

Whether working conditions are so intolerable so as to force a reasonable person to resign is a question for the trier of fact. *Arthur Young & Co. v. Sutherland*, App. D.C., 631 A.2d 354 (1993).

A constructive discharge requires the employee's affirmative act of quitting whereas a regular discharge is accomplished by the employer's act of dismissing the employee. *Hancock v. Bureau of Nat'l Affairs, Inc.*, App. D.C., 645 A.2d 588 (1994).

**Burden of proof.** — Age discrimination plaintiffs meet their burden by either producing direct or circumstantial evidence that their employer effectuated a pattern of discriminatory, age-based decision making, or by utilizing a burden shifting method of proof. *Hyman v. First Union Corp.*, 980 F. Supp. 46 (D.D.C. 1997).

**Proof of discrimination.** — Proof of discrimination in violation of the District of Columbia Human Rights Act proceeds in three steps; first, the employee must make a prima facie showing of discrimination by a preponder-

ance of the evidence; once that has been done, a rebuttable presumption arises that the employer's conduct amounted to unlawful discrimination. The burden then shifts to the employer to rebut this presumption by articulating some legitimate, nondiscriminatory reason for the employment action at issue. Finally, if the employer articulates some legitimate, nondiscriminatory reason for the disputed conduct, the burden shifts back to the employee to prove, again by a preponderance of the evidence, that the employer's stated justification for its action was not its true reason but was in fact merely a pretext to disguise a discriminatory practice. *Arthur Young & Co. v. Sutherland*, App. D.C., 631 A.2d 354 (1993).

In establishing employee's prima facie case of sexual discrimination in her discharge, employee was required to show that her manner of termination differed from the manner of termination for male employees who were similarly situated to her. *O'Donnell v. Associated Gen. Contractors of Am.*, App. D.C., 645 A.2d 1084 (1994).

Because Hispanic prisoner plaintiffs failed to prove the existence of a racially hostile environment or that the defendant's programming or other decisions were based on the Hispanic plaintiffs' race or national origin, their claim for violation of the D.C. Human Rights Act, § 1-2501 et seq., failed. *Franklin v. District of Columbia*, 960 F. Supp. 394 (D.D.C. 1997).

**Regular policy or practice of discrimination.** — Age discrimination plaintiffs who raise a collective claim of pattern of practice discrimination have as their initial burden the task of demonstrating that unlawful discrimination has been the regular policy of the employer or that discrimination was the employer's regular practice. *Hyman v. First Union Corp.*, 980 F. Supp. 46 (D.D.C. 1997).

In the liability stage, discrimination plaintiffs must show that unlawful discrimination has been a regular procedure or policy followed by an employer or a group of employers; in order to prove a pattern or practice of discrimination, plaintiffs must prove that unlawful discrimination is the company's standard operating procedure. *Hyman v. First Union Corp.*, 980 F. Supp. 46 (D.D.C. 1997).

**Company policy prohibiting discrimination does not preclude hostile environment claim.** — The mere existence of a company manual explicitly stating that racially discriminatory conduct was not tolerated in the workplace does not preclude plaintiff's claims of hostile environment. *Hunter v. Ark Restaurants Corp.*, 3 F. Supp. 2d 9 (D.D.C. 1998).

**Motion to dismiss for failure to state claim denied.** — Where the plaintiff claimed that the reason given to her for her termination was a pretext for terminating her because of her sex, as exemplified by her pregnant condi-

tion and because of her family responsibilities, including her refusal to have an abortion, the defendant's motion to dismiss for failure to state a claim for which relief can be granted was denied; plaintiff's claim of gender-based wrongful discharge, if proven, would appear to implicate a statutorily expressed public policy under the D.C. Human Rights Act. *MacNabb v. MacCartee*, 804 F. Supp. 378 (D.D.C. 1992).

**Jury selection.** — Where it was not obvious and readily apparent under a plain error review that this section prohibited age-based or gender-based peremptory jury strikes, the trial judge did not err by failing to apply this section, sua sponte, to defendant's claims. *Baxter v. United States*, App. D.C., 640 A.2d 714 (1994).

**Damages.** — Recovery under the D.C. Human Rights Act is not limited by the federal Title VII damage cap. *Martini v. Federal Nat'l Mtg. Ass'n*, 977 F. Supp. 464 (D.D.C. 1997).

**Punitive damages.** — Punitive damages awards are available for violations of the District of Columbia's Human Rights Act; however, such awards are disfavored in the District of Columbia. *Shepherd v. ABC*, 862 F. Supp. 486 (D.D.C. 1994).

**Punitive damages.** — Punitive damages are available in all discrimination cases under this chapter, subject only to the general principles governing any award of punitive damages. *Daka, Inc. v. Breiner*, App. D.C., 711 A.2d 86 (1998).

**Attorney's fees.** — Although plaintiffs stated that they were seeking attorney fees under Title VII, 42 U.S.C. § 2000e-5(k), the Title VII fee provision was not applicable because plaintiffs brought their suit under the District of Columbia's Human Rights Act (DCHRA), not Title VII. Despite plaintiffs' accidental misnomer of their fee claim, they were entitled to fees under DCHRA. *Shepherd v. ABC*, 862 F. Supp. 505 (D.D.C. 1994).

**Back pay.** — Court reversed an award of back pay and remanded the case for further consideration as to whether former employee acted with reasonable diligence in seeking alternative employment after termination. *Natural Motion by Sandra, Inc. v. District of Columbia Comm'n on Human Rights*, App. D.C., 687 A.2d 215 (1997).

Cited in *Jones v. Trailways Corp.*, 477 F. Supp. 642 (D.D.C. 1979); *United States Jaycees v. Bloomfield*, App. D.C., 434 A.2d 1379 (1981); *Gordon v. National Youth Work Alliance*, 675 F.2d 356 (D.C. Cir. 1982); *Davis v. Potomac Elec. Power Co.*, App. D.C., 449 A.2d 278 (1982); *Jones v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 451 A.2d 295 (1982); *Greater Wash. Bus. Ctr. v. District of Columbia Comm'n on Human Rights*, App. D.C., 454 A.2d 1333 (1982); *Rozen v. District of Columbia*, 702 F.2d 1202 (D.C. Cir. 1983); *Smith v. Police & Fire-*



men's Retirement & Relief Bd., App. D.C., 460 A.2d 997 (1983); NBC v. District of Columbia Comm'n on Human Rights, App. D.C., 463 A.2d 657 (1983); NBC v. District of Columbia Comm'n on Human Rights, App. D.C., 472 A.2d 885 (1984); Howard Univ. v. Best, App. D.C., 484 A.2d 958 (1984); Miller v. American Coalition of Citizens With Disabilities, Inc., App. D.C., 485 A.2d 186 (1984); Sartori v. Society of Am. Military Eng'rs, App. D.C., 499 A.2d 883 (1985); Clarke v. Washington Metro. Area Transit Auth., 654 F. Supp. 712 (D.D.C. 1985), aff'd, 808 F.2d 137 (D.C. Cir. 1987); Daniels v. Barry, 659 F. Supp. 999 (D.D.C. 1987); Thompson v. International Ass'n of Machinists & Aerospace Workers, 1002 F. Supp. 614 (D.D.C. 1985); Schoen v. Consumers United Group, Inc., 670 F. Supp. 367 (D.D.C. 1986); United Planning Org. v. District of Columbia Comm'n on Human Rights, App. D.C., 530 A.2d 674 (1987); Katradis v. Dav-El of Wash., D.C., 846 F.2d 1482 (D.C. Cir. 1988); Gomez v. Trustees of Harvard Univ., 677 F. Supp. 23 (D.D.C. 1988); Rasul v. District of Columbia, 680 F. Supp. 436 (D.D.C. 1988); Newspapers, Inc. v. Metropolitan Police Dep't, App. D.C., 546 A.2d 990 (1988); Matthews v. Automated Bus. Sys. & Servs., Inc., App. D.C., 558 A.2d 1175 (1989); Christopher B. v. Barry, 715 F. Supp. 1143 (D.D.C. 1989); Brereton v. Communications Satellite Corp., 735 F. Supp. 1085 (D.D.C. 1990), appeal dismissed, 925 F.2d 488 (D.C. Cir. 1991); Jones v. Howard Univ., App. D.C., 574 A.2d 1343 (1990); Clarke v. United States, 915 F.2d 699 (D.C. Cir. 1990); Perkins v. District of Columbia, 769 F. Supp. 11 (D.D.C. 1991); Simpson v. District of Columbia Office of Human Rights, App. D.C., 597 A.2d 392 (1991); Holland v. Board of Trustees, 794 F. Supp. 420 (D.D.C. 1992); Hessey v. Burden, App. D.C., 615 A.2d 562 (1992); Goos v. National Ass'n of Realtors, 997 F.2d 1565 (D.C. Cir. 1993); Kelley v. Broadmoor Coop. Apts., App. D.C., 676 A.2d 453 (1996); Evans v. United States, App. D.C., 682 A.2d 644 (1996); Milliner v. District of Columbia, 932 F. Supp. 345 (D.D.C. 1996); Turcios v. United States Servs. Indus., App. D.C., 680 A.2d 1023 (1996); Harris v. Perini Corp., 948 F. Supp. 4 (D.D.C. 1996); Drake v. Henkels & McCoy, Inc., 125 WLR 433 (Super. Ct. 1997); Whitbeck v. Vital Signs, Inc., 116 F.3d 588 (D.C. Cir. 1997); Somervell v. Baxter Healthcare Corp., 966 F. Supp. 18 (D.D.C. 1997); Martini v. Federal Nat'l Mtg. Ass'n, 977 F. Supp. 482 (D.D.C. 1997); Stockard v. Moss, App. D.C., 706 A.2d 561 (1997); Besikirski v. Providence Hospital, 126 WLR 869 (Super. Ct. 1998); Mackey v. Committee for Economic Development, 126 WLR 1089 (Super. Ct. 1998); Villines v. United Bhd. of Carpenters & Joiners, 999 F. Supp. 97 (D.D.C. 1998); Wallace v. Skadden, Arps, Slate, Meagher & Flom, App. D.C., 715 A.2d 873 (1998).

## § 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 accommodation" 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.)

**Effect of amendments.** — D.C. Law 12-242 inserted (11A).

**Legislative history of Law 2-38.** — See note to § 1-2501.

**Legislative history of Law 4-209.** — Law 4-209 was introduced in Council and assigned Bill No. 4-230, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-299 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 6-166.** — Law 6-166 was introduced in Council and assigned Bill No. 6-134, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on July 8, 1986 and September 23, 1986, respectively. Signed by the Mayor on October 9, 1986, it was assigned Act No. 6-212 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 7-50.** — Law 7-50 was introduced in Council and assigned Bill No. 7-157, which was referred to the Committee on Public Services. The Bill was adopted on first and second readings on July 14, 1987 and September 29, 1987, respectively. Signed by the Mayor on October 16, 1987, it was assigned Act No. 7-83 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 10-129.** — See note to § 1-2501.

**Legislative history of Law 12-242.** — See note to § 1-2501.

**"Physical handicap"** is defined to include only those who have a physical impairment. Under that definition, the protection afforded by the D.C. Human Rights Act for the physically handicapped is for those who suffer some sort of disability. *Ortner v. Paralyzed Veterans of Am.*, 120 WLR 193 (Super. Ct. 1992).

Confronted with an employee who concealed that a physical handicap was the source of her performance difficulties, employer was not required to investigate to ascertain the nature of such handicap, if any, nor to offer the employee a firm choice between treatment and termina-

tion. *American Univ. v. District of Columbia Comm'n on Human Rights*, App. D.C., 598 A.2d 416 (1991).

The Commission on Human Rights determination that the complainant suffered a mental disablement for which accommodation could be made within the meaning of paragraph (23) was not supported by substantial evidence. *American Univ. v. District of Columbia Comm'n on Human Rights*, App. D.C., 598 A.2d 416 (1991).

Acquired Immune Deficiency Syndrome (AIDS) is a condition falling within the definition of "physical handicap." *Joel Truitt Mgt., Inc. v. District of Columbia Comm'n on Human Rights*, App. D.C., 646 A.2d 1007 (1994).

**"Disability."** — Plaintiff had no "disability" as defined by the D.C. Human Rights Act, where plaintiff was not precluded from working generally and her alleged inability to perform a particular job or work for a particular supervisor would not, without more, qualify her as disabled. *Stroman v. Blue Cross & Blue Shield Ass'n*, 966 F. Supp. 9 (D.D.C. 1997).

Alcoholism is a "disability" under the Human Rights Act. *Besikirski v. Providence Hospital*, 126 WLR 869 (Super. Ct. 1998).

**Junior Chamber of Commerce is neither "educational institution" nor "place of public accommodation"** for purposes of this chapter. *United States Jaycees v. Bloomfield*, App. D.C., 434 A.2d 1379 (1981).

**Personal appearance.** — Employee was treated differently from other employees because of personal appearance where there was no evidence of uniformly prescribed standard of dress and where criticism of employee as dressed provocatively and inappropriately manifested a preoccupation with employee's physique and the cost of her clothes. *Atlantic Richfield Co. v. District of Columbia Comm'n of Human Rights*, App. D.C., 515 A.2d 1095 (1986).

An employer's written grooming policy was sufficiently specific to satisfy the "prescribed standards" element of the statutory exception to D.C.'s anti-discrimination law where (1) the two written criteria for hair on the head and face evidenced a communicated general rule

that employees would conform to traditional grooming styles, and (2) the supervisor's application of the written policy to forbid ponytails was not an unreasonable or unforeseeable interpretation of the policy. *Turcios v. United States Servs. Indus.*, App. D.C., 680 A.2d 1023 (1996).

**"Reasonable business purpose" distinguished from "business necessity."** — Employers claiming a "business necessity" exception under § 1-2503 are subjected to stricter statutory criteria than the limitations applicable to employers who claim their prescribed standards serve a "reasonable business purpose"; to establish a reasonable business purpose under the prescribed standards exception, an employer need show only an objectively reasonable justification for uniformly regulating its employees' personal appearances. *Turcios v. United States Servs. Indus.*, App. D.C., 680 A.2d 1023 (1996).

**Safety regulations.** — While expert testimony established the presence of facial hair may decrease the ability of firefighters to maintain an adequate seal between their masks and their faces, firefighters who wore beards because of folliculitis barbae provided irrefutable physical evidence that bearded firefighters could maintain a proper face-mask seal, therefore, such grooming regulations violated the Human Rights Law. *Kennedy v. Dixon*, 119 WLR 2637 (Super. Ct. 1991).

**Physical handicap.** — For discussion regarding cancer as a physical handicap, see *Katradis v. Dav-El of Wash.*, D.C., 846 F.2d 1482 (D.C. Cir. 1988).

**Person.** — The definition of "person" in this section is broad enough to encompass a sole proprietorship. *Ravinskas v. Karalekas*, 741 F. Supp. 978 (D.D.C. 1990).

**Persons over 65 not protected.** — The District of Columbia Human Rights Act does not protect persons over the age of 65. *Passer v. American Chem. Soc'y*, 701 F. Supp. 1 (D.D.C. 1988), modified, 935 F.2d 322 (D.C. Cir. 1991).

Where plaintiff's allegations of discrimination are directed to events that took place after

his 65th birthday, he cannot maintain an action under the District of Columbia Human Rights Act. *Passer v. American Chem. Soc'y*, 701 F. Supp. 1 (D.D.C. 1988), modified, 935 F.2d 322 (D.C. Cir. 1991).

Because plaintiff, at age 70, was not protected by the D.C. Human Rights Act against employment discrimination, he was not protected against any retaliation he may have suffered in asserting a groundless claim under that act. *Passer v. American Chem. Soc'y*, 935 F.2d 322 (D.C. Cir. 1991).

**Sexual orientation.** — A conclusory statement that plaintiff was discharged on the basis of transsexuality — the medical transformation from being a man to a woman — did not constitute a claim for relief on the basis of being discharged for "sexual orientation." *Underwood v. Archer Mgt. Servs., Inc.*, 857 F. Supp. 96 (D.D.C. 1994).

**Partner of law firm is amenable to suit.** — Where the employer is a law partnership, a partner of the firm is necessarily "any person acting in the interest of such employer, directly or indirectly" and, therefore, is amenable to suit in his individual capacity. *Wallace v. Skadden, Arps, Slate, Meagher & Flom*, App. D.C., 715 A.2d 873 (1998).

**Cited in** *Howard Univ. v. Best*, App. D.C., 484 A.2d 958 (1984); *Miller v. American Coalition of Citizens With Disabilities, Inc.*, App. D.C., 485 A.2d 186 (1984); *Schoen v. Consumers United Group, Inc.*, 670 F. Supp. 367 (D.D.C. 1986); *Gay Rights Coalition v. Georgetown Univ.*, App. D.C., 536 A.2d 1 (1987); *Katradis v. Dav-El*, 702 F. Supp. 1 (D.D.C. 1987), aff'd, 846 F.2d 1482 (D.C. Cir. 1988); *Simpson v. District of Columbia Office of Human Rights*, App. D.C., 597 A.2d 392 (1991); *Balkissoon v. Williams*, 120 WLR 173 (Super. Ct. 1992); *Dean v. District of Columbia*, 120 WLR 769 (Super. Ct. 1992); *Hessey v. Burden*, App. D.C., 615 A.2d 562 (1992); *Whitbeck v. Vital Signs, Inc.*, 934 F. Supp. 9 (D.D.C. 1996), rev'd on other grounds, 116 F.3d 588 (D.C. Cir. 1997); *Whitbeck v. Vital Signs, Inc.*, 116 F.3d 588 (D.C. Cir. 1997).

## § 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.)

**Section references.** — This section is referred to in § 1-2520.

**Effect of amendments.** — D.C. Law 12-242 added the last sentence to (a); rewrote (b); and added the subsection designated herein as (d).

**Legislative history of Law 2-38.** — See note to § 1-2501.

**Legislative history of Law 12-242.** — See note to § 1-2501.

**Nationally chartered corporations,** such as the Paralyzed Veterans of America (PVA) are typically governed by state law, and the operating presumption should be that Congress had no intent to override local law by chartering a national corporation; thus, Congress' chartering of PVA should not be seen as implicitly overriding the D.C. Human Rights Act. Ortnier v. Paralyzed Veterans of Am., 120 WLR 193 (Super. Ct. 1992).

**Applicability of exception.** — Plumbing company was landlord's agent in making authorized repairs to rental units, therefore, the "business necessity" exception, by its terms, could not have been invoked to insulate land-

lord from the bias or "preferences of co-workers, employees, customers or any other person under subsection (a) of this section. Joel Truitt Mgt., Inc. v. District of Columbia Comm'n on Human Rights, App. D.C., 646 A.2d 1007 (1994).

**"Business necessity" distinguished from "reasonable business purpose."** — The lack of overlap between the "business necessity" exception and the "reasonable business purpose" exception is evidenced by the fact that the business necessity exception is an exception entirely by itself, whereas the reasonable business purpose requirement is not itself an exception but only one of three criteria for satisfying the "prescribed standards" exception. Turcios v. United States Servs. Indus., App. D.C., 680 A.2d 1023 (1996).

Subsection (a) of this section subjects employers claiming a "business necessity" exception to stricter statutory criteria than the limitations applicable to employers who claim their prescribed standards serve a "reasonable business purpose"; to establish a reasonable

business purpose under the prescribed standards exception, an employer need show only an objectively reasonable justification for uniformly regulating its employees' personal appearances. *Turcios v. United States Servs. Indus.*, App. D.C., 680 A.2d 1023 (1996).

**Employer held liable.** — Evidence supported the commission's conclusion that the business necessity reasons advanced by the

employer for firing an employee with Acquired Immune Deficiency Syndrome were pretextual, and thus employer was liable for unlawful termination. *Natural Motion by Sandra, Inc. v. District of Columbia Comm'n on Human Rights*, App. D.C., 687 A.2d 215 (1997).

**Cited in** *Gay Rights Coalition v. Georgetown Univ.*, App. D.C., 536 A.2d 1 (1987).

## § 1-2504. Severability.

If any provision, or part thereof of this chapter or application thereof to any person or circumstances is held invalid, the remainder of the chapter and the application of the provision, or part thereof, to other persons not similarly situated or to other circumstances is not to be affected thereby. (1973 Ed., § 6-2204; Dec. 13, 1977, D.C. Law 2-38, title I, § 104, 24 DCR 6038.)

**Legislative history of Law 2-38.** — See note to § 1-2501.

## § 1-2505. Discrimination based on pregnancy, childbirth, or related medical conditions.

(a) For the purposes of interpreting this chapter, discrimination on the basis of sex shall include, but not be limited to, discrimination on the basis of pregnancy, childbirth, or related medical conditions.

(b) Women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and this requirement shall include, but not be limited to, a requirement that an employer must treat an employee temporarily unable to perform the functions of her job because of her pregnancy-related condition in the same manner as it treats other temporarily disabled employees. (Dec. 13, 1977, D.C. Law 2-38, title I, § 105, as added July 17, 1985, D.C. Law 6-8, § 2, 32 DCR 2959.)

**Legislative history of Law 6-8.** — Law 6-8, the "Pregnancy Anti-Discrimination Act of 1985," was introduced in Council and assigned Bill No. 6-45, which was referred to the Committee on Public Services and Cable Television. The Bill was adopted on first and second readings on April 16, 1985 and April 30, 1985, respectively. Signed by the Mayor on May 16, 1985, it was assigned Act No. 6-21 and transmitted to both Houses of Congress for its review.

**Motion to dismiss for failure to state claim denied.** — Where the plaintiff claimed that the reason given to her for her termination was a pretext for terminating her because of her sex, as exemplified by her pregnant condition and because of her family responsibilities, including her refusal to have an abortion, the defendant's motion to dismiss for failure to

state a claim for which relief can be granted was denied; plaintiff's claim of gender-based wrongful discharge, if proven, would appear to implicate a statutorily expressed public policy under the D.C. Human Rights Act. *MacNabb v. MacCartee*, 804 F. Supp. 378 (D.D.C. 1992).

**No special dispensation for pregnancy.** — The Human Rights Act does not create a special dispensation for pregnant women, but only requires 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).

**Cited in** *East v. Graphic Arts Indus. Joint Pension Trust*, 107 F.3d 911 (D.C. Cir. 1997); *Pendarvis v. Xerox Corp.*, 3 F. Supp. 2d 53 (D.D.C. 1998).



*Subchapter II. Prohibited Acts of Discrimination.***§ 1-2511. Equal opportunities.**

Every individual shall have an equal opportunity to participate fully in the economic, cultural and intellectual life of the District and to have an equal opportunity to participate in all aspects of life, including, but not limited to, in employment, in places of public accommodation, resort or amusement, in educational institutions, in public service, and in housing and commercial space accommodations. (1973 Ed., § 6-2211; Dec. 13, 1977, D.C. Law 2-38, title II, § 201, 24 DCR 6038.)

**Cross references.** — As to prohibition of discrimination in public accommodations licensed by District, see §§ 47-2901, 47-2902 and 47-2907.

**Section references.** — This section is referred to in § 1-2541.

**Legislative history of Law 2-38.** — See note to § 1-2501.

**Establishment of Department of Human Rights and Minority Business Development.** — See Mayor's Order 89-247, November 1, 1989.

**Construction.** — For every enumerated prohibition in this section the D.C. Council specifically enacted in subsequent sections detailed legislation on that prohibited conduct. *Gersman v. Group Health Ass'n*, 725 F. Supp. 573 (D.D.C. 1989), *aff'd*, 931 F.2d 1565 (D.C. Cir. 1991), *supp. op.*, 975 F.2d 886 (D.C. Cir. 1992).

**Purpose.** — The Council has provided the D.C. Office of Human Rights with the mandate to investigate discrimination in accordance with the statements of purpose in § 1-2501 and this section for the express reason of making appropriate recommendations for action, including legislation, against such discrimination. *Gersman v. Group Health Ass'n*, 725 F. Supp. 573 (D.D.C. 1989), *aff'd*, 931 F.2d 1565 (D.C. Cir. 1991), *supp. op.*, 975 F.2d 886 (D.C. Cir. 1992).

**Marital relationships.** — The City Council consciously chose not to make the language of the Human Rights Act applicable to regulation of the marital relationship. *Dean v. District of Columbia*, 120 WLR 769 (Super. Ct. 1991).

**Same-sex marriages.** — The Council of the District of Columbia did not intend for this act, the Human Rights Act, to change the funda-

mental definition of marriage. There cannot be discrimination against a same-sex marriage since, by independent statutory definition extended to the Human Rights Act, there can be no such thing. *Dean v. District of Columbia*, App. D.C., 653 A.2d 307 (1995).

**Discriminatory conduct.** — When the sections of the Human Rights Act are analyzed as they relate to each other it is clear that the D.C. Council was legislating only against the discriminatory conduct specifically enumerated in this section. *Gersman v. Group Health Ass'n*, 725 F. Supp. 573 (D.D.C. 1989), *aff'd*, 931 F.2d 1565 (D.C. Cir. 1991), *supp. op.*, 975 F.2d 886 (D.C. Cir. 1992).

**Economic life.** — Where the statutory scheme establishes an executive agency to investigate and recommend whether the D.C. Council should enact future legislation to prohibit certain discriminatory conduct in accordance with this section, the Council could not have intended that discrimination in all aspects of economic life was covered under the section; otherwise, § 1-2541(b) would be gratuitous. *Gersman v. Group Health Ass'n*, 725 F. Supp. 573 (D.D.C. 1989), *aff'd*, 931 F.2d 1565 (D.C. Cir. 1991), *supp. op.*, 975 F.2d 886 (D.C. Cir. 1992).

**Jury selection.** — The language and legislative history of the District of Columbia Human Rights Act does not support a prohibition on peremptory challenges based on age. *Evans v. United States*, App. D.C., 682 A.2d 644 (1996).

**Cited in** *Gay Rights Coalition v. Georgetown Univ.*, App. D.C., 536 A.2d 1 (1987); *Sorrells v. Garfinckel's*, App. D.C., 565 A.2d 285 (1989); *Weiss v. International Bhd. of Elec. Workers*, 729 F. Supp. 144 (D.D.C. 1990).

**§ 1-2512. Unlawful discriminatory practices in employment.**

(a) *General.* — It shall be an unlawful discriminatory practice to do any of the following acts, wholly or partially for a discriminatory reason based upon

the race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, disability, matriculation, or political affiliation of any individual:

(1) *By an employer.* — To fail or refuse to hire, or to discharge, any individual; or otherwise to discriminate against any individual, with respect to his compensation, terms, conditions, or privileges of employment, including promotion; or to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect his status as an employee;

(2) *By an employment agency.* — To fail or refuse to refer for employment, or to classify or refer for employment, any individual, or otherwise to discriminate against, any individual; or

(3) *By a labor organization.* — To exclude or to expel from its membership, or otherwise to discriminate against, any individual; or to limit, segregate, or classify its membership; or to classify, or fail, or refuse to refer for employment any individual in any way, which would deprive such individual of employment opportunities, or would limit such employment opportunities, or otherwise adversely affect his status as an employee or as an applicant for employment; or

(4) *By an employer, employment agency or labor organization.* — (A) To discriminate against any individual in admission to or the employment in, any program established to provide apprenticeship or other training or retraining, including an on-the-job training program;

(B) To print or publish, or cause to be printed or published, any notice or advertisement, or use any publication form, relating to employment by such an employer, or to membership in, or any classification or referral for employment by such a labor organization, or to any classification or referral for employment by such an employment agency, unlawfully indicating any preference, limitation, specification, or distinction, based on the race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, disability, or political affiliation of any individual.

(b) *Subterfuge.* — It shall further be an unlawful discriminatory practice 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, family responsibilities, matriculation, disability, or political affiliation of any individual.

(c) *Accommodation for religious observance.* — (1) It shall further be an unlawful discriminatory practice for an employer to refuse to make a reasonable accommodation for an employee's religious observance by permitting the employee to make up work time lost due to such observance, unless such an accommodation would cause the employer undue hardship. An accommodation would cause an employer undue hardship when it would cause the employer to incur more than de minimis costs.

(2) Such an accommodation may be made by permitting the employee to work:

- (A) During the employee's scheduled lunch time or other work breaks;
- (B) Before or after the employee's usual working hours;
- (C) Outside of the employer's normal business hours;
- (D) During the employee's paid vacation days;
- (E) During another employee's working hours as part of a voluntary swap with such other employee; or
- (F) In any other manner that is mutually agreeable to the employer and employee.

(3) When an employee's request for a particular form of accommodation would cause undue hardship to the employer, the employer shall reasonably accommodate the employee in a manner that does not cause undue hardship to the employer. Where other means of accommodation would cause undue hardship to the employer, an employee shall have the option of taking leave without pay if granting leave without pay would not cause undue hardship to the employer.

(4) An employee shall notify the employer of the need for an accommodation at least 10 working days prior to the day or days for which the accommodation is needed, unless the need for the accommodation cannot reasonably be foreseen.

(5) In any proceeding brought under this section, the employer shall have the burden of establishing that it would be unable reasonably to accommodate an employee's religious observance without incurring an undue hardship, provided, however, that in the case of an employer that employs more than 5 but fewer than 15 full-time employees, or where accommodation of an employee's observance of a religious practice would require the employee to take more than 3 consecutive days off from work, the employee shall have the burden of establishing that the employer could reasonably accommodate the employee's religious observance without incurring an undue hardship; and provided further, that it shall be considered an undue hardship if an employer would be required to pay any additional compensation to an employee by reason of an accommodation for an employee's religious observance. The mere assumption that other employees with the same religious beliefs might also request accommodation shall not be considered evidence of undue hardship. An employer that employs 5 or fewer full-time employees shall be exempt from the provisions of this subsection. (1973 Ed., § 6-2221; Dec. 13, 1977, D.C. Law 2-38, title II, § 211, 24 DCR 6038; Mar. 17, 1993, D.C. Law 9-211, § 2, 40 DCR 21; June 28, 1994, D.C. Law 10-129, § 2(c), 41 DCR 2583.)

**Cross references.** — As to prohibited discrimination by employment agencies, employment counseling services, employer-paid personnel services, job listing services, or employment counselors, see § 36-1008.

**Section references.** — This section is referred to in § 1-1185.8.

**Legislative history of Law 2-38.** — See note to § 1-2501.

**Legislative history of Law 9-211.** — Law 9-211, the "Human Rights Act of 1977 Religious Observance Accommodation Amendment Act of

1992," was introduced in Council and assigned Bill No. 9-276, which was referred to the Committee on Public Services. The Bill was adopted on first and second readings on November 4, 1992, and December 1, 1992, respectively. Signed by the Mayor on December 21, 1992, it was assigned Act No. 9-340 and transmitted to both Houses of Congress for its review. D.C. Law 9-211 became effective on March 17, 1993.

**Legislative history of Law 10-129.** — See note to § 1-2501.

**Construction generally.** — None of the

thirteen listed kinds of discrimination are more or less unlawful than other kinds. *Daka, Inc. v. Breiner*, App. D.C., 711 A.2d 86 (1998).

**Construction with federal law.** — An analysis that defeated plaintiff's age discrimination claim under the Federal Age Discrimination in Employment Act accordingly overcame his state claims as well, since the legal standards governing both are the same. *Paquin v. Federal Nat'l Mtg. Ass'n*, 935 F. Supp. 26 (D.D.C. 1996), *aff'd in part and rev'd in part*, 119 F.3d 23 (D.C. Cir. 1997).

**At-will employees.** — As with other workers, at-will employees may not be discharged if the grounds for the firing are specifically proscribed by some statute. *Washington v. Guest Servs., Inc.*, App. D.C., 703 A.2d 646 (1997).

**Supervisory employees.** — Liability under this Act is restricted to "employers"; while a supervisory employee may be joined as a party defendant, the employee is sued in his capacity as an agent of the employer, and not in his individual capacity. *Hunter v. Ark Restaurants Corp.*, 3 F. Supp. 2d 9 (D.D.C. 1998).

**Prima facie case.** — In order to demonstrate a prima facie case of age discrimination, plaintiff must show that he (i) belongs to the protected age group; (ii) was qualified for the position; (iii) was terminated; and (iv) was replaced by a younger person. *Paquin v. Federal Nat'l Mtg. Ass'n*, 935 F. Supp. 26 (D.D.C. 1996), *aff'd in part and rev'd in part*, 119 F.3d 23 (D.C. Cir. 1997).

Where plaintiff was a member of a protected class but did not prove that the contact she had had with her employer resulted in adverse employment action, she failed to establish a prima facie case of discrimination; a plaintiff is required to show that she is a member of a protected class, she suffered an adverse employment action, and employees that were not members of the protected class were not subjected to similar treatment. *Lempres v. CBS Inc.*, 916 F. Supp. 15 (D.D.C. 1996).

In order to establish a prima facie case of discriminatory discharge, the plaintiff must demonstrate that: (1) The plaintiff belongs to a protected class; (2) The plaintiff was qualified for the job from which the plaintiff was terminated; (3) The termination occurred despite the plaintiff's employment qualifications; and (4) The plaintiff's termination was based on the characteristic that placed the plaintiff in the protected class. *Blackman v. Visiting Nurses Ass'n*, App. D.C., 694 A.2d 865 (1997).

In order to establish that the protected characteristic was a substantial factor in the employee's termination, the employee must demonstrate that: (1) The employee was replaced by a person outside the employee's protected class, or, if the position remained vacant, that the employer has continued to solicit applications for the position; or (2) Other similarly situated

employees, i.e., employees who have committed similar acts of misconduct which the employer alleges was the basis for the employee's termination, particularly those employees not sharing the employee's protected characteristic, were not terminated but were instead treated more favorably. *Blackman v. Visiting Nurses Ass'n*, App. D.C., 694 A.2d 865 (1997).

A viable hostile environment claim can be demonstrated if a plaintiff can demonstrate: (1) that he is a member of a protected class; (2) that he has been subject to unwelcome harassment; (3) that the harassment was based on membership in the protected class, and (4) that the harassment is severe and pervasive enough to affect a term, condition, or privilege of employment. *Daka, Inc. v. Breiner*, App. D.C., 711 A.2d 86 (1998).

**Persons over 65 not protected.** — The District of Columbia Human Rights Act does not protect persons over the age of 65. *Passer v. American Chem. Soc'y*, 701 F. Supp. 1 (D.D.C. 1988), modified, 935 F.2d 322 (D.C. Cir. 1991).

Where plaintiff's allegations of discrimination are directed to events that took place after his 65th birthday, he cannot maintain an action under the District of Columbia Human Rights Act. *Passer v. American Chem. Soc'y*, 701 F. Supp. 1 (D.D.C. 1988), modified, 935 F.2d 322 (D.C. Cir. 1991).

**Able bodied not protected.** — The D.C. Human Rights Act does not protect the able bodied from discrimination based on their lack of handicap. *Ortner v. Paralyzed Veterans of Am.*, 120 WLR 193 (Super. Ct. 1992).

**Neither Title VII, 42 U.S.C. § 1981 et seq., nor this chapter creates grounds for a cognizable claim against a co-worker;** employers, however, may be held liable to employees under a theory of respondeat superior for the hostile actions of other employees. *Hodges v. Washington Tennis Serv. Int'l, Inc.*, 870 F. Supp. 386 (D.D.C. 1994).

**Discrimination outside the District.** — The Human Rights Act was intended to cover all discrimination concerning jobs located in the District of Columbia, even if the application and decision to discriminate were made outside the District. *Green v. Kinney Shoe Corp.*, 704 F. Supp. 259 (D.D.C. 1988).

**Location of discriminatory acts.** — If the events alleged in plaintiff's complaint occurred in the District of Columbia, they are subject to scrutiny under this section, regardless of whether her "actual place of employment" was in Maryland, the District, or both. *Matthews v. Automated Bus. Sys. & Servs.*, App. D.C., 558 A.2d 1175 (1989).

**Proof of claim of discrimination proceeds in three steps:** First, the plaintiff must prove by a preponderance of the evidence a prima facie case of discrimination; the burden then shifts to the employer to articulate a

legitimate, nondiscriminatory reason for the employment action so that the employer need only raise a genuine issue of fact as to whether it discriminated against the plaintiff; and finally, the plaintiff must show that the employer's proffered reason was in fact a pretext for discrimination. The plaintiff always retains the ultimate burden of persuading the court or agency that she has been a victim of intentional discrimination. *Rap, Inc. v. District of Columbia Comm'n on Human Rights*, App. D.C., 485 A.2d 173 (1984).

First, the employee must carry the initial burden of establishing a prima facie case of discrimination; second, if the plaintiff does so, the burden then must shift to the employer to articulate some legitimate, nondiscriminatory reason for the employee's rejection; and third, if the employer succeeds, the burden shifts back to the employee to show that the employer's stated reason was in fact pretext. *Miller v. American Coalition of Citizens With Disabilities, Inc.*, App. D.C., 485 A.2d 186 (1984).

The ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff; the proof proceeds by alternate shiftings of intermediate evidentiary burdens. *Shaw Project Area Comm., Inc. v. District of Columbia Comm'n on Human Rights*, App. D.C., 500 A.2d 251 (1985).

The McDonnell-Douglas three-part test has become the accepted means by which age discrimination is determined, and questions of material fact are relevant only as they relate to the three stages of the test: (1) a plaintiff must establish a prima facie case of age discrimination; (2) the burden then shifts to the defendant employer to demonstrate a legitimate, non-discriminatory reason for plaintiff's termination; and (3) plaintiff must, in order to prevail, prove that defendant's stated reason is actually a pretext for discrimination. *Paquin v. Federal Nat'l Mtg. Ass'n*, 935 F. Supp. 26 (D.D.C. 1996), *aff'd in part and rev'd in part*, 119 F.3d 23 (D.C. Cir. 1997).

**"Reverse discrimination."** — Plaintiff, born to American parents in the Canal Zone of Panama, a territory of the United States, who did not show that American-born persons were in the minority where she was employed, was required to provide evidence of background circumstances that could lead a fact finder to infer discriminatory motive based on national origin for a claim of "reverse discrimination". *Slaughter v. Howard Univ.*, 971 F. Supp. 613 (D.D.C. 1997).

**Retaliatory actions.** — Under this act, the District of Columbia Human Rights Act (DCHRA), it is an unlawful discriminatory practice for an employer to retaliate against a person on account of that person's opposition to any practice made unlawful by the DCHRA.

*Howard Univ. v. Green*, App. D.C., 652 A.2d 41 (1994).

Because plaintiff failed to prove discriminatory reasons for terminating her position and that the defendant retaliated against her for asserting her civil rights by refusing to pay her three months' severance pay, her claims under the D.C. Human Rights Act, § 1-2501 et seq., failed. *Carney v. American Univ.*, 960 F. Supp. 436 (D.D.C. 1997).

**Showing of discrimination with regard to particular vacancy or promotion not required.** — Paragraph (a)(1) provides a basis for a cause of action for compensatory damages, even in the absence of a person applying for an existing vacancy or for a particular promotion, and even where there is no basis for an award of back pay in the particular circumstances; thus, simply telling a black employee who is working for her employer physically in the District of Columbia that her opportunities for transfer or promotion were precluded by the fact that she was black is a compensable violation of the District of Columbia Human Rights Act. *Holt v. Life Care Servs. Corp.*, 121 WLR 1497 (Super. Ct. 1993).

**Constructive discharge.** — A constructive discharge requires the employee's affirmative act of quitting whereas a regular discharge is accomplished by the employer's act of dismissing the employee. *Hancock v. Bureau of Nat'l Affairs, Inc.*, App. D.C., 645 A.2d 588 (1994).

Plaintiff could not show he was constructively discharged on the basis of his race, where, unlike four white peers who were terminated without the opportunity to relocate, plaintiff had a chance to relocate and stay with the firm. *Mungin v. Katten Muchin & Zavis*, 116 F.3d 1549 (D.C. Cir. 1997).

**Evidence insufficient to show discrimination based on race.** — Plaintiff did not produce sufficient evidence to show that the defendants, maintained a segregated work force, that the turnover rate of black employees was greater than that of white employees, or that the defendants' evidence offered in response to his claim of disparate treatment was pretextual or unworthy of credence. *Beckwith v. Career Blazers Learning Ctr.*, 946 F. Supp. 1035 (D.D.C. 1996).

**Evidence held sufficient to show discrimination on basis of age.** — There was sufficient evidence that age-related comments were unwelcome where plaintiff may have invited innocuous comments such as "old man" or "old school" but subsequent comments he received were much more "egregious and offensive"; plaintiff sought to discourage comments by making it well known to his superior that he found the insults inappropriate, and plaintiff approached his superior and stated that the comments were "against the law" or "illegal." *Daka, Inc. v. Breiner*, App. D.C., 711 A.2d 86

(1998). Evidence held sufficient to warrant damages.

**Evidence of age discrimination held sufficient to warrant damages.** — Repetitive, demeaning age-related slurs by superior and subordinates directed toward plaintiff, including questioning his sexual prowess and his ability to perform his job in front of both customers and subordinates, were sufficient to show that plaintiff's working conditions were discriminatorily altered. *Daka, Inc. v. Breiner*, App. D.C., 711 A.2d 86 (1998).

**District proceeding a prerequisite to federal filing.** — The District of Columbia has a statute prohibiting age and race discrimination in employment, therefore, it is a deferral state for both the Federal Age Discrimination in Employment Act and Title VII, and a plaintiff must resort to state proceedings before filing a claim in federal court. *Wilson v. Communications Workers of Am.*, 767 F. Supp. 304 (D.D.C. 1991).

**Action by District agency enforcing act.** — District agency, Fair Employment Council, had standing to sue employer who allegedly was violating rights of applicants for compensatory damages for the frustration of its purpose in that it was required to divert resources to the investigation of the charges as well as employ additional counselors to assist those whose rights had been violated by the employer. *Molovinsky v. Fair Emp. Council of Greater Wash., Inc.*, App. D.C., 683 A.2d 142 (1996).

**Action by employees of District agency enforcing act.** — Testers who were sent to apply at an employment agency to determine if violations of this act were taking place had standing to sue for the alleged violation of their rights under this act. *Molovinsky v. Fair Emp. Council of Greater Wash., Inc.*, App. D.C., 683 A.2d 142 (1996).

**Employee bears initial burden of proving prima facie case of discrimination.** — In an employment discrimination case where disparate treatment is alleged, the employee carries the initial burden of proving by the preponderance of the evidence a prima facie case of discrimination. *Greater Wash. Bus. Ctr. v. District of Columbia Comm'n on Human Rights*, App. D.C., 454 A.2d 1333 (1982); *Thompson v. International Ass'n of Machinists & Aerospace Workers*, 614 F. Supp. 1002 (D.D.C. 1985).

**Initial burden not satisfied.** — Where plaintiff was ineligible for further service for reasons entirely apart from those raised pursuant to lack of reasonable accommodation of her physical disability, the plaintiff failed to meet the statutory prerequisite to pursue a claim for discrimination under this chapter. *Whitbeck v. Vital Signs, Inc.*, 934 F. Supp. 9 (D.D.C. 1996),

rev'd on other grounds, 116 F.3d 588 (D.C. Cir. 1997).

**Initial burden satisfied.** — Where plaintiff was 50 years old at the time of his termination, and was replaced by a 40-year-old woman, and where plaintiff worked at employer for 22 years, holding successive management positions and progressing consistently upward within the company, based on his professional background it is presumed that, although recent problems and inadequacies led employer to terminate his employment, plaintiff possessed the basic skills for his position, and was sufficiently qualified to satisfy the prima facie burden of proof. *Paquin v. Federal Nat'l Mtg. Ass'n*, 935 F. Supp. 26 (D.D.C. 1996), aff'd in part and rev'd in part, 119 F.3d 23 (D.C. Cir. 1997).

**Once initial burden satisfied, presumption of discrimination arises and burden of proof shifts.** — Once the employee has made a prima facie case of discrimination, there is a presumption that the employer unlawfully discriminated against the employee. The burden of production then shifts to the employer to articulate some legitimate, nondiscriminatory reason for the action. *Greater Wash. Bus. Ctr. v. District of Columbia Comm'n on Human Rights*, App. D.C., 454 A.2d 1333 (1982); *Thompson v. International Ass'n of Machinists & Aerospace Workers*, 614 F. Supp. 1002 (D.D.C. 1985).

**Employer not required to prove nondiscriminatory reason for action.** — The employer is not required to prove by a preponderance of the evidence the existence of the nondiscriminatory reason for the action; rather, the defendant need only produce admissible evidence which would allow the trier of fact rationally to conclude that the employment decision had not been motivated by discriminatory animus. *Rap, Inc. v. District of Columbia Comm'n on Human Rights*, App. D.C., 485 A.2d 173 (1984).

**Demonstrating discriminatory intent and pretext** requires more than merely showing that the employer was mistaken. *United Planning Org. v. District of Columbia Comm'n on Human Rights*, App. D.C., 530 A.2d 674 (1987).

**Discriminatory animus.** — The official who made the decision to terminate an employee for violating company policy is not tainted with the alleged discriminatory animus of the employee's immediate supervisor where the immediate supervisor was not involved in the decision to terminate, but only provided the decision maker with information about the employee's conduct. *Blackman v. Visiting Nurses Ass'n*, App. D.C., 694 A.2d 865 (1997).

Where the plaintiff's immediate supervisor, the alleged discriminator, did not participate in the decision to terminate the plaintiff, and the

plaintiff offered no evidence showing that the person making the decision to terminate was predisposed to bias based on the protected class to which the plaintiff belonged, the fact that the alleged discriminator reported the plaintiff's job-related misconduct to the person deciding to terminate the plaintiff was insufficient to infer a causal relation between the alleged animus and the decision to terminate the plaintiff for gross misconduct. *Blackman v. Visiting Nurses Ass'n*, App. D.C., 694 A.2d 865 (1997).

**Employee evaluations.** — The legal standard for employment discrimination has consistently been based on the employer's perception of the plaintiff's work. Praise from other sources is not relevant, and while aspects of plaintiff's performance may be praised by outside associates and plaintiff himself, the conflict between these evaluations and those of the company does not render employer's perceptions somehow suspect. As long as employer's expectations are known and reasonable, they govern an employee's evaluation and the standards for his termination. *Paquin v. Federal Nat'l Mtg. Ass'n*, 935 F. Supp. 26 (D.D.C. 1996), *aff'd in part and rev'd in part*, 119 F.3d 23 (D.C. Cir. 1997).

Complainant was given the opportunity to discover comparable evaluations of other executives at his level to enable him to meet his burden of proving that employer's proffered reason for terminating him was a pretext for discrimination. *Paquin v. Federal Nat'l Mtg. Ass'n*, 119 F.3d 23 (D.C. Cir. 1997).

**Evidence sufficient to show pretext for discrimination.** — Evidence sufficient to support finding that employer's otherwise legitimate reasons for promoting male candidate rather than comparably qualified female were pretext for discrimination against plaintiff because of her sex. *United Planning Org. v. District of Columbia Comm'n on Human Rights*, App. D.C., 530 A.2d 674 (1987).

**Present employment practices as a continuing violation.** — In order for present employment practices to give rise to a continuing violation, thereby permitting recovery for past conduct, there must be an interrelation between the current practice and the past conduct. *Norman v. Gannett Co.*, 852 F. Supp. 46 (D.D.C. 1994).

Where plaintiff has not demonstrated that the disparate treatment about which she complained was related to the past sexual harassment she alleges, nor had nor has she shown that unwelcome sexual conduct against her occurred within one year, the continuing violation theory could not save the plaintiff's claims of unwelcome sexual conduct occurring outside the limitation period. *Norman v. Gannett Co.*, 852 F. Supp. 46 (D.D.C. 1994).

The continuing violation theory requires proof of an interrelation between current prac-

tice and past conduct and evidence of substantially related subject matter and a showing of discrimination prevailing the series of events; however, where the plaintiff's supervisors involved were different, the alleged discriminatory nature of the acts were different and no common thread was established connecting the past events and the present practices, the plaintiff failed to establish the components necessary to maintain a viable claim pursuant to the continuing violation theory. *Lempres v. CBS Inc.*, 916 F. Supp. 15 (D.D.C. 1996).

**Work assignments.** — Plaintiff presented no basis for a jury to think that his associates, who were assigned more sophisticated work than he, were any less qualified, or that race played a factor in firm's decision to assign the matter to his associates. *Mungin v. Katten Muchin & Zavis*, 116 F.3d 1549 (D.C. Cir. 1997).

**Prima facie case of sexually hostile work environment.** — In order to establish a claim for maintenance of a sexually hostile work environment, the evidence of sexual harassment must be sufficiently pervasive so as to alter the conditions of employment and create an abusive working environment; more than a few isolated incidents must have occurred, and genuinely trivial occurrences will not establish a prima facie case. *Beckwith v. Career Blazers Learning Ctr.*, 946 F. Supp. 1035 (D.D.C. 1996).

**Employer cannot negotiate away employee's statutory right to equal pay;** thus, evidence that employee negotiated her salary with her employer is not fatal to her claim of sex discrimination in compensation. *Howard Univ. v. Best*, App. D.C., 484 A.2d 958 (1984).

**Elements of sex discrimination claim.** — To prove a prima facie case under this section a plaintiff must show 1) that she was excluded from participation in, or denied the benefits of, or subjected to discrimination in an educational program or activity; 2) that the program or activity receives federal financial assistance; and 3) that the exclusion was on the basis of sex, i.e. gender. *Tyler v. Howard Univ.*, 124 WLR 49 (Super. Ct. 1995).

**Burden of proving sex discrimination in wage rates.** — A plaintiff who alleges that she was unlawfully paid less than a man must establish that the employer pays different wages to employees of opposite sexes for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions. *Howard Univ. v. Best*, App. D.C., 484 A.2d 958 (1984).

**Recovery for pay differential.** — A female plaintiff may be entitled to recovery for unlawful sex discrimination for a differential in pay compensation even when the jobs are not substantially equal, and even if the Equal Pay Act, 29 U.S.C. § 201, has not been violated. *Tyler v. Howard Univ.*, 124 WLR 49 (Super. Ct. 1995).

**"Continuing violation" theory adapted for pay discrimination claims.** — The court adopted a "continuing violation" theory for equal pay discrimination claims, whereby the plaintiff suffers a denial of equal pay with each paycheck that is received; thus, so long as the plaintiff receives some salary payments within one year of filing the complaint, the equal pay claim will not be barred by the one-year statute of limitations for such claims. *Mackey v. Committee for Economic Development*, 126 WLR 1089 (Super. Ct. 1998).

**Evidence insufficient to show gender discrimination.** — Gender discrimination claim of female plaintiff was dismissed where similarly situated male employee had been employed and certified in the same medical specialty longer than plaintiff, held an appointment at a higher level, and was a part-time faculty member, while plaintiff was a full-time faculty member. *Slaughter v. Howard Univ.*, 971 F. Supp. 613 (D.D.C. 1997).

**Evidence held insufficient to show discrimination on basis of sex.** — See *Shaw Project Area Comm., Inc. v. District of Columbia Comm'n on Human Rights*, App. D.C., 500 A.2d 251 (1985).

**University can be held liable for actions of dean in sexual harassment of faculty member** where dean had actual role in personnel affairs and had the power to terminate faculty member. *Howard Univ. v. Best*, App. D.C., 484 A.2d 958 (1984).

**To establish prima facie case of sexual harassment**, a plaintiff must demonstrate: (1) That she is a member of a protected class; (2) that she has been subject to unwelcome sexual harassment; (3) that the harassment complained of was based on sex; (4) that the harassment complained of affected a term, condition, or privilege of employment; and (5) respondent superior. *Howard Univ. v. Best*, App. D.C., 484 A.2d 958 (1984).

A plaintiff establishes a prima facie case of sexual harassment upon demonstrating that unwelcome verbal and/or physical advances of a sexual nature were directed at him/her in the workplace, resulting in a hostile or abusive working environment. The test to determine whether the plaintiff has met her burden is essentially a balancing test, in which the trier of fact should consider, inter alia, the amount and nature of the conduct, the plaintiff's response to such conduct, and the relationship between the harassing party and the plaintiff. *Howard Univ. v. Best*, App. D.C., 484 A.2d 958 (1984).

**Sexual harassment actionable without loss of work benefits.** — Sexual harassment which creates a discriminatory environment but does not cause an employee loss of any tangible work benefits (e.g., promotion) is nevertheless actionable discrimination in a term,

condition, or privilege of employment under paragraph (a)(1) of this section. *Howard Univ. v. Best*, App. D.C., 484 A.2d 958 (1984).

**Physical handicap.** — Confronted with an employee who concealed that a physical handicap was the source of her performance difficulties, employer was not required to investigate to ascertain the nature of such handicap, if any, nor to offer the employee a firm choice between treatment and termination. *American Univ. v. District of Columbia Comm'n on Human Rights*, App. D.C., 598 A.2d 416 (1991).

**To make prima facie case of discrimination based on physical handicap**, an employee needs to demonstrate that: (1) Except for his physical handicap, he is qualified to fill the position; (2) he has a handicap that prevents him from meeting the physical criteria for employment; and (3) the challenged physical standards have a disproportionate impact on persons having the same handicap from which he suffers. To sustain this prima facie case, there shall also be a facial showing or at least plausible reasons to believe that the handicap can be accommodated or that the physical criteria are not "job-related." *Miller v. American Coalition of Citizens With Disabilities, Inc.*, App. D.C., 485 A.2d 186 (1984).

**Accommodation.** — 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, where the determination of her eligibility for benefits did not address the possible effect of accommodation on her ability to work, and an award of benefits did not preclude a later claim that she could work with accommodation. *Whitbeck v. Vital Signs, Inc.*, 116 F.3d 588 (D.C. Cir. 1997).

A reasonable jury could have found plaintiff proposed a reasonable accommodation to her employer which would allow her to work as sales representative for medical equipment company using a motorized cart, where plaintiff's doctor believed she could do her job with a cart, and her employer had allowed her to work with a wheelchair. *Whitbeck v. Vital Signs, Inc.*, 116 F.3d 588 (D.C. Cir. 1997).

**Frequency and context of acts may accumulate to show discrimination on basis of sexual orientation.** — While social relationships per se and acts of favoritism may not, by themselves, be meaningful, their frequency and the context in which they occur may take on probative significance as to discriminatory intent; a trier-of-fact is entitled to consider that each successive episode had its predecessor and that the impact of the separate incidents may accumulate to show a sexually discriminatory work environment, or a well-founded reasonable belief that a preferential course of treatment for certain employees, and adverse treatment of others, is the result of sexual



orientation discrimination. *Green v. Howard Univ.*, 121 WLR 629 (Super. Ct. 1992).

**Evidence held sufficient to show discrimination on basis of sexual orientation.** — From the totality of the evidence presented, the jury had more than sufficient evidence before it from which to draw inferences supporting its conclusion that plaintiff had a reasonable belief as to the sexual orientation of the employees of defendant, including her supervisor, and that they engaged in sexual orientation discrimination with reference to workplace conditions, assignments, remuneration and benefits. *Green v. Howard Univ.*, 121 WLR 629 (Super. Ct. 1992).

**Transsexuality.** — Being discharged from employment on the basis of one's transsexuality does not violate the District of Columbia Human Rights Act, thus a transsexual's claim of discrimination based on "sex" would be dismissed. *Underwood v. Archer Mgt. Servs., Inc.*, 857 F. Supp. 96 (D.D.C. 1994).

**Pregnancy discrimination.** — Plaintiff was able to establish a prima facie case of discrimination on the basis of pregnancy when she produced circumstantial evidence to establish a causal nexus between the pregnancy and her termination, based on the timing of her dismissal as it related to her announcement that she was pregnant. *Pendarvis v. Xerox Corp.*, 3 F. Supp. 2d 53 (D.D.C. 1998).

**Exclusion of pregnancy-related disabilities from company-paid sick leave and benefit plan** does not constitute a violation of the District of Columbia Human Rights Law. *NBC v. District of Columbia Comm'n on Human Rights*, App. D.C., 463 A.2d 657 (1983).

**Discrimination claims based on personal appearance and family responsibility beyond jurisdiction of court.** *Lamont v. Rogers*, App. D.C., 479 A.2d 1274 (1984).

**Regulations regarding personal appearance.** — The District of Columbia Fire Department's grooming regulations, which require male firefighters to be cleanly shaven and to have short hair, violated both a Mayor's Order and this Act, the Human Rights Act of 1977, where the Department's regulations (1) were not uniformly and equally applied to Department employees, (2) were not an essential component of an employee's uniform, (3) did not foster esprit de corps among the employees, and (4) were not rationally based on a safety justification. *Kennedy v. District of Columbia*, App. D.C., 654 A.2d 847 (1994).

**Evidence sufficient to show sexually hostile and abusive work environment.** — The conduct of the defendants supervisory employees as related by the plaintiff, when considered in the totality of the circumstances without regard to any single incident, was sufficient to constitute a prima facie showing that the defendants tolerated a sexually hostile and

abusive work environment in violation of the District of Columbia Human Rights Acts. *Norman v. Gannett Co.*, 852 F. Supp. 46 (D.D.C. 1994).

Evidence of incidents of sexual harassment reported by other females bears on a plaintiff's claim of sexual harassment and is relevant to show a hostile work environment. *Drake v. Henkels & McCoy, Inc.*, 123 WLR 2225 (Super. Ct. 1995).

Based on comments made by the site supervisor, and by the other male employees working under his supervision, there was more than sufficient evidence from which a reasonable jury could conclude that there was sexual harassment of employees in subjecting them to a severe and pervasive pattern of sexual comments and acts which created a hostile work environment. *Drake v. Henkels & McCoy, Inc.*, 123 WLR 2217 (Super. Ct. 1995).

There was substantial evidence of corporate higher up officials acting in a manner to condone the conduct constituting sexual harassment, and in some instances encouraging supervisor's conduct, which the jury could find constituted sexual harassment and retaliation in the case. *Drake v. Henkels & McCoy, Inc.*, 123 WLR 2217 (Super. Ct. 1995).

**Evidence sufficient to support finding of disability discrimination.** — Evidence was sufficient to support a finding of employment discrimination based on employee's alcoholism disability. *Besikirski v. Providence Hospital*, 126 WLR 869 (Super. Ct. 1998).

**Cited in** *Gordon v. National Youth Work Alliance*, 675 F.2d 356 (D.C. Cir. 1982); *Prouty v. National R.R. Passenger Corp.*, 572 F. Supp. 200 (D.D.C. 1983); *Williams v. District of Columbia*, App. D.C., 467 A.2d 140 (1983); *Dougherty v. Barry*, 604 F. Supp. 1424 (D.D.C. 1985); *Stevens Chevrolet, Inc. v. Commission on Human Rights*, App. D.C., 498 A.2d 546 (1985); *Pender v. National R.R. Passenger Corp.*, 625 F. Supp. 252 (D.D.C. 1985); *Scott v. Metropolitan Radio Tel. Systems, Inc.*, 114 WLR 1981 (Super. Ct.); *Green v. ABC*, 647 F. Supp. 1359 (D.D.C. 1986); *Newman v. District of Columbia*, App. D.C., 518 A.2d 698 (1986); *Schoen v. Consumers United Group, Inc.*, 670 F. Supp. 367 (D.D.C. 1986); *Gay Rights Coalition v. Georgetown Univ.*, App. D.C., 536 A.2d 1 (1987); *Anderson v. United States Safe Deposit Co.*, App. D.C., 552 A.2d 859 (1989); *Harris v. District of Columbia Comm'n on Human Rights*, App. D.C., 562 A.2d 625 (1989); *Sorrells v. Garfinckel's*, App. D.C., 565 A.2d 285 (1989); *Gersman v. Group Health Ass'n*, 725 F. Supp. 573 (D.D.C. 1989), *aff'd*, 931 F.2d 1565 (D.C. Cir. 1991), *supp. op.*, 975 F.2d 886 (D.C. Cir. 1992); *Weiss v. International Bhd. of Elec. Workers*, 729 F. Supp. 144 (D.D.C. 1990); *Garzon v. District of Columbia Comm'n on Human Rights*, App. D.C., 578 A.2d 1134

(1990); *Ravinskas v. Karalekas*, 741 F. Supp. 978 (D.D.C. 1990); *Perkins v. District of Columbia*, 769 F. Supp. 11 (D.D.C. 1991); *Johnson v. Greater S.E. Community Hosp. Corp.*, 951 F.2d 1268 (D.C. Cir. 1991); *Fair Emp. Council of Greater Wash., Inc. v. BMC Mktg. Corp.*, 829 F. Supp. 402 (D.D.C. 1993), modified, 28 F.3d 1268 (D.C. Cir. 1994); *Arthur Young & Co. v. Sutherland*, App. D.C., 631 A.2d 354 (1993); *Fair Emp. Council of Greater Wash., Inc. v. BMC Mktg. Corp.*, 28 F.3d 1268 (D.C. Cir. 1994); *Johnson v. Greater S.E. Community Hosp. Corp.*, 903 F. Supp. 140 (D.D.C. 1995); *Turcios v. United States Servs. Indus., App. D.C.*, 680 A.2d 1023 (1996); *Evans v. United*

*States*, App. D.C., 682 A.2d 644 (1996); *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); *Beckwith v. Career Blazers Learning Ctr.*, 946 F. Supp. 1035 (D.D.C. 1996); *Drake v. Henkels & McCoy, Inc.*, 125 WLR 433 (Super. Ct. 1997); *East v. Graphic Arts Indus. Joint Pension Trust*, 107 F.3d 911 (D.C. Cir. 1997); *Martini v. Federal Nat'l Mtg. Ass'n*, 977 F. Supp. 464 (D.D.C. 1997); *Wallace v. Skadden, Arps, Slate, Meagher & Flom*, App. D.C., 715 A.2d 873 (1998); *United Mine Workers of Am. v. Moore*, App. D.C., 717 A.2d 332 (1998).

## § 1-2513. Exceptions regarding seniority system and officer cadet programs.

(a) It shall not be an unlawful discriminatory practice for an employer to observe the conditions of a bona fide seniority system or a bona fide employee benefit system such as retirement, pension or insurance plan which is not a subterfuge to evade the purposes of this chapter, except that no such employee seniority system or benefit plan shall excuse the failure to hire any individual.

(b) It shall not be an unlawful discriminatory practice for the District of Columbia to prescribe minimum and maximum age limits for appointment to the police officer and firefighter cadet programs. (1973 Ed., § 6-2222; Dec. 13, 1977, D.C. Law 2-38, title II, § 212, 24 DCR 6038; Mar. 9, 1983, D.C. Law 4-172, § 4(a), 29 DCR 5745.)

**Legislative history of Law 2-38.** — See note to § 1-2501.

**Legislative history of Law 4-172.** — Law 4-172 was introduced in Council and assigned Bill No. 4-421, which was referred to the Committee on the Judiciary and the Committee on Education. The Bill was adopted on first and second readings on October 19, 1982, and November 16, 1982, respectively. Signed by the

Mayor on December 8, 1982, it was assigned Act No. 4-254 and transmitted to both Houses of Congress for its review.

**Cited in** *Gersman v. Group Health Ass'n*, 725 F. Supp. 573 (D.D.C. 1989), aff'd, 931 F.2d 1565 (D.C. Cir. 1991), supp. op., 975 F.2d 886 (D.C. Cir. 1992); *Evans v. United States*, App. D.C., 682 A.2d 644 (1996).

## § 1-2514. Reports furnished to Office.

Every employer, employment agency, and labor organization, subject both to this chapter and to Title VII of the Civil Rights Act of 1964, as amended, is to furnish to the Office, all reports that may be required by the Equal Employment Opportunity Commission established under the Civil Rights Act of 1964. (1973 Ed., § 6-2223; Dec. 13, 1977, D.C. Law 2-38, title II, § 213, 24 DCR 6038.)

**Legislative history of Law 2-38.** — See note to § 1-2501.

### § 1-2515. Unlawful discriminatory practices in real estate transactions.

(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 interrupt or terminate, or refuse or fail to initiate or conduct any transaction in real property; or to require different terms for such transaction; or to represent falsely that an interest in real property is not available for transaction;

(2) To include in the terms or conditions of a transaction in real property, any clause, condition or restriction;

(3) To appraise a property, refuse to lend money, guarantee a loan, purchase a loan, accept residential real property as security for a loan, accept a deed of trust or mortgage, or otherwise refuse to make funds available for the purchase, acquisition, construction, alteration, rehabilitation, repair or maintenance of real property; or impose different conditions on such financing; or refuse to provide title or other insurance relating to the ownership or use of any interest in real property;

(4) To refuse or restrict facilities, services, repairs or improvements for a tenant or lessee;

(5) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to a transaction, or proposed transaction, in real property, or financing relating thereto, which notice, statement, or advertisement unlawfully indicates or attempts unlawfully to indicate any preference, limitation, or discrimination based on 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;

(6) To discriminate in any financial transaction involving real property, on account of the location of residence or business (i.e. to "red-line"); or

(7) To limit access to, or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting residential real estate, or to discriminate against any person in terms or conditions of access, membership or participation in any organization, service or facility.

(b) *Subterfuge.* — It shall further be an unlawful discriminatory practice 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, sexual orientation, familial status, family responsibilities, disability, matriculation, political affiliation, source of income, or place of residence or business of any individual.

(c) *Families with children.* — (1) It shall be an unlawful discriminatory practice to do any of the acts prohibited in subsections (a) and (b) of this section

wholly or partially based on the fact that a person has one or more children who reside with that person.

(2) There shall be a rebuttable presumption that an unlawful discriminatory practice has occurred if the person alleging discrimination has 1 or more children who reside with that person and any of the acts prohibited by subsections (a) and (b) of this section are done to maintain residential occupancies more restrictive than the following:

(A) In an efficiency apartment, 2 persons; or

(B) In an apartment with one or more bedrooms, 2 times the number of bedrooms plus one.

(3) Nothing contained in this chapter limits the applicability of any District or federal restriction regarding the maximum number of occupants permitted to occupy a dwelling. Nothing in this chapter regarding familial status applies to housing for older persons.

(4) For the purposes of this subsection "housing for older persons" means a premises which:

(A) The U.S. Department of Housing and Urban Development determines pursuant to a federal program, is specifically designed and operated to assist older persons;

(B) Is intended for, and solely occupied by persons 62 years of age or older; or

(C) Is intended and operated for occupancy by persons 55 years of age or older, provided that at least 80% of the occupied units are occupied by at least one person who is 55 years of age or older, and the housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required pursuant to this paragraph, and complies with rules issued by the Secretary of the U.S. Department of Housing and Urban Development for verification of occupancy.

(d) *Disability.* — (1) It shall be an unlawful discriminatory practice in the sale or rental of real estate to deny a dwelling to a buyer or renter or to otherwise make a dwelling unavailable to a buyer or renter because of a disability of:

(A) That buyer or renter; or

(B) Any person residing in or intending to reside in that dwelling after it is sold, rented or made available; or any person associated with that buyer or renter.

(2) It shall be unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of a disability of:

(A) That buyer or renter; or

(B) Any person residing in or intending to reside in that dwelling after it is sold, rented or made available; or any person associated with that buyer or renter.

(3) For purposes of this subsection, "unlawful discrimination" includes:

(A) A refusal to permit, at the expense of the person with the disability, reasonable modifications of existing premises occupied or to be occupied by the person if the modification may be necessary to afford the person full enjoyment

of the premises of a dwelling. A landlord, where it is reasonable, may condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(B) A refusal to make reasonable accommodations in rules, policies, practices, or services, when these accommodations may be necessary to afford any person equal opportunity to use and enjoy a dwelling;

(C) In connection with the design and construction of covered multi-family dwellings for first occupancy after April 20, 1999, a failure to design and construct these dwellings in a manner that:

(i) The public and common use portions of the dwellings are readily accessible to and usable by disabled persons; and

(ii) Doors designed to allow passage into and within all premises within the dwellings are sufficiently wide to allow passage by persons with wheelchairs;

(D) All premises within the dwellings shall contain the following features of adaptive design:

(i) An accessible route into and through the dwelling;

(ii) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(iii) Reinforcements in bathroom walls to allow later installations of grab bars;

(iv) Usable kitchens and bathrooms so that an individual in a wheelchair can maneuver about the space; and

(v) The premises within the dwellings shall have at least 1 building entrance on an accessible route unless it is impracticable because of the terrain or unusual characteristics of the site.

(4) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for disabled persons suffices to satisfy the requirements of paragraph (3) of this subsection.

(5) Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. (1973 Ed., § 6-2231; Dec. 13, 1977, D.C. Law 2-38, title II, § 221, 24 DCR 6038; July 26, 1980, D.C. Law 3-80, § 2, 27 DCR 2554; June 28, 1994, D.C. Law 10-129, § 2(d), 41 DCR 2583; Apr. 20, 1999, D.C. Law 12-242, § 2(d), 46 DCR 952.)

**Cross references.** — As to prohibition of discrimination against elderly tenants or families with children, see § 45-2555.

**Effect of amendments.** — D.C. Law 12-242 rewrote the section.

**Legislative history of Law 2-38.** — See note to § 1-2501.

**Legislative history of Law 3-80.** — Law 3-80 was introduced in Council and assigned Bill No. 3-74, which was referred to the Committee on Public Safety and Consumer Affairs.

The Bill was adopted on first and second readings on April 22, 1980 and May 6, 1980, respectively. Signed by the Mayor on May 23, 1980, it was assigned Act No. 3-191 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 10-129.** — See note to § 1-2501.

**Legislative history of Law 12-242.** — See note to § 1-2501.

**Subject matter jurisdiction.** — Having found that the plaintiff had alleged no substan-

tial federal cause of action under the Fair Housing Act or the Civil Rights Act, the District Court lacked a solid basis for subject matter jurisdiction over the Human Rights Act claims. *Clifton Terrace Assocs. v. United Technologies Corp.*, 929 F.2d 714 (D.C. Cir. 1991).

**Requirement of certification from health authorities as to health hazard discriminatory.** — Where a landlord did not provide any evidence that it had a reasonable basis to believe that tenant posed a threat to repair people because of his AIDS condition, the landlord's memorandum to tenant which contained an implied threat that repair people would not perform any repairs in the apartment without certification from a qualified health authority involved facial discrimination on the basis of tenant's physical condition. *Joel Truitt Mgt., Inc. v. District of Columbia Comm'n on Human Rights*, App. D.C., 646 A.2d 1007 (1994).

**Families with children.** — A court cannot enforce by eviction a private lease which would override statutory provisions that permit a defendant to have dependent children living in her apartment. *Balkissoon v. Williams*, 120 WLR 173 (Super. Ct. 1992).

**Refusal to deal.** — Where plaintiff alleged discriminatory refusal to deal against elevator manufacturer for refusing to enter contract to maintain elevators in apartment complex with predominantly black residents, plaintiff had to show at least the following: (1) that it was a member of a protected class; (2) that it applied for services which it was qualified to receive; (3) that the services were denied to plaintiff; and (4) that a substantial factor in the decision not to provide services was plaintiff's membership in the protected class. *Clifton Terrace Assocs. v. United Technologies Corp.*, 728 F. Supp. 24 (D.D.C. 1990), modified on other grounds, 929 F.2d 714 (1991).

**Cited in** *Gay Rights Coalition v. Georgetown Univ.*, App. D.C., 536 A.2d 1 (1987); *Gersman v. Group Health Ass'n*, 725 F. Supp. 573 (D.D.C. 1989), aff'd, 931 F.2d 1565 (D.C. Cir. 1991), supp. op., 975 F.2d 886 (D.C. Cir. 1992); *Hessey v. Burden*, App. D.C., 615 A.2d 562 (1992); *Arthur Young & Co. v. Sutherland*, App. D.C., 631 A.2d 354 (1993); *Timus v. District of Columbia Dep't of Human Rights*, App. D.C., 633 A.2d 751 (1993); *Evans v. United States*, App. D.C., 682 A.2d 644 (1996); *Molovinsky v. Monterey Coop.*, App. D.C., 689 A.2d 531 (1996).

## § 1-2516. Blockbusting and steering.

It shall be an unlawful discriminatory practice for any person, whether or not acting for monetary gain, directly or indirectly to engage in the practices of "blockbusting" and "steering", including, but not limited to, the commission of any 1 or more of the following acts:

(1) To promote, induce, influence, or attempt to promote, induce, or influence a transaction in real property through any representation, means or device whatsoever calculated to induce a person to discriminate or to engage in such transaction wholly or partially in response to discrimination, prejudice, fear or unrest adduced by such means, device or representation;

(2) To place a sign, or display any other device, either purporting to offer or tending to lead to the belief that an offer is being made for a transaction in real property that is not in fact available or offered for transaction, or which purports that any transaction in real property has occurred that in fact has not. (1973 Ed., § 6-2232; Dec. 13, 1977, D.C. Law 2-38, title II, § 222, 24 DCR 6038.)

**Legislative history of Law 2-38.** — See note to § 1-2501.

**Cited in** *Gay Rights Coalition v. Georgetown Univ.*, App. D.C., 536 A.2d 1 (1987); *Gersman v.*

*Group Health Ass'n*, 725 F. Supp. 573 (D.D.C. 1989), aff'd, 931 F.2d 1565 (D.C. Cir. 1991), supp. op., 975 F.2d 886 (D.C. Cir. 1992).

## § 1-2517. Acts of discrimination by broker or salesperson.

Any real estate broker or real estate salesperson who commits any act of discrimination prohibited under the provisions of this chapter, if such act or the property involved is within the District of Columbia, or if such act occurs

outside of the District of Columbia, in a place where such act is prohibited by state or local law, ordinance or regulation, without regard to location of the property, shall be considered by the Real Estate Commission, for the purposes of Chapter 19 of Title 45, as having endangered the public interest; and shall be subject to the procedures set forth in § 1-2557. (1973 Ed., § 6-2233; Dec. 13, 1977, D.C. Law 2-38, title II, § 223, 24 DCR 6038; Mar. 10, 1983, D.C. Law 4-209, § 35(a)(2), 30 DCR 390.)

**Legislative history of Law 2-38.** — See note to § 1-2501.

**Legislative history of Law 4-209.** — Law 4-209 was introduced in Council and assigned Bill No. 4-230, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on

December 28, 1982, it was assigned Act No. 4-299 and transmitted to both Houses of Congress for its review.

**Cited in** *Gay Rights Coalition v. Georgetown Univ.*, App. D.C., 536 A.2d 1 (1987); *Gersman v. Group Health Ass'n*, 725 F. Supp. 573 (D.D.C. 1989), *aff'd*, 931 F.2d 1565 (D.C. Cir. 1991), *supp. op.*, 975 F.2d 886 (D.C. Cir. 1992).

## § 1-2518. Exceptions.

(a) Nothing in this chapter is to be construed to apply to the rental or leasing of housing accommodations in a building in which the owner, or members of his family occupy one of the living units and in which there are, or the owner intends that there be, accommodations for not more than:

(1) Four families, and only with respect to a prospective tenant, not related to the owner-occupant, with whom the owner-occupant anticipates the necessity of sharing a kitchen or bathroom; or

(2) Two families living independently of each other.

(b) Nothing contained in the provisions of this chapter shall be deemed to permit any rental or occupancy otherwise prohibited by any statute, or by any regulation previously enacted and not repealed herein.

(c) Nothing in this chapter shall apply to the sale or rental of a single-family home sold or rented by an owner if:

(1) The owner does not own more than 3 single-family homes at any one time; or own any interest in, or has owned or reserved on his behalf, under any express or voluntary agreement, title to any right to all or a portion of the proceeds from the sale or rental of more than 3 single-family homes at any one time. This exemption shall apply only to one sale within a 24-month period of the sale of any single-family home by a private owner not residing in that home at the time of the sale or who was not the most recent resident of that home prior to the sale.

(2) The home was sold or rented without:

(A) The use of the sales or rental facilities or services of a real estate broker, agent, or salesperson, or of the facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent, or salesperson; and

(B) Without the publication, posting or mailing, after notice, of any advertisement in violation of § 1-2515(a)(5). (1973 Ed., § 6-2234; Dec. 13, 1977, D.C. Law 2-38, title II, § 224, 24 DCR 6038; Apr. 20, 1999, D.C. Law 12-242, § 2(e), 46 DCR 952.)

**Effect of amendments.** — D.C. Law 12-242 substituted "Four families" for "Five families" in (a)(1); substituted "Two families" for "Two (2) families" in (a)(2); and added (c).

**Legislative history of Law 2-38.** — See note to § 1-2501.

**Legislative history of Law 12-242.** — See note to § 1-2501.

**Cited in** *Gersman v. Group Health Ass'n*, 725 F. Supp. 573 (D.D.C. 1989), *aff'd*, 931 F.2d 1565 (D.C. Cir. 1991), *supp. op.*, 975 F.2d 886 (D.C. Cir. 1992); *Evans v. United States*, App. D.C., 682 A.2d 644 (1996).

## § 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 objectionable, 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.)

**Effect of amendments.** — D.C. Law 12-242 inserted "familial status" in (a) and (b).

**Legislative history of Law 2-38.** — See note to § 1-2501.

**Legislative history of Law 10-129.** — See note to § 1-2501.

**Legislative history of Law 12-242.** — See note to § 1-2501.

**Junior Chamber of Commerce is neither "educational institution" nor "place of public accommodation"**, for purposes of this chapter. *United States Jaycees v. Bloomfield*, App. D.C., 434 A.2d 1379 (1981).

**Elements of claim.** — A claim under this act requires proof that (a) plaintiff has a dis-

ability, (b) defendant denied goods, services, facilities, privileges, advantages, or accommodations to plaintiff, and (c) defendant did so wholly or partially for a discriminatory reason. *Sumes v. Andres*, 938 F. Supp. 9 (D.D.C. 1996).

In determining whether a defendant acted for a discriminatory reason, the analysis for federal Title VII discrimination claims is applicable to claims brought under this chapter: the plaintiff must first prove by a preponderance of the evidence a *prima facie* case of discrimination, which raises a presumption that the defendant's action, if otherwise unexplained, was more likely than not based on a consideration of impermissible factors; the burden then shifts to



the defendant to raise a genuine issue of fact as to whether he discriminated against plaintiff, by showing a legitimate, nondiscriminatory reason for his actions; and finally, plaintiff must show that the defendant's proffered reason was a pretext either directly by persuading the court that a discriminatory reason more likely motivated the defendant or indirectly by showing that the defendant's proffered explanation was unworthy of credence. *Sumes v. Andres*, 938 F. Supp. 9 (D.D.C. 1996).

**Marital relationships.** — The City Council consciously chose not to make the language of the Human Rights Act applicable to regulation of the marital relationship. *Dean v. District of Columbia*, 120 WLR 769 (Super. Ct. 1991).

**Medical precautions held not discriminatory.** — The Commission on Human Rights could reasonably conclude that a hospital considered petitioner's sexual orientation merely as a medical risk factor, not as a discriminatory basis for the actions taken with respect to him, and that the decision to order blood and body fluid precautions was based upon petitioner's medical history, which included the information that petitioner had a history of sexually transmitted diseases and had suffered from hepatitis. *Doe v. District of Columbia Comm'n on Human Rights*, App. D.C., 624 A.2d 440 (1993).

**Restaurant dress policies not discriminatory.** — Restaurant dress policies which

require men to wear jackets while not imposing the same requirement on women, do not constitute illegal discrimination based on sex. *Karson v. Prime Rib, Inc.*, 111 WLR 1677 (Super. Ct.).

**A proposed arena design failed to comply with the sightline and dispersal elements of the District of Columbia's Human Rights Act**, and consequently the defendants were enjoined to submit a plan that would be in compliance. *Paralyzed Veterans of Am. v. Ellerbe Becket Architects & Eng'rs*, 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).

**Damages recoverable.** — Plaintiff may recover compensatory damages for humiliation, embarrassment, and emotional pain and suffering; a finding of humiliation and embarrassment flows naturally from a finding of discrimination. *Sumes v. Andres*, 938 F. Supp. 9 (D.D.C. 1996).

**Cited in** *National Org. for Women v. Mutual of Omaha Ins. Co.*, 612 F. Supp. 100 (D.D.C. 1985); *Lyles v. Executive Club Ltd.*, 670 F. Supp. 34 (D.D.C. 1987); *National Org. for Women v. Mutual of Omaha Ins. Co.*, App. D.C., 531 A.2d 274 (1987); *Gay Rights Coalition v. Georgetown Univ.*, App. D.C., 536 A.2d 1 (1987); *Gersman v. Group Health Ass'n*, 725 F. Supp. 573 (D.D.C. 1989), *aff'd*, 931 F.2d 1565 (D.C. Cir. 1991), *supp. op.*, 975 F.2d 886 (D.C. Cir. 1992).

## § 1-2520. Unlawful discriminatory practices in educational institutions.

It is an unlawful discriminatory practice, subject to the exemptions in § 1-2503(b), for an educational institution:

(1) To deny, restrict, or to abridge or condition the use of, or access to, any of its facilities and services to any person otherwise qualified, wholly or partially, for a discriminatory reason, based upon the race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, political affiliation, source of income, or disability of any individual; or

(2) To make or use a written or oral inquiry, or form of application for admission, that elicits or attempts to elicit information, or to make or keep a record, concerning the race, color, religion, or national origin of an applicant for admission, except as permitted by regulations of the Office.

(3) Notwithstanding any other provision of the laws of the District of Columbia, it shall not be an unlawful discriminatory practice in the District of Columbia for any educational institution that is affiliated with a religious organization or closely associated with the tenets of a religious organization to deny, restrict, abridge, or condition —

(A) the use of any fund, service, facility, or benefit; or

(B) the granting of any endorsement, approval, or recognition,

to any person or persons that are organized for, or engaged in, promoting, encouraging, or condoning any homosexual act, lifestyle, orientation, or belief. (1973 Ed., § 6-2251; Dec. 13, 1977, D.C. Law 2-38, title II, § 241, 24 DCR 6038; Nov. 21, 1989, 103 Stat. 1284, Pub. L. 101-168, § 141(b); June 28, 1994, D.C. Law 10-129, § 2(f), 41 DCR 2583; Apr. 20, 1999, D.C. Law 12-242, § 2(g), 46 DCR 952.)

**Effect of amendments.** — D.C. Law 12-242 inserted "familial status" in (1).

**Legislative history of Law 2-38.** — See note to § 1-2501.

**Legislative history of Law 10-129.** — See note to § 1-2501.

**Legislative history of Law 12-242.** — See note to § 1-2501.

**The eradication of sexual orientation discrimination is a compelling governmental interest.** Gay Rights Coalition v. Georgetown Univ., App. D.C., 536 A.2d 1 (1987).

**This section cannot be read to compel a regulated party to express religious approval or neutrality towards any group or individual.** Gay Rights Coalition v. Georgetown Univ., App. D.C., 536 A.2d 1 (1987).

**This section does not require one private actor to "endorse" another and Georgetown's denial of "University Recognition"—in this case a status carrying an intangible "endorsement"—did not violate this section.** Gay Rights Coalition v. Georgetown Univ., App. D.C., 536 A.2d 1 (1987).

**Free speech and free exercise guarantees threatened.** — Government compulsion to grant "University Recognition" by Georgetown University would threaten both the free speech and free exercise guarantees of the First Amendment. Gay Rights Coalition v. Georgetown Univ., App. D.C., 536 A.2d 1 (1987).

**Free exercise of religion defense does not provide exemption from compliance.**

— Georgetown University's free exercise defense does not exempt it from compliance with this section since the District of Columbia's compelling interest in eradicating sexual orientation discrimination outweighs any burden that equal provision of the tangible benefits would impose on Georgetown's religious exercise. Gay Rights Coalition v. Georgetown Univ., App. D.C., 536 A.2d 1 (1987).

**Unconstitutional burden on free exercise of religion not imposed.** — Forced distribution of various tangible benefits without regard to sexual orientation, severed from the direct "endorsement" required by a compelled grant of "University Recognition," did not impose an unconstitutional burden on

Georgetown's exercise of religion. Gay Rights Coalition v. Georgetown Univ., App. D.C., 536 A.2d 1 (1987).

**Government's interest in eradication of sexual discrimination outweighed burden on free exercise of religion.** — District of Columbia's compelling interest in the eradication of sexual orientation discrimination outweighs any burden imposed upon Georgetown University's exercise of religion by the forced equal provision of tangible benefits. Gay Rights Coalition v. Georgetown Univ., App. D.C., 536 A.2d 1 (1987).

**Section requires equal access to facilities and services.** — While this section does not require any "endorsement"—and therefore does not require the type of "University Recognition" offered by Georgetown—it does require equal access to the "facilities and services" attendant upon that status. Gay Rights Coalition v. Georgetown Univ., App. D.C., 536 A.2d 1 (1987).

**Equality of treatment measured by non-discriminatory provision of access to facilities and services.** — While this section does not seek to compel uniformity in philosophical attitudes by force of law, it does require equal treatment, and equality of treatment in educational institutions is concretely measured by nondiscriminatory provision of access to "facilities and services." Gay Rights Coalition v. Georgetown Univ., App. D.C., 536 A.2d 1 (1987).

**Junior Chamber of Commerce is neither "educational institution" nor "place of public accommodation" for purposes of this chapter.** United States Jaycees v. Bloomfield, App. D.C., 434 A.2d 1379 (1981).

**Intentional violation established.** — Evidence established an intentional violation of this section. Gay Rights Coalition v. Georgetown Univ., App. D.C., 536 A.2d 1 (1987).

**Cited in Gersman v. Group Health Ass'n,** 725 F. Supp. 573 (D.D.C. 1989), aff'd, 931 F.2d 1565 (D.C. Cir. 1991), supp. op., 975 F.2d 886 (D.C. Cir. 1992); **Evans v. United States,** App. D.C., 682 A.2d 644 (1996); **Committee for Voluntary Prayer v. Wimberly,** App. D.C., 704 A.2d 1199 (1997).

### § 1-2521. Exceptions regarding sex discrimination and age.

(a) Nothing in this chapter regarding sex discrimination in admission policy shall apply to any private undergraduate college or to any private preschool, elementary or secondary school; except that, when any of the above exempted colleges offers a course nowhere else available in the District, opportunity for admission to that course must be open to students of both sexes who otherwise meet lawful requirements for admission.

(b) It shall not be an unlawful discriminatory practice for the District of Columbia to prescribe minimum and maximum age limits for appointment to the police officer and firefighter cadet programs. (1973 Ed., § 6-2252; Dec. 13, 1977, D.C. Law 2-38, title II, § 242, 24 DCR 6038; Mar. 9, 1983, D.C. Law 4-172, § 4(b), 29 DCR 5745.)

**Legislative history of Law 2-38.** — See note to § 1-2501.

**Legislative history of Law 4-172.** — See note to § 1-2513.

**Cited in** *Gersman v. Group Health Ass'n*, 725 F. Supp. 573 (D.D.C. 1989), *aff'd*, 931 F.2d 1565

(D.C. Cir. 1991), *supp. op.*, 975 F.2d 886 (D.C. Cir. 1992); *Evans v. United States*, App. D.C., 682 A.2d 644 (1996); *Anderson v. Thomas*, App. D.C., 683 A.2d 156 (1996).

### § 1-2522. Posting of notice.

Every person subject to this chapter shall post and keep posted in a conspicuous location where business or activity is customarily conducted or negotiated, a notice whose language and form has been prepared by the Office, setting forth excerpts from or summaries of, the pertinent provisions of this chapter and information pertinent to the filing of a complaint. (1973 Ed., § 6-2261; Dec. 13, 1977, D.C. Law 2-38, title II, § 251, 24 DCR 6038.)

**Section references.** — This section is referred to in §§ 1-1185.8 and 1-2528.

**Legislative history of Law 2-38.** — See note to § 1-2501.

**Effect of failure to post notice.** — The Court of Appeals for the District of Columbia would have to determine whether or under what circumstances the failure to post the requisite notice under this section may provide justification for equitable tolling of the statute of limitations. *East v. Graphic Arts Indus. Joint Pension Trust*, 107 F.3d 911 (D.C. Cir. 1997).

**Equitable tolling not available.** — Even assuming the applicability of equitable tolling principles where the employer fails to post notice in compliance with the District of Columbia Human Rights Act, equitable tolling would not be available where plaintiff failed to file court action within a reasonable time after she obtained — or by due diligence could have obtained — the information necessary to file her complaint. *East v. Graphic Arts Indus. Joint Pension Trust*, App. D.C., 718 A.2d 153 (1998).

### § 1-2523. Preservation of business records; contents; reports to Office.

(a) Every person subject to this chapter shall preserve any regularly kept business records for a period of 6 months from the date of the making of the record, or from the date of the action which is the subject of the record, whichever is longer; such records shall include, but not be limited to, application forms submitted by applicants, sales and rental records, credit and reference reports, personnel records, and any other record pertaining to the

status of an individual's enjoyment of the rights and privileges protected or granted under this chapter.

(b) Where a charge of discrimination has been filed against a person under this chapter, the respondent shall preserve all records which may be relevant to the charge or action, until a final disposition of the charge in accordance with subsection (c) of this section.

(c) All persons subject to this chapter shall furnish to the Office, at the time and in the manner prescribed by the Office, such reports relating to information under their control as the Office may require. The identities of persons and properties contained in reports submitted to the Office under the provisions of this section shall not be made public. (1973 Ed., § 6-2262; Dec. 13, 1977, D.C. Law 2-38, title II, § 252, 24 DCR 6038.)

**Section references.** — This section is referred to in § 1-2528.

**Legislative history of Law 2-38.** — See note to § 1-2501.

## § 1-2524. Affirmative action plans.

(a) It shall not be an unlawful discriminatory practice for any person to carry out an affirmative action plan that has been approved by the Office. An affirmative action plan is any plan devised to effectuate remedial or corrective action in response to past discriminatory practices prohibited under this chapter and may also include those plans devised to provide preferential treatment for a class or classes of persons, which preferential treatment by class would otherwise be prohibited by this chapter and which plan is not devised to contravene the intent of this chapter.

(b) All banks and savings and loan associations, subject to this chapter, shall submit annually to the Office an affirmative action plan which shall include goals and timetables for the remediation or correction of past or present discriminatory practices. Such plan shall be reviewed by the Office and is subject to its approval.

(c) It shall be an unlawful discriminatory practice for any bank or savings and loan association, subject to this chapter, to fail to develop an affirmative action plan approved by the Office or fail to comply substantially with the terms of such affirmative action plan.

(d) The Office shall develop and promulgate guidelines which will set forth the affirmative action requirements of this section and shall incorporate, but not be limited to, applicable federal guidelines. Such guidelines shall be promulgated by the Office within 120 days of the enactment of this law consistent with the District of Columbia Administrative Procedure Act (D.C. Code, § 1-1501 et seq.) and shall not become effective until 60 calendar days following submission to the Council. (1973 Ed., § 6-2263; Dec. 13, 1977, D.C. Law 2-38, title II, § 253, 24 DCR 6038; Mar. 3, 1979, D.C. Law 2-140, § 3, 25 DCR 5473.)

**Section references.** — This section is referred to in §§ 1-2528 and 43-1841.

**Legislative history of Law 2-38.** — See note to § 1-2501.

**Legislative history of Law 2-140.** — Law 2-140 was introduced in Council and assigned Bill No. 2-294, which was referred to the Committee on Employment and Economic Develop-

ment. The Bill was adopted on first, amended first, second amended first, and second readings on September 19, 1978, October 3, 1978, October 17, 1978 and October 31, 1978, respec-

tively. Signed by the Mayor on November 27, 1978, it was assigned Act No. 2-301 and transmitted to both Houses of Congress for its review.

## § 1-2525. Coercion or retaliation.

(a) It shall be an unlawful discriminatory practice to coerce, threaten, retaliate against, or interfere with any person in the exercise or enjoyment of, or on account of having exercised or enjoyed, or on account of having aided or encouraged any other person in the exercise or enjoyment of any right granted or protected under this chapter.

(b) It shall be an unlawful discriminatory practice for any person to require, request, or suggest that a person retaliate against, interfere with, intimidate or discriminate against a person, because that person has opposed any practice made unlawful by this chapter, or because that person has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding or hearing authorized under this chapter.

(c) It shall be an unlawful discriminatory practice for any person to cause or coerce, or attempt to cause or coerce, directly or indirectly, any person to prevent any person from complying with the provisions of this chapter. (1973 Ed., § 6-2271; Dec. 13, 1977, D.C. Law 2-38, title II, § 261, 24 DCR 6038.)

**Legislative history of Law 2-38.** — See note to § 1-2501.

**Construction with federal law.** — District of Columbia law in the context of this chapter employs the same standard for retaliation as federal age discrimination claims, and thus arguments with respect to the federal claim also apply to the state claim. *Paquin v. Federal Nat'l Mtg. Ass'n*, 935 F. Supp. 26 (D.D.C. 1996), *aff'd in part and rev'd in part*, 119 F.3d 23 (D.C. Cir. 1997).

**Prima facie case.** — The elements of a prima facie retaliation case are that 1) plaintiff was engaged in a protected activity, 2) the employer took an adverse personnel action, and 3) a causal relationship existed between the two. *Goos v. National Ass'n of Realtors*, 715 F. Supp. 2 (D.D.C. 1989).

A plaintiff establishes a prima facie case of retaliation under subsection (a) by showing that he or she was engaged in a statutorily protected activity, that his or her employer took an adverse action, and that there was a causal relationship between the protected activity and the adverse action. *Arthur Young & Co. v. Sutherland*, App. D.C., 631 A.2d 354 (1993).

Retaliation requires that (i) plaintiff is engaged in a protected activity; (ii) there is some adverse impact on the plaintiff; and (iii) the adverse impact is causally related to the exercise of the protected activity. *Paquin v. Federal Nat'l Mtg. Ass'n*, 935 F. Supp. 26 (D.D.C. 1996), *aff'd in part and rev'd in part*, 119 F.3d 23 (D.C. Cir. 1997).

**Retaliation.** — The Commission found that the employer retaliated against employee in that the employer threatened to see that employee would have difficulty in obtaining employment if she persisted in her complaint. *Atlantic Richfield Co. v. District of Columbia Comm'n of Human Rights*, App. D.C., 515 A.2d 1095 (1986).

This section does not merely protect against retaliation provoked by filing a complaint; retaliation may consist of opposition to various activities. *Ravinskas v. Karalekas*, 741 F. Supp. 978 (D.D.C. 1990).

Where plaintiff alleged not only harassment and discrimination but also constructive termination as a result of her refusal to consent to further sexual relations, she alleged sufficient facts to support a retaliation claim. *Ravinskas v. Karalekas*, 741 F. Supp. 978 (D.D.C. 1990).

Because plaintiff, at age 70, was not protected by the D.C. Human Rights Act against employment discrimination, he was not protected against any retaliation he may have suffered in asserting a groundless claim under that act. *Passer v. American Chem. Soc'y*, 935 F.2d 322 (D.C. Cir. 1991).

Although plaintiff failed to state any claims for retaliation under § 1981, she raised a genuine issue as to all of her claims for retaliation under the D.C. Human Rights Act. *Saunders v. George Wash. Univ.*, 768 F. Supp. 854 (D.D.C. 1991).

In a reprisal or retaliation civil rights case, a complainant is not required to establish that

the underlying unlawful discrimination actually occurred, but it suffices that the complainant had a reasonable belief as to the alleged unlawful discrimination and protested, or complained thereof, to management. *Green v. Howard Univ.*, 121 WLR 629 (Super. Ct. 1992).

The fact that an employer had a legitimate business reason for its decision did not necessarily insulate it from liability for retaliation under subsection (a). *Arthur Young & Co. v. Sutherland*, App. D.C., 631 A.2d 354 (1993).

**Prima facie case shown.** — Plaintiff's abrupt termination on the heels of voicing her opposition to an allegedly racially motivated termination was sufficient to establish a prima facie case of unlawful retaliation. *Goos v. National Ass'n of Realtors*, 715 F. Supp. 2 (D.D.C. 1989).

**Notice to management.** — To establish the crux of a retaliation claim, i.e., a causal connection between an adverse personnel action and protected opposition activity, the employee must first prove she sufficiently alerted management to the nature of her complaint. *Howard Univ. v. Green*, App. D.C., 652 A.2d 41 (1994).

**Notice to supervisor deemed notice to employer.** — Person to whom plaintiff made her complaint was a high enough supervisory official for notice of the discrimination complaint, under principles of agency, to be deemed notice to the defendant, as the employer. *Green v. Howard Univ.*, 121 WLR 629 (Super. Ct. 1992).

**Time of protected activity.** — For termination to act as retaliation, employer must have decided to terminate plaintiff after he filed his claim with the EEOC; a response to protected activity cannot occur unless the protected activity has already been initiated. *Paquin v. Federal Nat'l Mtg. Ass'n*, 935 F. Supp. 26 (D.D.C. 1996), aff'd in part and rev'd in part, 119 F.3d 23 (D.C. Cir. 1997).

**Burden of production.** — Once plaintiff has established a prima facie retaliation case, the burden of production shifts to the defendant to show a legitimate nondiscriminatory reason for the contested personnel action. If defendant does so, the burden shifts back to plaintiff to show that the reason was a "pretext." *Goos v. National Ass'n of Realtors*, 715 F. Supp. 2 (D.D.C. 1989).

Once the plaintiff presents a prima facie case of retaliation, the burden shifts to the employer to show a legitimate, nonretaliatory reason for the contested action. *Arthur Young & Co. v. Sutherland*, App. D.C., 631 A.2d 354 (1993).

**Opposition to practices in violation of chapter.** — In order to make out a claim for retaliation, a plaintiff need only prove she had a reasonable good faith belief that the practice she opposed was unlawful under this chapter, not that it actually violated this chapter.

*Howard Univ. v. Green*, App. D.C., 652 A.2d 41 (1994).

**Withdrawal of separation benefits not retaliation.** — The withdrawal of separation benefits is not an "adverse action," and is thus not an actionable form of "retaliation" where employer's official policy did not include an assurance of severance pay upon departure from the company; if severance pay is contractually required, it cannot be applied unequally, but if a separation package constitutes an additional benefit that was not specifically guaranteed, it may be negated, waived, or refused. *Paquin v. Federal Nat'l Mtg. Ass'n*, 935 F. Supp. 26 (D.D.C. 1996), aff'd in part and rev'd in part, 119 F.3d 23 (D.C. Cir. 1997).

**Evidence sufficient to establish discrimination.** — Based on comments made by the site supervisor, and by the other male employees working under his supervision, there was more than sufficient evidence from which a reasonable jury could conclude that there was sexual harassment of employees in subjecting them to a severe and pervasive pattern of sexual comments and acts which created a hostile work environment. *Drake v. Henkels & McCoy, Inc.*, 123 WLR 2217 (Super. Ct. 1995).

**Evidence insufficient to establish discrimination.** — Proof of mere favoritism is insufficient to establish a claim of discrimination under this chapter. *Howard Univ. v. Green*, App. D.C., 652 A.2d 41 (1994).

Plaintiff's termination was not in retaliation where plaintiff was terminated because he was unable or unwilling to properly perform his duties as senior vice president, and upper management was legitimately dissatisfied with his work. *Paquin v. Federal Nat'l Mtg. Ass'n*, 935 F. Supp. 26 (D.D.C. 1996), aff'd in part and rev'd in part, 119 F.3d 23 (D.C. Cir. 1997).

Evidence was insufficient to show the necessary causal relationship to establish retaliation for the filing of a formal complaint of sex discrimination. *Tyler v. Howard Univ.*, 124 WLR 49 (Super. Ct. 1995).

Because plaintiff failed to prove discriminatory reasons for terminating her position and that the defendant retaliated against her for asserting her civil rights by refusing to pay her three months' severance pay, her claims under the D.C. Human Rights Act, § 1-2501 et seq., failed. *Carney v. American Univ.*, 960 F. Supp. 436 (D.D.C. 1997).

**Cited in** *Davis v. Potomac Elec. Power Co.*, App. D.C., 449 A.2d 278 (1982); *Schoen v. Consumers United Group, Inc.*, 670 F. Supp. 367 (D.D.C. 1986); *Alder v. Columbia Historical Soc'y*, 690 F. Supp. 9 (D.D.C. 1988), but see, *Rafferty v. NYNEX Corp.*, 60 F.3d 844 (D.C. Cir. 1995); *Parker v. National Corp. for Hous. Partnerships*, 697 F. Supp. 5 (D.D.C. 1988); *Hessey v. Burden*, App. D.C., 615 A.2d 562 (1992); *Drake v. Henkels & McCoy, Inc.*, 125 WLR 433

(Super. Ct. 1997); *Hogue v. Roach*, 967 F. Supp. 7 (D.D.C. 1997).

### § 1-2526. Aiding or abetting.

It shall be an unlawful discriminatory practice for any person to aid, abet, invite, compel, or coerce the doing of any of the acts forbidden under the provisions of this chapter or to attempt to do so. (1973 Ed., § 6-2272; Dec. 13, 1977, D.C. Law 2-38, title II, § 262, 24 DCR 6038.)

**Legislative history of Law 2-38.** — See note to § 1-2501.

**Partners of law firm are amenable to suit.** — Where a law firm is the employer, partners of law firm who carried out allegedly discriminatory acts aided and abetted the employer's discrimination and, therefore, partners are amenable to suit in their individual capacities.

*Wallace v. Skadden, Arps, Slate, Meagher & Flom*, App. D.C., 715 A.2d 873 (1998).

**Cited in** *Newman v. District of Columbia*, App. D.C., 518 A.2d 698 (1986); *Alder v. Columbia Historical Soc'y*, 690 F. Supp. 9 (D.D.C. 1988), but see, *Rafferty v. NYNEX Corp.*, 60 F.3d 844 (D.C. Cir. 1995).

### § 1-2527. Conciliation agreements.

It shall be an unlawful discriminatory practice for a party to a conciliation agreement, made under the provisions of this chapter, to violate the terms of such agreement. (1973 Ed., § 6-2273; Dec. 13, 1977, D.C. Law 2-38, title II, § 263, 24 DCR 6038.)

**Legislative history of Law 2-38.** — See note to § 1-2501.

### § 1-2528. Resisting the Office or Commission.

(a) Any person who shall willfully resist, prevent, impede or interfere with the Office or the Commission, or any of their representatives, in the performance of any duty under the provisions of this chapter, or shall willfully violate an order of the Commission, shall upon conviction, be punished by imprisonment for not more than 10 days, or by a fine of not more than \$300, or by both, except, that filing a petition for review of an order, pursuant to the provisions of this chapter, shall not be deemed to constitute such willful conduct, nor shall compliance with any procedure regarding a subpoena in accord with § 1-331, be deemed to constitute such willful conduct.

(b) It shall be an unlawful discriminatory practice for a person subject to this chapter, to fail to post notices, maintain records, file reports, as required by §§ 1-2522 to 1-2524, or to supply documents and information requested by the Office in connection with a matter under investigation. (1973 Ed., § 6-2274; Dec. 13, 1977, D.C. Law 2-38, title II, § 264, 24 DCR 6038.)

**Legislative history of Law 2-38.** — See note to § 1-2501.

**§ 1-2529. Falsifying documents and testimony.**

It shall be unlawful to willfully falsify documents, records, or reports, which are required or subpoenaed pursuant to this chapter, or willfully to falsify testimony, or to intimidate any witness or complainant; such violations shall be punishable by imprisonment for not more than 10 days, or by a fine of not more than \$300, or by both. (1973 Ed., § 6-2275; Dec. 13, 1977, D.C. Law 2-38, title II, § 265, 24 DCR 6038.)

**Legislative history of Law 2-38.** — See note to § 1-2501.

**§ 1-2530. Arrest records.**

It shall be an unlawful practice, punishable by a fine of not more than \$300, or imprisonment for not more than 10 days, or both, for any person to require the production of any arrest record or any copy, extract, or statement thereof, at the monetary expense of any individual to whom such record may relate. Such "arrest records" shall contain only listings of convictions and forfeitures of collateral that have occurred within 10 years of the time at which such record is requested. (1973 Ed., § 6-2276; Dec. 13, 1977, D.C. Law 2-38, title II, § 266, 24 DCR 6038.)

**Legislative history of Law 2-38.** — See note to § 1-2501.

**Cited in** *Newspapers, Inc. v. Metropolitan Police Dep't*, App. D.C., 546 A.2d 990 (1988).

**§ 1-2531. Compliance with chapter prerequisite for licenses.**

All permits, licenses, franchises, benefits, exemptions, or advantages issued by or on behalf of the government of the District of Columbia, shall specifically require and be conditioned upon full compliance with the provisions of this chapter; and shall further specify that the failure or refusal to comply with any provision of this chapter shall be a proper basis for revocation of such permit, license, franchise, benefit, exemption, or advantage. (1973 Ed., § 6-2277; Dec. 13, 1977, D.C. Law 2-38, title II, § 267, 24 DCR 6038.)

**Section references.** — This section is referred to in § 1-2502.

**Legislative history of Law 2-38.** — See note to § 1-2501.

**§ 1-2532. Discriminatory effects of practices.**

Any practice which has the effect or consequence of violating any of the provisions of this chapter shall be deemed to be an unlawful discriminatory practice. (1973 Ed., § 6-2278; Dec. 13, 1977, D.C. Law 2-38, title II, § 268, 24 DCR 6038.)

**Legislative history of Law 2-38.** — See note to § 1-2501.

**Unintentional discrimination established.** — Evidence established unintentional



discrimination under this section. *Gay Rights Coalition v. Georgetown Univ.*, App. D.C., 536 A.2d 1 (1987).

*Cited in Hessey v. Burden*, App. D.C., 615 A.2d 562 (1992).

### § 1-2533. Sale of motor vehicle insurance.

It is unlawful discriminatory practice for an insurer authorized to sell motor vehicle insurance in the District of Columbia to do any of the following acts, wholly or partially for a discriminatory reason based on race, color, religion, national origin, sex, marital status, personal appearance, sexual orientation, family responsibilities, disability, matriculation, political affiliation, lawful occupation, or location within the geographical area of the District of Columbia of any individual:

- (1) To fail or refuse to issue a policy of motor vehicle insurance;
- (2) To fail or refuse to renew a policy of motor vehicle insurance; or
- (3) To cancel a policy of motor vehicle insurance. (Dec. 13, 1977, D.C. Law 2-38, § 271, as added Sept. 18, 1982, D.C. Law 4-155, § 14(b), 29 DCR 3491; June 28, 1994, D.C. Law 10-129, § 2(g), 41 DCR 2583; Oct. 21, 1995, D.C. Law 11-64, § 2(a), 42 DCR 4322.)

**Legislative history of Law 2-38.** — See note to § 1-2501.

**Legislative history of Law 4-155.** — Law 4-155 was introduced in Council and assigned Bill No. 4-140, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first, amended first, second amended first, and second readings on May 11, 1982, May 25, 1982, June 8, 1982, and June 22, 1982, respectively. Deemed approved without Mayoral signature upon expiration of the Mayoral review period on July 22, 1982, it was assigned Act No. 4-226 and

transmitted to both Houses of Congress for its review.

**Legislative history of Law 10-129.** — See note to § 1-2501.

**Legislative history of Law 11-64.** — See note to § 1-2534.

*Cited in National Org. for Women v. Mutual of Omaha Ins. Co.*, App. D.C., 531 A.2d 274 (1987); *Gersman v. Group Health Ass'n*, 725 F. Supp. 573 (D.D.C. 1989), *aff'd*, 931 F.2d 1565 (D.C. Cir. 1991), *supp. op.*, 975 F.2d 886 (D.C. Cir. 1992).

### § 1-2534. Motor vehicle rental companies.

Notwithstanding any other provision of this chapter, it shall not be an unlawful practice for a motor vehicle rental company to fail or refuse to rent a motor vehicle, or to impose differential terms and conditions upon the rental of a motor vehicle, based on the age of any person, where such action is reasonably related to accident risk or threat to public safety. (Sept. 18, 1982, D.C. Law 4-155, § 272, as added Oct. 21, 1995, D.C. Law 11-64, § 2(b), 42 DCR 4322.)

**Legislative history of Law 11-64.** — Law 11-64, the "Motor Vehicle Rental Company Amendment Act of 1995," was introduced in Council and assigned Bill No. 11-162, which was referred to the Committee on Labor and Human Rights. The Bill was adopted on first and second readings on June 20, 1995, and July

11, 1995, respectively. Approved without the signature of the Mayor on July 28, 1995, it was assigned Act No. 11-126 and transmitted to both Houses of Congress for its review. D.C. Law 11-64 became effective on November 21, 1995.

*Subchapter III. Procedures.***§ 1-2541. Powers of Office and Commission; annual report by Mayor.**

(a) The activities of the Office and the Commission, under the provisions of this chapter, shall be considered investigations or examinations of municipal matters, within the meaning of § 1-331; and the Commission, the individual members thereof, and the Director, shall possess the powers vested in the Council of the District of Columbia.

(b) The Office is hereby empowered to undertake its own investigations and public hearings on any racial, religious, and ethnic group tensions, prejudice, intolerance, bigotry, and disorder; and on any form of, or reason for, discrimination, in accordance with §§ 1-2501 and 1-2511, against any person, group of persons, organization, or corporations, whether practiced by private persons, associations, corporations, city officials, or city agencies; for the purpose of making appropriate recommendations for action, including legislation, against such discrimination.

(c) The Office and the Commission may make, issue, adopt, promulgate, amend, and rescind such rules and procedures as they deem necessary to effectuate and which are not in conflict with, the provisions of this chapter. Such rules and procedures and amendments thereto shall be adopted and promulgated in accordance with procedures promulgated pursuant to the D.C. Administrative Procedure Act (D.C. Code, § 1-1501 et seq.).

(d) In taking any action authorized or required by the provisions of this chapter, the Commission may act through panels or a division of not less than 3 of its members, a majority of whom shall constitute a quorum.

(e) The Mayor shall recommend to the Council any additional regulations.

(f) Investigations relating to the enforcement of provisions of this chapter shall be given priority over all other duties and activities of the Office.

(g) The Mayor shall report annually to the Council as to the progress with regard to the enforcement of this chapter, and any other activity related to the field of human rights deemed valuable to the Council in the pursuit of its responsibilities.

(h) The Office and the Commission shall enforce §§ 43-1840, 43-1841, 43-1842, 43-1843 and any other human rights provisions of Chapter 18 of Title 43. (1973 Ed., § 6-2281; Dec. 13, 1977, D.C. Law 2-38, title III, § 301, 24 DCR 6038; Aug. 21, 1982, D.C. Law 4-142, § 42(i), 29 DCR 2872.)

**Legislative history of Law 2-38.** — See note to § 1-2501.

**Legislative history of Law 4-142.** — Law 4-142 was introduced in Council and assigned Bill No. 4-35, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on March 9, 1982, and June 8, 1982, respectively. Approved without signature by the Mayor, it was assigned Act No. 4-208 and

transmitted to both Houses of Congress for its review.

**Establishment of Department of Human Rights and Minority Business Development.** — See Mayor's Order 89-247, November 1, 1989.

**Authority to conduct investigations.** — Where the statutory scheme establishes an executive agency to investigate and recommend whether the D.C. Council should enact future

legislation to prohibit certain discriminatory conduct in accordance with § 1-2511, the Council could not have intended that discrimination in all aspects of economic life was covered under the section; otherwise, subsection (b) would be gratuitous. *Gersman v. Group Health Ass'n*, 725 F. Supp. 573 (D.D.C. 1989), *aff'd*, 931 F.2d 1565 (D.C. Cir. 1991), *supp. op.*, 975 F.2d 886 (D.C. Cir. 1992).

**Limitations of actions.** — The statute of limitations is tolled during the pendency of an action before the Office of Human Rights. *Alder v. Columbia Historical Soc'y*, 690 F. Supp. 9 (D.D.C. 1988), *but see*, *Rafferty v. NYNEX Corp.*, 60 F.3d 844 (D.C. Cir. 1995).

**Claims under 42 U.S.C. § 1981** are not barred by collateral estoppel where the issues were brought before the Office of Human Rights because proceedings before the Office of Human Rights, in contrast to proceedings before the Commission on Human Rights which are governed by the Administrative Procedures Act, § 1-1501 *et seq.*, and are intended to be adjudicative, provide inadequate opportunities to litigate the factual issues. *Alder v. Columbia Historical Soc'y*, 690 F. Supp. 9 (D.D.C. 1988), *but see*, *Rafferty v. NYNEX Corp.*, 60 F.3d 844 (D.C. Cir. 1995).

## § 1-2542. Complaints; independent action by other District agencies.

Nothing in the provisions of this chapter is deemed to relieve any agency or authority of the government of the District of its obligation to take immediate and independent action regarding a matter filed with it, in accord with its jurisdiction, that also may be the subject of a complaint filed with the Office. (1973 Ed., § 6-2282; Dec. 13, 1977, D.C. Law 2-38, title III, § 302, 24 DCR 6038.)

**Legislative history of Law 2-38.** — See note to § 1-2501.

## § 1-2543. Establishment of procedure for complaints filed against District government.

Notwithstanding any other provision of this chapter, the Mayor shall establish rules of procedure for the investigation, conciliation, and hearing of complaints filed against District government agencies, officials and employees alleging violations of this chapter. The final determination in such matters shall be made by the Mayor or his designee. (1973 Ed., § 6-2283; Dec. 13, 1977, D.C. Law 2-38, title III, § 303, 24 DCR 6038.)

**Section references.** — This section is referred to in §§ 1-625.5 and 1-2544.

**Legislative history of Law 2-38.** — See note to § 1-2501.

**Administrative remedies provided by this section are the exclusive remedies available to District government employee** claiming discrimination in employment; the private right of action established by § 1-2556 is available only to nongovernment employees. *Williams v. District of Columbia*, App. D.C., 467 A.2d 140 (1983).

**Exhaustion of administrative remedies required.** — A District of Columbia government employee was required to exhaust her administrative remedies before seeking relief in the courts. *Williams v. District of Columbia*, App. D.C., 467 A.2d 140 (1983).

Police officer was required to exhaust administrative remedies under Human Rights Act and was not permitted to withdraw complaint before Office of Human Rights and file action in Superior Court. *Newman v. District of Columbia*, App. D.C., 518 A.2d 698 (1986).

Former police officer alleging that he had been discharged on account of his race, must first exhaust his administrative remedies; claims that the local human rights agencies are understaffed and do not act promptly does not meet the exhaustion requirement. *Roache v. District of Columbia*, App. D.C., 654 A.2d 1283 (1995).

**Administrative remedy does not toll statute of limitations for civil rights action.** — While District of Columbia employees must exhaust their administrative remedies

under the Human Rights Act before seeking judicial review under § 1-2554, exhaustion of state administrative remedies is not a prerequisite to bringing a civil rights action, and since exhaustion is not a prerequisite to the initiation of a federal claim premised on 42 U.S.C.

§§ 1981 and 1983, plaintiff cannot toll the three-year statute of limitations for civil rights action by filing claim with Human Rights Commission. *Deskins v. Barry*, 729 F. Supp. 1 (D.D.C. 1989).

## § 1-2544. Filing of complaints and mediation.

(a) Any person or organization, whether or not an aggrieved party, may file with the Office a complaint of a violation of the provisions of this chapter, including a complaint of general discrimination, unrelated to a specific person or instance. The complaint shall state the name and address of the person alleged to have committed the violation, hereinafter called the respondent, and shall set forth the substance thereof, and such other information as may be required by the Office. The Director, sua sponte, may investigate individual instances and patterns of conduct prohibited by the provisions of this chapter and may initiate complaints in connection therewith. Any complaint under this chapter shall be filed with the Office within 1 year of the occurrence of the unlawful discriminatory practice, or the discovery thereof, except as may be modified in accordance with § 1-2543.

(b) Complaints filed with the Office under the provisions of this chapter may be voluntarily withdrawn at the request of the complainant at any time prior to the completion of the Office's investigation and findings as specified in § 1-2545, except that the circumstances accompanying said withdrawal may be fully investigated by the Office.

(c) A mediation program shall be established and all complaints shall be mediated before the Office commences a full investigation. During the mediation the parties shall discuss the issues of the complaint in an effort to reach an agreement that satisfies the interests of all concerned parties. The Office shall grant the parties up to 45 days within which to mediate a complaint. If an agreement is reached during the mediation process, the terms of the agreement shall control resolution of the complaint. If an agreement is not reached, the Office shall proceed with an investigation of the complaint.

(d) Complaints filed with the Office alleging unlawful discrimination in residential real estate transactions or violations of FHA, shall be served on the complainant and respondent within 5 days of filing, with a notice identifying the alleged discriminatory practice and advising the parties of their procedural rights and obligations under this chapter and FHA. The Office shall refer the complaint for mediation, but shall begin investigating the complaint within 30 days of its filing if the parties fail to reach an agreement. (1973 Ed., § 6-2284; Dec. 13, 1977, D.C. Law 2-38, title III, § 304, 24 DCR 6038; Oct. 23, 1997, D.C. Law 12-39, § 2(a), 44 DCR 4856; Apr. 20, 1999, D.C. Law 12-242, § 2(h), 46 DCR 952.)

**Effect of amendments.** — D.C. Law 12-39 added "and mediation" to the section heading; and added (c).

D.C. Law 12-242 added (d).

**Legislative history of Law 2-38.** — See note to § 1-2501.

**Legislative history of Law 12-39.** — Law 12-39, the "Human Rights Amendment Act of

1997," was introduced in Council and assigned Bill No. 12-143, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 3, 1997, and July 1, 1997, respectively. Signed by the Mayor on July 18, 1997, it was assigned Act No. 12-143 and transmitted to both Houses of Congress for its review. D.C. Law 12-39 became effective on October 23, 1997.

**Legislative history of Law 12-242.** — See note to § 1-2501.

**One-year limitation period applies to actions at law commenced under Human Rights Act.** *Davis v. Potomac Elec. Power Co.*, App. D.C., 449 A.2d 278 (1982); *Parker v. B & O R.R.*, 555 F. Supp. 1182 (D.D.C. 1983).

Where employee failed to file a complaint alleging violations under the District of Columbia Human Rights Act within 1 year of his discharge, his claim is time-barred. *Prouty v. National R.R. Passenger Corp.*, 572 F. Supp. 200 (D.D.C. 1983).

Where plaintiff conceded that she knew of the unequal treatment and recognized the need to assert her rights more than five years before she filed an EEOC charge, she could not base her claims of race discrimination and retaliation on those events, since they fell outside of the statute of limitations. *Villines v. United Bhd. of Carpenters & Joiners*, 999 F. Supp. 97 (D.D.C. 1998).

**Statute of limitations is tolled during the pendency of an action** before the Office of Human Rights. *Alder v. Columbia Historical Soc'y*, 690 F. Supp. 9 (D.D.C. 1988), but see, *Rafferty v. NYNEX Corp.*, 60 F.3d 844 (D.C. Cir. 1995).

**Equitable tolling not available.** — Even assuming the applicability of equitable tolling principles where the employer fails to post notice in compliance with the District of Columbia Human Rights Act, equitable tolling would not be available where plaintiff failed to file court action within a reasonable time after she obtained — or by due diligence could have obtained — the information necessary to file her complaint. *East v. Graphic Arts Indus. Joint Pension Trust*, App. D.C., 718 A.2d 153 (1998).

**Statute of limitations was not tolled** due to claimant's homelessness for several months after originally filing complaint especially where, despite her homelessness, the claimant was able to pursue other government claims. *Holland v. Western Dev. Corp.*, 799 F. Supp. 181 (D.D.C. 1992).

Statute of limitations was not tolled by claimant's reliance on single statement of government official that she must conclude unemployment claims proceedings in order to pursue discrimination claim where unemployment proceedings lasted for three years and plaintiff

failed to verify that this delay was not jeopardizing her discrimination claim. To file anything requiring action from a government agency and then to ignore it completely for three years defies common sense no matter what one may have been told at the time of filing. *Holland v. Western Dev. Corp.*, 799 F. Supp. 181 (D.D.C. 1992).

**Civil rights claim began to run on date of discharge.** — Where university employee was dismissed by the university and was unable to allege any separate acts of discrimination occurring after date of discharge, statute of limitations on civil rights claim began to run from date of discharge. *Jones v. Howard Univ.*, App. D.C., 574 A.2d 1343 (1990).

A party contesting any decision of the Rental Accommodations and Conversion Division cannot seek direct review of that decision in either the superior court or this appellate court but must first take an appeal to the Rental Housing Commission (RHC); the final decision of the RHC may then, and only then, be brought directly to this court by the filing of a petition for review under subsection (a). *Mack v. Zalco Realty, Inc.*, App. D.C., 630 A.2d 1136 (1993).

**Discovery rule does not apply.** — Discovery rule does not apply to circumstances where plaintiff failed to discover relevant law even though the existence of an injury is apparent; the focus of the rule is on when plaintiff gained general knowledge that employer's action was wrongful, not when she learned of precise legal remedies. *East v. Graphic Arts Indus. Joint Pension Trust*, App. D.C., 718 A.2d 153 (1998).

Employee's general knowledge that termination was improper was enough to require her to seek legal assistance, and failure to seek such advice does not toll the statute of limitations under the discovery rule. *East v. Graphic Arts Indus. Joint Pension Trust*, App. D.C., 718 A.2d 153 (1998).

**Effect of dismissal.** — A decision by the agency administering the District of Columbia Human Rights Act not to commit scarce prosecutorial resources to a trial-type hearing before the Human Rights Commission, where in its judgment the complainant could be made whole informally, is an exercise of prosecutorial discretion. Thus, a person whose complaint has been dismissed on grounds of administrative convenience retains the right to bring suit as if no complaint had been filed. *Timus v. District of Columbia Dep't of Human Rights*, App. D.C., 633 A.2d 751 (1993).

**Effect of failure to post requisite notice.** — The Court of Appeals for the District of Columbia would have to determine whether or under what circumstances the failure to post the requisite notice under § 1-2522 may provide justification for equitable tolling of the statute of limitations. *East v. Graphic Arts*

Indus. Joint Pension Trust, 107 F.3d 911 (D.C. Cir. 1997).

**Constructive discharge.** — The nature of constructive discharge requires that any adverse employment action compelling employee to retire necessarily had to occur on or prior to the day that employee decided to retire; thus, the limitations period began at the point when employee decided to retire and gave employer notice of that decision. *Hancock v. Bureau of Nat'l Affairs, Inc.*, App. D.C., 645 A.2d 588 (1994).

**Ongoing behavior resulting in constructive termination.** — Discrimination and retaliation claims were not time-barred where the alleged sex discrimination and retaliation were ongoing behavior, continuing until the time of plaintiff's constructive termination, which was within the one-year limitation period. *Ravinsky v. Karalekas*, 741 F. Supp. 978 (D.D.C. 1990).

**One act did not constitute continuing violation.** — One discriminatory act of failing to close on a purchase agreement contract does not constitute a continuing violation of the District of Columbia Human Rights Act for purposes of tolling the statute of limitations. *Molvinsky v. Monterey Coop.*, App. D.C., 689 A.2d 531 (1996).

**Grievance proceedings did not toll statute of limitations.** — The availability of a grievance mechanism that enabled employee to seek reinstatement did not convert a final termination into a temporary suspension, and terminated employee could not toll statute of limitations on civil rights claim by seeking reinstatement through grievance proceedings. *Jones v. Howard Univ.*, App. D.C., 574 A.2d 1343 (1990).

**"Continuing violation" theory adopted for pay discrimination claims.** — The court adopted a "continuing violation" theory for equal pay discrimination claims, whereby the plaintiff suffers a denial of equal pay with each paycheck that is received; thus, so long as the plaintiff receives some salary payments within one year of filing the complaint, the equal pay claim will not be barred by the one-year statute of limitations for such claims. *Mackey v. Committee for Economic Development*, 126 WLR 1089 (Super. Ct. 1998).

**Federal civil rights actions.** — Because the District's Human Rights Act emphasizes interests that are inconsistent with, or of marginal relevance to, the policies informing the Federal Civil Rights Act, it would be inappropriate to borrow that Act's 1-year statute of limitations to govern federal civil rights actions. *Banks v. C & P Tel. Co.*, 802 F.2d 1416 (D.C. Cir. 1986).

Section 1981, Federal Civil Rights Act, claims are governed by the 1-year limitation specially provided by subsection (a) for civil

rights actions in the District of Columbia. *Keller v. Association of Am. Medical Colleges*, 644 F. Supp. 459 (D.D.C. 1985), *aff'd*, 802 F.2d 1483 (D.C. Cir. 1986).

Claims under 42 U.S.C. § 1981 are not barred by collateral estoppel where the issues were brought before the Office of Human Rights because proceedings before the Office of Human Rights, in contrast to proceedings before the Commission on Human Rights which are governed by the Administrative Procedures Act, § 1-1501 et seq., and are intended to be adjudicative, provide inadequate opportunities to litigate the factual issues. *Alder v. Columbia Historical Soc'y*, 690 F. Supp. 9 (D.D.C. 1988), but see, *Rafferty v. NYNEX Corp.*, 60 F.3d 844 (D.C. Cir. 1995).

Finding of no probable cause did not preclude plaintiff from litigating her 42 U.S.C. § 1981 claim in federal court where, upon remand, office found no jurisdiction. *Alder v. Columbia Historical Soc'y*, 690 F. Supp. 9 (D.D.C. 1988), but see, *Rafferty v. NYNEX Corp.*, 60 F.3d 844 (D.C. Cir. 1995).

**Prospective application of 1-year statute of limitations deemed justified under certain circumstances.** — Where, in 1979 when plaintiff filed his first complaint of discrimination, federal courts in the District of Columbia labored under the supposition that the District of Columbia would apply its residual 3-year statute of limitations to actions brought under the D.C. Human Rights Law, and consequently, they applied a 3-year statute of limitations to § 1981 actions, the District Court held that the confusion surrounding the applicable statute of limitations in 1979 justifies prospective application of the 1-year statute of limitations such that plaintiff's § 1981 claims are not barred. *Parker v. B & O R.R.*, 555 F. Supp. 1182 (D.D.C. 1983).

**Limitations suspended during pendency of administrative action.** — Where plaintiff withdrew her complaint from the Office of Human Rights and elected to seek redress through the judicial process, the 1-year statute of limitations was suspended during the pendency of plaintiff's administrative action and her claim under the Human Rights Act was not time-barred, even though filed more than 1 year from occurrence of the unlawful discriminatory practice. *Blake v. American College of Obstetricians & Gynecologists*, 608 F. Supp. 1239 (D.D.C. 1985), overruled on other grounds, *Banks v. C & P Tel. Co.*, 802 F.2d 1416 (1986).

**Delay caused by agency.** — Where the complainant's initial complaint was timely filed and agency representing her legal interests failed to amend complaint on timely notice of constructive discharge claim the Commission was not barred from acting under this section. *Atlantic Richfield Co. v. District of Columbia*

Comm'n on Human Rights, App. D.C., 515 A.2d 1095 (1986).

**Amended complaint alleging Human Rights Act violations for first time, held time-barred.** — because it could not relate back to a timely filed complaint merely alleging wrongful discharge since defendants could not have reasonably anticipated allegations of discrimination raised therein. *Sorrels v. Garfinckel, Brooks Bros. Miller & Rhoads*, 111 WLR 845 (Super. Ct.).

**Amendment adding claim under chapter not allowed.** — With little chance of a successful discrimination claim, the court did not abuse its discretion in concluding plaintiff was not entitled to add the claim to his complaint. A claim under D.C.'s Human Rights Act would have been futile, as he did not seek to amend his complaint until more than one year later. *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).

**Failure to meet time limitations.** — Plaintiff failed to meet the statutory time requirement for filing actions, where plaintiff admitted that all of the substantive discrimination allegedly caused took place a year before she filed, and where comments subsequently made did not qualify as retaliation or continuing harassment, because neither comment showed any attempt to further discriminate or retaliate and the comments were not made in the presence of the plaintiff. *Nelson-Cole v. Borg-Warner Sec. Corp.*, 881 F. Supp. 71 (D.D.C. 1995).

**Suit timely filed.** — Plaintiff's suit was timely filed, notwithstanding defendant's assertion that plaintiff was put on notice of the termination of her employment by letter more than one year before her action was filed, where the letter only advised her that her employment would be considered voluntarily terminated if she did not respond and plaintiff responded she was not voluntarily terminating her employment. *Stroman v. Blue Cross & Blue Shield Ass'n*, 966 F. Supp. 9 (D.D.C. 1997).

**Mutually exclusive jurisdiction of court under different provisions.** — The jurisdiction of the court, under § 1-2556, and the Office of Human Rights, under this section, are mutually exclusive in the first instance. *Brown v. Capitol Hill Club*, App. D.C., 425 A.2d 1309 (1981).

**Jurisdiction under Workers' Compensation Act.** — Unless a claimant's injuries clearly

are not compensable under the Workers' Compensation Act (WCA), the Department of Employee Services (DOES), not the Superior Court, has primary jurisdiction over employment-related claims by private employees who allege disabilities attributable to intentional infliction of emotional distress. *Estate of Underwood v. National Credit Union Admin.*, App. D.C., 665 A.2d 621 (1995).

That employee's common law tort claim for emotional distress was premised on the same events that underlaid her Human Rights Act claim for sexual harassment meant that her alleged disability fell outside the definition of disabling injuries as a matter of law, and employee was thus free to file suit for emotional distress in Superior Court rather than submitting that claim to the Department of Employment Services. *Estate of Underwood v. National Credit Union Admin.*, App. D.C., 665 A.2d 621 (1995).

The court erroneously applied the *Underwood* decision (see above) to include "mixed cause" claims of emotional injury "grounded only in part on sexual harassment"; such "mixed cause" claims may be compensable under the WCA. *Parkhurst v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 710 A.2d 854 (1998).

**Remedies.** — A person suffering discrimination may either pursue administrative remedies before the District of Columbia Office of Human Rights (OHR) or bring a private action in court. If the person elects to file a claim with the OHR, the OHR may award compensatory damages and attorneys' fees, but not punitive damages; if the person files a private civil action in the Superior Court, however, the court may grant such relief as it deems appropriate. *Arthur Young & Co. v. Sutherland*, App. D.C., 631 A.2d 354 (1993).

**Cited in** *Hughes v. C & P Tel. Co.*, 583 F. Supp. 66 (D.D.C. 1983); *Hobson v. Brennan*, 625 F. Supp. 459 (D.D.C. 1985); *Katradis v. Dav-El of Wash.*, D.C., 846 F.2d 1482 (D.C. Cir. 1988); *Anderson v. United States Safe Deposit Co.*, App. D.C., 552 A.2d 859 (1989); *Deskins v. Barry*, 729 F. Supp. 1 (D.D.C. 1989); *Weiss v. International Bhd. of Elec. Workers*, 729 F. Supp. 144 (D.D.C. 1990); *Saunders v. George Wash. Univ.*, 768 F. Supp. 854 (D.D.C. 1991); *Doe v. District of Columbia Comm'n on Human Rights*, App. D.C., 624 A.2d 440 (1993); *Washington Teachers' Union Local 6 v. Board of Educ.*, 109 F.3d 774 (D.C. Cir. 1997).

## § 1-2545. Investigation.

(a) With the exception of complaints alleging unlawful discrimination in residential real estate transactions brought pursuant to this chapter or the FHA, the Office shall serve, within 15 days of said filing, a copy thereof upon

the respondent, and upon all persons it deems to be necessary parties; and shall make prompt investigation in connection therewith.

(b) Within 120 days, after service of the complaint upon all parties thereto, the Office shall determine whether, in accord with its own rules, it has jurisdiction; and if so, whether there is probable cause to believe that the respondent has engaged or is engaging in an unlawful discriminatory practice.

(c) If the Office finds, with respect to any respondent, that it lacks jurisdiction or that probable cause does not exist the Director forthwith shall issue and cause to be served on the appropriate parties, an order dismissing the allegations of the complaint.

(d) The Office shall complete investigations of complaints alleging unlawful discrimination in residential real estate transactions brought pursuant to this chapter or the FHA, within 100 days after filing of the complaint. The Office shall notify the parties in writing of the reasons for not timely completing the investigation, if it is unable to or it becomes impracticable to complete the investigation within 100 days.

(e) The Office may join a person not named as an additional or substitute respondent upon written notice for complaints alleging unlawful discrimination in residential real estate transactions brought pursuant to this chapter or the FHA. The Office, in the notice to the respondent shall explain the basis for determining that the person is properly joined as a respondent.

(f) The complainant, respondent, or an aggrieved person on whose behalf the complaint was filed, for complaints alleging unlawful discrimination in residential real estate transactions or violations of the FHA, may elect to have the claims asserted in the complaint decided in a civil action.

(1) An election of remedies, pursuant to this subsection, shall be made no later than 20 days after the service of a charge, based on a finding of probable cause pursuant to the investigation of the complaint.

(2) The person making the election of remedies shall give notice by certified mail to the Director and to all parties to the complaint.

(g) If a timely election is made pursuant to subsection (f) of this section, the Director shall authorize, not later than 30 days after the election is made, and the Corporation Counsel shall file a civil action on behalf of the aggrieved party in the Superior Court of the District of Columbia. Venue for an action pursuant to this section shall be in the District of Columbia. Any aggrieved party may intervene in this court action. The Court may grant relief pursuant to § 1-2556(b) if the court finds that a discriminatory housing practice has occurred or is occurring. (1973 Ed., § 6-2285; Dec. 13, 1977, D.C. Law 2-38, title III, § 305, 24 DCR 6038; Apr. 20, 1999, D.C. Law 12-242, § 2(i), 46 DCR 952.)

**Section references.** — This section is referred to in §§ 1-2544 and 1-2557.

**Effect of amendments.** — D.C. Law 12-242, substituted "With the exception of complaints alleging unlawful discrimination in residential real estate transactions brought pursuant to this chapter or the FHA" for "After

the filing of any complaint" in (a); and added (d), (e), (f), and (g).

**Legislative history of Law 2-38.** — See note to § 1-2501.

**Legislative history of Law 12-242.** — See note to § 1-2501.

**Statute of limitations is tolled during**



the pendency of an action before the Office of Human Rights. *Alder v. Columbia Historical Soc'y*, 690 F. Supp. 9 (D.D.C. 1988), but see, *Rafferty v. NYNEX Corp.*, 60 F.3d 844 (D.C. Cir. 1995).

**Federal civil rights actions.** — Finding of no probable cause did not preclude plaintiff from litigating her 42 U.S.C. § 1981 claim in federal court where, upon remand, Office of Human Rights found no jurisdiction. *Alder v. Columbia Historical Soc'y*, 690 F. Supp. 9 (D.D.C. 1988), but see, *Rafferty v. NYNEX Corp.*, 60 F.3d 844 (D.C. Cir. 1995).

Cited in *Brown v. Capitol Hill Club*, App. D.C., 425 A.2d 1309 (1981); *McCormick v. District of Columbia*, 554 F. Supp. 640 (D.D.C. 1982); *Wisconsin Ave. Nursing Home v. District of Columbia Comm'n on Human Rights*, App. D.C., 527 A.2d 282 (1987); *New Travel, Inc. v. District of Columbia Office of Human Rights*, App. D.C., 530 A.2d 217 (1987); *Anderson v. United States Safe Deposit Co.*, App. D.C., 552 A.2d 859 (1989); *Harris v. District of Columbia Comm'n on Human Rights*, App. D.C., 562 A.2d 625 (1989).

## § 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.)

**Effect of amendments.** — D.C. Law 11-198 added the subsection designated herein as (e).

D.C. Law 12-39 added the first three sentences of (b); and repealed (d).

D.C. Law 12-242 added the subsection designated herein as (e).

**Temporary amendment of section.** — Section 2 of D.C. Law 11-226 added (d).

Section 1201(b) of D.C. Law 11-226 provided that the act shall expire after 225 days of its having taken effect, or upon the effective date of the Fiscal Year 1997 Budget Support Amend-

ment Act of 1996, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 402 of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

Section 1001 of D.C. Act 12-2 provides for the application of the act.

**Legislative history of Law 2-38.** — See note to § 1-2501.

**Legislative history of Law 11-198.** — Law 11-198, the "Fiscal Year 1997 Budget Support Act of 1996," was introduced in Council and assigned Bill No. 11-741, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 19, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 26, 1996, it was assigned Act No. 11-360 and transmitted to both Houses of Congress for its review. D.C. Law 11-198 became effective on April 9, 1997.

**Legislative history of Law 11-226.** — Law 11-226, the "Fiscal Year 1997 Budget Support Temporary Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-896. The Bill was adopted on first and second read-

ings on October 1, 1996, and November 7, 1996, respectively. Signed by the Mayor on December 4, 1996, it was assigned Act No. 11-453 and transmitted to both Houses of Congress for its review. D.C. Law 11-226 became effective on April 9, 1997.

**Legislative history of Law 12-39.** — See note to § 1-2544.

**Legislative history of Law 12-242.** — See note to § 1-2501.

**Failure of conciliation.** — The interpretation of the statutory phrase "failure of conciliation efforts" adopted by the Office of Human Rights (OHR), assumed a willingness of the complainant to conciliate and recognizes that conciliation failed (assuming OHR has determined such efforts to be warranted) only if the respondent either has refused to take part in conciliation or has offered a settlement that will not in fact remedy the alleged discrimination, and the complainant rejects it. *Timus v. District of Columbia Dep't of Human Rights*, App. D.C., 633 A.2d 751 (1993).

**Cited in** *Brown v. Capitol Hill Club*, App. D.C., 425 A.2d 1309 (1981); *Stevens Chevrolet, Inc. v. Commission on Human Rights*, App. D.C., 498 A.2d 546 (1985).

## § 1-2547. Injunctive relief.

If, at any time after a complaint has been filed, the Office believes that appropriate civil action to preserve the status quo or to prevent irreparable harm appears advisable, the Office shall certify the matter to the Corporation Counsel, who shall bring, in the name of the District of Columbia, any action necessary to preserve such status quo or to prevent such harm, including the seeking of temporary restraining orders and preliminary injunctions. The appropriate parties shall be notified of such certification and the complainant may initiate independently, or in cooperation with the Corporation Counsel, appropriate civil action to seek a temporary restraining order or preliminary injunction. (1973 Ed., § 6-2287; Dec. 13, 1977, D.C. Law 2-38, title III, § 307, 24 DCR 6038.)

**Legislative history of Law 2-38.** — See note to § 1-2501.

**Cited in** *Brown v. Capitol Hill Club*, App. D.C., 425 A.2d 1309 (1981).

## § 1-2548. Posting of notice of complaint in housing accommodation.

If a finding of probable cause has been made, as to a complaint of discrimination in housing, and the property owner, or his duly authorized agent, will not agree voluntarily to withhold from the market the subject housing accommodations for a period of 10 days from the date of such finding of probable cause, the Office may cause to be posted on the door of said housing accommodations for a period of 10 days from the date of said finding a notice

advising that said accommodations are the subject of a complaint before the Office and that prospective transferees will take such housing accommodations at their peril. Any destruction, defacement, alteration or removal of the notice thereof, by the owner or his agents, servants and employees, shall be punishable, upon conviction, by a fine of up to \$300, or by imprisonment for not more than 10 days, or both. (1973 Ed., § 6-2288; Dec. 13, 1977, D.C. Law 2-38, title III, § 308, 24 DCR 6038.)

**Legislative history of Law 2-38.** — See note to § 1-2501.

### § 1-2549. Service of process.

In all cases where the Office is required to effect service, it shall be accomplished by registered or certified mail, return receipt requested or by personal service and shall otherwise be in accordance with rules of the Office regarding service and notice. (1973 Ed., § 6-2289; Dec. 13, 1977, D.C. Law 2-38, title III, § 309, 24 DCR 6038.)

**Legislative history of Law 2-38.** — See note to § 1-2501.

**Cited in** *Gordon v. National Youth Work Alliance*, 675 F.2d 356 (D.C. Cir. 1982).

### § 1-2550. Notice of hearing.

In case of failure of conciliation efforts, or in advance of conciliation efforts, as determined by the Office, and after a finding of probable cause, the Office shall cause to be issued and served in the name of the Commission, a written notice, together with a copy of the complaint, as the same may have been amended, requiring the respondent to answer the charges of such complaint at a public hearing before 1 or more members of the Commission or before a hearing examiner, such hearing to be scheduled not less than 10 days or not more than 30 days after such service and at a place to be specified in such notice. Notice shall be served by registered or certified mail, return receipt requested, or by personal service. (1973 Ed., § 6-2290; Dec. 13, 1977, D.C. Law 2-38, title III, § 310, 24 DCR 6038.)

**Legislative history of Law 2-38.** — See note to § 1-2501.

**Cited in** *Brown v. Capitol Hill Club*, App. D.C., 425 A.2d 1309 (1981); *Gordon v. National Youth Work Alliance*, 675 F.2d 356 (D.C. Cir. 1982); *McCormick v. District of Columbia*, 554 F. Supp. 640 (D.D.C. 1982); *Williams v. District of Columbia*, App. D.C., 467 A.2d 140 (1983); *Wisconsin Ave. Nursing Home v. District of Columbia Comm'n on Human Rights*, App.

D.C., 527 A.2d 282 (1987); *Alder v. Columbia Historical Soc'y*, 690 F. Supp. 9 (D.D.C. 1988), but see, *Rafferty v. NYNEX Corp.*, 60 F.3d 844 (D.C. Cir. 1995); *Anderson v. United States Safe Deposit Co.*, App. D.C., 552 A.2d 859 (1989); *Harris v. District of Columbia Comm'n on Human Rights*, App. D.C., 562 A.2d 625 (1989); *American Univ. v. District of Columbia Comm'n on Human Rights*, App. D.C., 598 A.2d 416 (1991).

### § 1-2551. Hearing tribunal.

(a) After a complaint has been noticed for hearing, a hearing tribunal consisting of 3 members of the Commission, sitting as the Commission, shall be appointed to make a determination upon such complaint. At the discretion of

the Commission, 1 or more hearing examiners may be delegated to hear and report back to the Commission, on any case or question before the Commission.

(b) A hearing examiner may be an employee of the District government or may be selected from a list of qualified hearing examiners prepared by the Commission. Commission members may serve as hearing examiners. Hearing examiners shall be paid on a per diem basis, while actually sitting and hearing a case: Provided, that funds are available for such purpose. (1973 Ed., § 6-2291; Dec. 13, 1977, D.C. Law 2-38, title III, § 311, 24 DCR 6038.)

**Legislative history of Law 2-38.** — See note to § 1-2501.

**New hearing required whenever hearing examiner becomes unavailable.** — This section requires the Commission to hold a new (de novo) hearing whenever a hearing examiner becomes unavailable without first reporting his or her initial decision back to the agency, unless the agency can demonstrate that the credibility of witnesses plays no part in the agency's decision. The burden of persuading a reviewing court that credibility is not a factor shall remain with the agency at all times. *Stevens Chevrolet, Inc. v. Commission on Human Rights*, App. D.C., 498 A.2d 546 (1985).

**Scope of review.** — The Human Rights Commission's scope of review of the hearing

examiner's proposed decision is not limited to a determination whether his findings are supported by substantial evidence. *Harris v. District of Columbia Comm'n on Human Rights*, App. D.C., 562 A.2d 625 (1989).

The Human Rights Commission may not ignore the hearing examiner's assessment of the credibility of the witnesses and, without any explanation, substitute credibility findings of its own. *Harris v. District of Columbia Comm'n on Human Rights*, App. D.C., 562 A.2d 625 (1989).

Cited in *Alder v. Columbia Historical Soc'y*, 690 F. Supp. 9 (D.D.C. 1988), but see, *Rafferty v. NYNEX Corp.*, 60 F.3d 844 (D.C. Cir. 1995); *In re Banks*, App. D.C., 561 A.2d 158 (1987).

## § 1-2552. Conduct of hearing.

(a) The hearing shall be conducted in accordance with procedures promulgated pursuant to the Administrative Procedure Act (D.C. Code, § 1-1501 et seq.).

(b) The case in support of the complaint shall be presented by an agent or attorney of the Office.

(c) Any Commissioner or hearing examiner, who has participated in the investigation, conciliation or processing of a complaint, or has participated in any decision related to the merits of a complaint, may not sit with a hearing tribunal appointed to make a determination upon such complaint.

(d) Efforts at conciliation by the Office, or the parties, shall not be received in evidence.

(e) If the respondent fails to answer the complaint, the hearing tribunal, or the hearing examiner designated to conduct the hearing, may enter the default and the hearing shall proceed on the basis of the evidence in support of the complaint. Such default may be set aside only for good cause shown, and upon equitable terms and conditions. (1973 Ed., § 6-2292; Dec. 13, 1977, D.C. Law 2-38, title III, § 312, 24 DCR 6038.)

**Legislative history of Law 2-38.** — See note to § 1-2501.

**Commission has powers of adjudicatory body.** — The Human Rights Act gives the Commission on Human Rights all the powers of an adjudicatory body in this section through

§ 1-2554. *Parker v. National Corp. for Hous. Partnerships*, 619 F. Supp. 1061 (D.D.C. 1985).

**Claims previously adjudicated by Commission barred before U.S. District Court.** — The doctrine of administrative res judicata bars the relitigation in the U.S. District Court

of a plaintiff's claims under the District of Columbia Human Rights Act of 1977, which previously were adjudicated by the District of Columbia Commission on Human Rights acting in its judicial capacity. *Parker v. National Corp.*

for Hous. Partnerships, 619 F. Supp. 1061 (D.D.C. 1985).

Cited in *Alder v. Columbia Historical Soc'y*, 690 F. Supp. 9 (D.D.C. 1988), but see, *Rafferty v. NYNEX Corp.*, 60 F.3d 844 (D.C. Cir. 1995).

## § 1-2553. Decision and order.

(a)(1) If, at the conclusion of the hearing, the Commission determines that a respondent has engaged in an unlawful discriminatory practice or has otherwise violated the provisions of this chapter, the Commission shall issue, and cause to be served upon such respondent, a decision and order, accompanied by findings of fact and conclusions of law, requiring such respondent to cease and desist from such unlawful discriminatory practice, and to take such affirmative action, including but not limited to:

(A) The hiring, reinstatement or upgrading of employees, with or without back pay;

(B) The restoration to the membership in any respondent labor organization, admission to or participation in a program, apprenticeship training program, on-the-job training program or other occupational training or re-training program;

(C) The extension of full, equal and unsegregated accommodations, advantages, facilities and privileges to all persons;

(D) The payment of compensatory damages to the person aggrieved by such practice;

(E) The payment of reasonable attorney fees;

(E-1) The payment of civil penalties, which shall be deposited in the General Fund, according to the following schedule:

(i) In an amount not to exceed \$10,000 if the respondent has not been adjudged to have committed any prior unlawful discriminatory practice;

(ii) In an amount not to exceed \$25,000 if the respondent has been adjudged to have committed 1 other unlawful discriminatory practice during the 5-year period ending on the date of the filing of this charge; and

(iii) In an amount not to exceed \$50,000 if the respondent has been adjudged to have committed 2 or more unlawful discriminatory practices during the 7-year period ending on the date of the filing of this charge; and

(F) The payment of hearing costs, as, in the judgment of the Commission, will effectuate the purposes of this chapter, and including a requirement for a report as to the manner of compliance with such decision and order.

(2) With regard to compensatory damages, civil penalties, and attorneys fees, the Commission shall develop guidelines which shall be submitted to the Council for review prior to implementation.

(b) If, upon all the evidence, the Commission finds that a respondent has not engaged in any unlawful discriminatory practice, the Commission shall issue and cause to be served on the complainant, an order dismissing the complaint as to such respondent.

(c) Whenever a case has been heard by 1 or more hearing examiners who do not have the power to render a final order or decision, the Commissioners, assigned to decide the case, shall serve upon the parties a proposed order or

decision, including findings of fact and conclusions of law, with a notice providing that each party adversely affected may file exceptions and present arguments to the Commissioners, on a date not less than 10 days from the date of service of the proposed order or decision.

(d) Findings of fact and conclusions of law shall be supported by, and in accordance with, reliable, probative, and substantial evidence. (1973 Ed., § 6-2293; Dec. 13, 1977, D.C. Law 2-38, title III, § 313, 24 DCR 6038; Oct. 23, 1997, D.C. Law 12-39, § 2(c), 44 DCR 4856.)

**Section references.** — This section is referred to in § 1-2556.

**Effect of amendments.** — D.C. Law 12-39 inserted (a)(1)(E-1); and inserted "civil penalties" in (a)(2).

**Legislative history of Law 2-38.** — See note to § 1-2501.

**Legislative history of Law 12-39.** — See note to § 1-2544.

**Compensatory damages and attorneys' fees guidelines approved.** — Pursuant to Resolution 4-637, the "Commission on Human Rights Compensatory Damages and Attorneys' Fees Approved Resolution of 1982", effective October 19, 1982, the Council approved the proposed guidelines concerning compensatory damages and attorneys' fees which were transmitted from the Commission to the Council on May 10, 1982.

**Compensatory damages, civil penalties, and attorney's fees approved.** — Proposed Resolution 12-1237 (R12-838), the "District of Columbia Commission on Human Rights Compensatory Damages, Civil Penalties, and Attorneys' Fees Approval Resolution of 1998", was deemed approved, effective December 15, 1998.

**Scope of section.** — This section does not pertain to judicial proceedings but rather concerns only the decisions and orders of the District of Columbia Commission on Human Rights. *Thompson v. International Ass'n of Machinists & Aerospace Workers*, 664 F. Supp. 578 (D.D.C. 1987).

**Commission has powers of adjudicatory body.** — The Human Rights Act gives the Commission on Human Rights all the powers of an adjudicatory body in §§ 1-2552 through 1-2554. *Parker v. National Corp. for Hous. Partnerships*, 619 F. Supp. 1061 (D.D.C. 1985).

**Claims previously adjudicated by Commission barred before U.S. District Court.** — The doctrine of administrative res judicata bars the relitigation in the U.S. District Court of a plaintiff's claims under the District of Columbia Human Rights Act of 1977, which previously were adjudicated by the District of Columbia Commission on Human Rights acting in its judicial capacity. *Parker v. National Corp. for Hous. Partnerships*, 619 F. Supp. 1061 (D.D.C. 1985).

**Scope of allowable damages.** — The jury is entitled to include a sum for emotional distress and humiliation that plaintiff suffered as a result of her wrongful termination; recovery for damages is not limited to a back pay determination, but may include compensatory damages in the normal tort sense, and in appropriate circumstances, punitive damages may even be recovered. *Green v. Howard Univ.*, 121 WLR 629 (Super. Ct. 1992).

**Right to jury.** — Money damages contemplated by this section are not ancillary to equitable relief but a legal remedy thereby bringing actions under this chapter under the Seventh Amendment right to a jury. *Green v. American Broadcasting Cos.*, 647 F. Supp. 1359 (D.D.C. 1986).

**Burden of proof on damages.** — It is the complainant's burden to present evidence demonstrating the amount of his damages, but once such evidence has been presented, the burden shifts to the defendant to establish the amount by which those damages should be reduced to reflect the complainant's interim earnings or to show his failure to take reasonable efforts to mitigate his damages by finding alternative employment. *Wisconsin Ave. Nursing Home v. District of Columbia Comm'n on Human Rights*, App. D.C., 527 A.2d 282 (1987).

**Back pay award.** — Ordinarily a victim of discriminatory discharge is entitled to receive back pay, i.e., the salary that he would have received from the employer but for the unlawful discriminatory acts. A back pay award should equal the salary the complainant would have received from the time of the violation until the date on which the Commission on Human Rights issues its final order, minus the complainant's actual interim earnings or the amounts he would have earned had he diligently sought other work. *Wisconsin Ave. Nursing Home v. District of Columbia Comm'n on Human Rights*, App. D.C., 527 A.2d 282 (1987).

**Alternative employment.** — In the absence of extenuating circumstances, such as unreasonable working conditions, a voluntary termination of employment represents a choice to incur a loss of earnings in violation of the employee's duty to make reasonable efforts to mitigate damages. Such a rationale would obviously not apply where the complainant is

terminated from his substitute employment through no fault of his own; there is a point at which employment is of such duration that it cannot be considered short-lived or interim in nature; however, the complainants' employment of 1 month or less is short of the duration of subsequent employment that suffices to breach the causal chain that links wrongful termination with later joblessness. *Wisconsin Ave. Nursing Home v. District of Columbia Comm'n on Human Rights*, App. D.C., 527 A.2d 282 (1987).

**Punitive damages.** — This chapter does not limit a court to the remedies set forth under subsection (a); therefore, the court did not strike punitive damages claim. *Green v. American Broadcasting Cos.*, 647 F. Supp. 1359 (D.D.C. 1986).

Compensatory damages and punitive damages are not merely ancillary under an equitable relief scheme in the District of Columbia Human Rights Act, but are coequal and significant aspects of relief to which a plaintiff is entitled. *Holt v. Life Care Servs. Corp.*, 121 WLR 1497 (Super. Ct. 1993).

As § 1-2556 authorizes a court to grant relief in actions under the Human Rights Act beyond the relief described in subsection (a) of this section, an award of punitive damages in an egregious case of unlawful discrimination would be justified. *Holt v. Life Care Servs. Corp.*, 121 WLR 1497 (Super. Ct. 1993).

A person suffering discrimination may either pursue administrative remedies before the District of Columbia Office of Human Rights (OHR) or bring a private action in court. If the person elects to file a claim with the OHR, the OHR may award compensatory damages and attorneys' fees, but not punitive damages; if the person files a private civil action in the Superior Court, however, the court may grant such relief as it deems appropriate. *Arthur Young & Co. v. Sutherland*, App. D.C., 631 A.2d 354 (1993).

**Attorney's fees.** — Plaintiff is entitled to reasonable attorney's fees as the prevailing party although the jury awarded no damages. *Best v. Howard Univ.*, 114 WLR 2689 (Super. Ct.).

Fees in excess of the amount of damages recovered are not necessarily unreasonable and need not be proportionate to those damages. *Best v. Howard Univ.*, 114 WLR 2689 (Super. Ct.).

The most critical factor in determining the reasonableness of a fee award is the degree of success obtained; in assessing the degree of success, two questions must be addressed. First, whether the plaintiff failed to prevail on claims that were unrelated to the claims on which he succeeded, and second, whether the plaintiff achieved a level of success that made the hours reasonably expended a satisfactory

basis for making a fee award. *Goos v. National Ass'n of Realtors*, 997 F.2d 1565 (D.C. Cir. 1993).

Absent evidence of a discounted rate to reflect noneconomic goals and in light of testimony that a lawyer's customary rate was in line with community rates, the lawyer was entitled to fees at the contractual rate, as opposed to prevailing market rates. *Goos v. National Ass'n of Realtors*, 997 F.2d 1565 (D.C. Cir. 1993).

In assessing the fees for related claims, if successful and unsuccessful claims share a common core of facts, a court should simply compute the appropriate fee as a function of degree of success. *Goos v. National Ass'n of Realtors*, 997 F.2d 1565 (D.C. Cir. 1993).

Where fee applicants' counsel lack an established billing history, they may collect fees based upon the prevailing market rates in the relevant community. *Shepherd v. ABC*, 862 F. Supp. 505 (D.D.C. 1994).

Fact that prevailing parties' counsel took a case on contingency did not entitle them to their claimed 200% enhancement of the lodestar amount; such contingency enhancements are not permitted in the District of Columbia under federal fee-shifting statutes, and rules governing the determination of federal fee awards routinely govern District of Columbia Human Rights Act (DCHRA) fee awards. *Shepherd v. ABC*, 862 F. Supp. 486 (D.D.C. 1994).

Although plaintiffs stated that they were seeking attorney fees under Title VII, 42 U.S.C. § 2000e-5(k), the Title VII fee provision was not applicable because plaintiffs brought their suit under the District of Columbia's Human Rights Act (DCHRA), not Title VII; despite plaintiffs' accidental misnomer of their fee claim, they were entitled to fees under DCHRA. *Shepherd v. ABC*, 862 F. Supp. 505 (D.D.C. 1994).

In an action under the Human Rights Act, wherein the jury awarded plaintiffs compensatory and punitive damages for sex discrimination in the form of harassment and retaliation, the court granted attorneys' fees at the rate requested. *Drake v. Henkels & McCoy, Inc.*, 125 WLR 433 (Super. Ct. 1997).

**Cited in Greater Wash. Bus. Ctr. v. District of Columbia Comm'n on Human Rights, App. D.C., 454 A.2d 1333 (1982); *NBC v. District of Columbia Comm'n on Human Rights*, App. D.C., 463 A.2d 657 (1983); *Thompson v. International Ass'n of Machinists & Aerospace Workers*, 614 F. Supp. 1002 (D.D.C. 1985); *Harris v. District of Columbia*, 652 F. Supp. 154 (D.D.C. 1986); *Alder v. Columbia Historical Soc'y*, 690 F. Supp. 9 (D.D.C. 1988), but see, *Rafferty v. NYNEX Corp.*, 60 F.3d 844 (D.C. Cir. 1995); *Harris v. District of Columbia Comm'n on Human Rights*, App. D.C., 562 A.2d 625 (1989); *American Univ. v. District of Columbia***

Comm'n on Human Rights, App. D.C., 598 A.2d 416 (1991).

## § 1-2554. Judicial review.

Any person suffering a legal wrong, or adversely affected or aggrieved by an order or decision of the Commission in a matter pursuant to the provisions of this chapter, is entitled to a judicial review thereof, in accordance with § 1-1510, upon filing, in the District of Columbia Court of Appeals, a written petition for such review. (1973 Ed., § 6-2294; Dec. 13, 1977, D.C. Law 2-38, title III, § 314, 24 DCR 6038.)

**Section references.** — This section is referred to in § 1-2555.

**Legislative history of Law 2-38.** — See note to § 1-2501.

**Human Rights Act does not expand the scope of court's jurisdiction** beyond that conferred by the Administrative Procedure Act (D.C. Code, § 1-1501 et seq.). *Lamont v. Rogers*, App. D.C., 479 A.2d 1274 (1984).

**Office of Human Rights findings.** — An Office of Human Rights' finding of no probable cause is subject to judicial review. *Simpson v. District of Columbia Office of Human Rights*, App. D.C., 597 A.2d 392 (1991).

**Commission has powers of adjudicating body.** — The Human Rights Act gives the Commission on Human Rights all the powers of an adjudicatory body in § 1-2552 through this section. *Parker v. National Corp. for Hous. Partnerships*, 619 F. Supp. 1061 (D.D.C. 1985).

**Claims previously adjudicated by Commission barred before U.S. District Court.** — The doctrine of administrative res judicata bars the relitigation in the U.S. District Court of a plaintiff's claims under the District of Columbia Human Rights Act of 1977, which previously were adjudicated by the District of Columbia Commission on Human Rights acting in its judicial capacity. *Parker v. National Corp. for Hous. Partnerships*, 619 F. Supp. 1061 (D.D.C. 1985).

**Discrimination claims based on personal appearance and family responsibility beyond jurisdiction of court.** *Lamont v. Rogers*, App. D.C., 479 A.2d 1274 (1984).

**Scope of judicial review.** — The Court of Appeal's review of an order of the Commission on Human Rights includes deciding all relevant questions of law and determining whether the

Commission's findings of fact are supported by substantial evidence. *Wisconsin Ave. Nursing Home v. District of Columbia Comm'n on Human Rights*, App. D.C., 527 A.2d 282 (1987).

After the Human Rights Commission has issued its final decision, the Court of Appeals may review the Commission's factual findings to determine whether there is substantial evidence to support them. *Harris v. District of Columbia Comm'n on Human Rights*, App. D.C., 562 A.2d 625 (1989).

The court's role under the Human Rights Act (HRA), when the plaintiff is a District employee, is limited to judicial review of the underlying Commission on Human Rights decision, and the HRA provides for judicial review only in the District of Columbia Court of Appeals. *Deskins v. Barry*, 729 F. Supp. 1 (D.D.C. 1989).

**Jury trial.** — Money damages contemplated by § 1-2553 are not ancillary to equitable relief but a legal remedy thereby bringing actions under this chapter under the Seventh Amendment right to a jury. *Green v. American Broadcasting Cos.*, 647 F. Supp. 1359 (D.D.C. 1986).

**Cited in** *Brown v. Capitol Hill Club*, App. D.C., 425 A.2d 1309 (1981); *NBC v. District of Columbia Comm'n on Human Rights*, App. D.C., 463 A.2d 657 (1983); *Williams v. District of Columbia*, App. D.C., 467 A.2d 140 (1983); *Karson v. Prime Rib, Inc.*, 111 WLR 1677 (Super. Ct.); *Parker v. National Corp. for Hous. Partnerships*, 619 F. Supp. 1061 (D.D.C. 1985); *Kennedy v. Barry*, App. D.C., 516 A.2d 176 (1986), rev'd on other grounds sub nom. *Kennedy v. District of Columbia*, App. D.C., 654 A.2d 847 (1994); *Parker v. National Corp. for Hous. Partnerships*, 697 F. Supp. 5 (D.D.C. 1988).

## § 1-2555. Enforcement of order.

(a) The decision and order of the Commission shall be served on the respondent, with notice that, if the Commission determines that the respondent has not, after 30 calendar days following service of its order, corrected the unlawful discriminatory practice and complied with the order, the Commission



will certify the matter to the Corporation Counsel, and to such other agencies as may be appropriate for enforcement.

(b) The Corporation Counsel shall institute, in the name of the District, civil proceedings including the seeking of such restraining orders and temporary or permanent injunctions, as are necessary to obtain complete compliance with the Commission's orders. In the event that successful civil proceedings do not result in securing such compliance, the Corporation Counsel shall institute criminal action.

(c) No enforcement action shall be instituted pending review as provided in § 1-2554.

(d) Nothing in this section shall be construed to deprive any person of rights in the criminal justice process. (1973 Ed., § 6-2295; Dec. 13, 1977, D.C. Law 2-38, title III, § 315, 24 DCR 6038.)

**Section references.** — This section is referred to in § 1-2557.

**Legislative history of Law 2-38.** — See note to § 1-2501.

### § 1-2556. Private cause of action.

(a) Any person claiming to be aggrieved by an unlawful discriminatory practice shall have a cause of action in any court of competent jurisdiction for damages and such other remedies as may be appropriate, unless such person has filed a complaint hereunder; provided, that where the Office has dismissed such complaint on the grounds of administrative convenience, or where the complainant has withdrawn a complaint, such person shall maintain all rights to bring suit as if no complaint had been filed. No person who maintains, in a court of competent jurisdiction, any action based upon an act which would be an unlawful discriminatory practice under this chapter may file the same complaint with the Office. A private cause of action pursuant to this chapter shall be filed in a court of competent jurisdiction within one year of the unlawful discriminatory act, or the discovery thereof, except that the limitation shall be within 2 years of the unlawful discriminatory act, or the discovery thereof, for complaints of unlawful discrimination in real estate transactions brought pursuant to this chapter or the FHA. The timely filing of a complaint with the Office shall toll the running of the statute of limitations while the complaint is pending before the Office.

(b) The court may grant any relief it deems appropriate, including, the relief provided in §§ 1-2547 and 1-2553(a). (1973 Ed., § 6-2296; Dec. 13, 1977, D.C. Law 2-38, title III, § 316, 24 DCR 6038; Oct. 23, 1997, D.C. Law 12-39, § 2(d), 44 DCR 4856; Apr. 20, 1999, D.C. Law 12-242, § 2(k), 46 DCR 952.)

**Effect of amendments.** — D.C. Law 12-39 added the last two sentences of (a).

D.C. Law 12-242 in (a), rewrote the second to last sentence, and in the last sentence, deleted "one year" following "running of the"; and rewrote (b).

**Legislative history of Law 2-38.** — See note to § 1-2501.

**Legislative history of Law 12-39.** — See note to § 1-2544.

**Legislative history of Law 12-242.** — See note to § 1-2501.

**References in text.** — "This act," referred to in (a), is the "Human Rights Amendment Act of 1997," D.C. Law 12-39.

**Jurisdictional requirements.** — There is no jurisdictional limitation requiring persons who sue under the Human Rights Act to have a sufficient nexus with the District in order to provide a District of Columbia court with juris-

diction. *Matthews v. Automated Bus. Sys. & Servs.*, App. D.C., 558 A.2d 1175 (1989).

**Mutually exclusive jurisdiction of court under different provisions.** — The jurisdiction of the court, under this section, and the Office of Human Rights, under § 1-2544, are mutually exclusive in the first instance. *Brown v. Capitol Hill Club*, App. D.C., 425 A.2d 1309 (1981); *Parker v. National Corp. for Hous. Partnerships*, 697 F. Supp. 5 (D.D.C. 1988).

**Standing generally.** — Standing under the District of Columbia Human Rights Act is co-extensive with standing under Article III of the U.S. Constitution. The Supreme Court has construed the nearly identical language of the Civil Rights Act of 1968 ("any person who claims to have been injured") to confer standing to the full extent that Article III permits. *Molovinsky v. Fair Emp. Council of Greater Wash., Inc.*, App. D.C., 683 A.2d 142 (1996).

**Jury trial.** — It is assumed and taken for granted that the right to trial by jury is applicable to a case brought pursuant to the District of Columbia Human Rights Act. *Holt v. Life Care Servs. Corp.*, 121 WLR 1497 (Super. Ct. 1993).

**Election of remedies.** — This section requires an individual to elect between the filing of a complaint with the District of Columbia Office of Human Rights and the filing of a private cause of action. *Weaver v. Gross*, 605 F. Supp. 210 (D.D.C. 1985).

Police officer was required to exhaust administrative remedies under Human Rights Act and was not permitted to withdraw complaint before Office of Human Rights and file action in Superior Court. *Newman v. District of Columbia*, App. D.C., 518 A.2d 698 (1986).

A person suffering discrimination may either pursue administrative remedies before the District of Columbia Office of Human Rights (OHR) or bring a private action in court. If the person elects to file a claim with the OHR, the OHR may award compensatory damages and attorneys' fees, but not punitive damages; if the person files a private civil action in the Superior Court, however, the court may grant such relief as it deems appropriate. *Arthur Young & Co. v. Sutherland*, App. D.C., 631 A.2d 354 (1993).

A plaintiff may file suit in Superior Court seeking substantial damages — including punitive damages — without having to exhaust administrative remedies available through the Office of Human Rights. *Estate of Underwood v. National Credit Union Admin.*, App. D.C., 665 A.2d 621 (1995).

**Adjudicated administrative action bars judicial action.** — Since plaintiff filed a complaint with the D.C. Office of Human Rights and never withdrew his complaint, and the Office fully investigated the matter and reached a conclusion on the merits rather than

dismissing it on grounds of administrative convenience, plaintiff could not bring an action in court alleging violations of the D.C. Human Rights Act. *Hogue v. Roach*, 967 F. Supp. 7 (D.D.C. 1997).

**Federal civil action not barred by administrative adjudication.** — Plaintiff who could not bring an action in court alleging violations of the D.C. Human Rights Act because he filed a complaint with the D.C. Office of Human Rights which fully investigated the matter and reached a conclusion on the merits, could bring a claim under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq. *Hogue v. Roach*, 967 F. Supp. 7 (D.D.C. 1997).

**Action by District agency enforcing Act.** — District agency, Fair Employment Council, had standing to sue employer who allegedly was violating rights of applicants for compensatory damages for the frustration of its purpose in that it was required to divert resources to the investigation of the charges as well as employ additional counselors to assist those whose rights had been violated by the employer. *Molovinsky v. Fair Emp. Council of Greater Wash., Inc.*, App. D.C., 683 A.2d 142 (1996).

**Action by employees of District agency enforcing Act.** — Testers who were sent to apply at an employment agency to determine if violations of this act were taking place had standing to sue for the alleged violation of their rights under this act. *Molovinsky v. Fair Emp. Council of Greater Wash., Inc.*, App. D.C., 683 A.2d 142 (1996).

**Private right of action established by this section is available only to nongovernment employees.** *Williams v. District of Columbia*, App. D.C., 467 A.2d 140 (1983); *Dougherty v. Barry*, 604 F. Supp. 1424 (D.D.C. 1985).

The private right of action established by this section is not available to District of Columbia government employees. *Holland v. Board of Trustees*, 794 F. Supp. 420 (D.D.C. 1992).

Members of the Lottery Board, as D.C. government employees, had no private right of action against the defendants for ordering them to report to the Chief Financial Officer of the District rather than to the Lottery Board. *Brewer v. District of Columbia Fin. Responsibility & Mgt. Assistance Auth.*, 953 F. Supp. 406 (D.D.C. 1997).

**Sexual harassment may support action for emotional distress.** — Sexual harassment may be outrageous enough to support the cause of action for intentional infliction of emotional distress. *Howard Univ. v. Best*, App. D.C., 484 A.2d 958 (1984).

**Withdrawal of complaint before agency's disposition necessary to preserve cause of action.** — To preserve the right to bring action in court, withdrawal of the com-

plaint to the Office must occur prior to the agency's disposition. *Brown v. Capitol Hill Club*, App. D.C., 425 A.2d 1309 (1981); *Parker v. National Corp. for Hous. Partnerships*, 697 F. Supp. 5 (D.D.C. 1988).

A grievant who files an administrative complaint and then withdraws it in timely fashion is on no better footing than a grievant who passes up the administrative process and elects to sue. If the claimant does not commence suit until over a year after the allegedly discriminatory discharge, such suit would obviously be barred by the one year limitations period. *Anderson v. United States Safe Deposit Co.*, App. D.C., 552 A.2d 859 (1989).

A claimant who files a claim with the Office of Human Rights (OHR) may still file a lawsuit, but only if the administrative claim is withdrawn prior to completion of the OHR's investigation or if the OHR dismisses the complaint for administrative convenience. *Weiss v. International Bhd. of Elec. Workers*, 729 F. Supp. 144 (D.D.C. 1990).

Where plaintiffs filed administrative claims before commencing a civil action, but withdrew their administrative claims and amended their complaint to reflect that fact, defendants' claim of failure to exhaust administrative remedies lacked merit. *Rauh v. Coyne*, 744 F. Supp. 1186 (D.D.C. 1990).

**Dismissal of action proceeding in administrative forum.** — Action for remedies for intentional infliction of emotional distress was dismissed because: (1) The case is proceeding in an administrative forum, under a law that provides a comprehensive scheme for redress, and at this time, it is uncertain how much of the administrative claim will be resolved and compensated in the other tribunal; (2) consideration of tort claims would inevitably involve the court in the same facts that are being considered in the other tribunal, and this duplication of effort would squander judicial resources; (3) plaintiff may obtain full compensation in the other forum. *Locklear v. Dubliner, Inc.*, 721 F. Supp. 1342 (D.D.C. 1989).

A person whose complaint has been dismissed on grounds of administrative convenience retains the right to bring suit as if no complaint had been filed. *Timus v. District of Columbia Dep't of Human Rights*, App. D.C., 633 A.2d 751 (1993).

**Review of agency decisions.** — Section 1-1502(8) has the unmistakable effect that some agency actions — including dismissal under subsection (a) of this section — are not reviewable directly by the Court of Appeals even though this may erroneously deprive the complainant of a trial-type administrative hearing. *Timus v. District of Columbia Dep't of Human Rights*, App. D.C., 633 A.2d 751 (1993).

**Election of remedies bar not invoked.** — Where the status of the Office of Human Rights

initial finding of no probable cause was thrown into question by the remand by the Court of Appeals to the Office of Human Rights of the question of the interpretation of this section by the Office, and because of the Office of Human Rights subsequent incorrect finding of no jurisdiction, the Office of Human Rights had not properly reconsidered the merits of plaintiff's claim, plaintiff has not had a finding on the merits of her claim adequate to invoke the election of remedies bar to the suit. *Alder v. Columbia Historical Soc'y*, 690 F. Supp. 9 (D.D.C. 1988), but see, *Rafferty v. NYNEX Corp.*, 60 F.3d 844 (D.C. Cir. 1995).

**Scope of allowable damages.** — The jury is entitled to include a sum for emotional distress and humiliation that plaintiff suffered as a result of her wrongful termination; recovery for damages is not limited to a back pay determination, but may include compensatory damages in the normal tort sense, and in appropriate circumstances, punitive damages may even be recovered. *Green v. Howard Univ.*, 121 WLR 629 (Super. Ct. 1992).

**Punitive damages.** — This chapter does not limit a court to the remedies set forth under § 1-2553(a); therefore, the court did not strike punitive damages claim. *Green v. ABC*, 647 F. Supp. 1359 (D.D.C. 1986).

As this section authorizes a court to grant relief in actions under the Human Rights Act beyond the relief described in § 1-2553(a), an award of punitive damages in an egregious case of unlawful discrimination would be justified. *Holt v. Life Care Servs. Corp.*, 121 WLR 1497 (Super. Ct. 1993).

Compensatory damages and punitive damages are not merely ancillary under an equitable relief scheme in the District of Columbia Human Rights Act, but are coequal and significant aspects of relief to which a plaintiff is entitled. *Holt v. Life Care Servs. Corp.*, 121 WLR 1497 (Super. Ct. 1993).

Punitive damages are available in all discrimination cases under this chapter, subject only to the general principles governing any award of punitive damages. *Daka, Inc. v. Breiner*, App. D.C., 711 A.2d 86 (1998).

Where appropriate, an award of punitive damages would serve this chapter's broader purpose of eliminating discrimination in society. *Daka, Inc. v. Breiner*, App. D.C., 711 A.2d 86 (1998).

Punitive damages may be awarded only in cases where it is shown by clear and convincing evidence that employer's conduct was accompanied by requisite degree of malice or evil motive. *United Mine Workers of Am. v. Moore*, App. D.C., 717 A.2d 332 (1998).

**Punitive damages award not excessive.** — Where employee's ability to be effective was substantially diminished by severe and pervasive abusive conduct, an award of punitive

damages in the amount of \$390,000 was not excessive, even though it was 39 times greater than the compensatory damages award. *Daka, Inc. v. Breiner*, App. D.C., 711 A.2d 86 (1998).

**Attorney's fees.** — Fees in excess of the amount of damages recovered are not necessarily unreasonable and need not be proportionate to those damages. *Best v. Howard Univ.*, 114 WLR 2689 (Super. Ct.).

In an action under the Human Rights Act, wherein the jury awarded plaintiffs compensatory and punitive damages for sex discrimination in the form of harassment and retaliation, the court granted attorneys' fees at the rate requested. *Drake v. Henkels & McCoy, Inc.*, 125 WLR 433 (Super. Ct. 1997).

**Appellate review of award.** — Court's review of an award of compensatory damages is limited and highly deferential because the trial court has broad discretion to determine appropriate relief. *United Mine Workers of Am. v. Moore*, App. D.C., 717 A.2d 332 (1998).

**Cited in** *Karson v. Prime Rib, Inc.*, 111 WLR 1677 (Super. Ct. 1983); *Hughes v. C & P Tel. Co.*, 583 F. Supp. 66 (D.D.C. 1983); *National Org. for Women v. Mutual of Omaha Ins. Co.*, 612 F. Supp. 100 (D.D.C. 1985); *National Org. for Women v. Mutual of Omaha Ins. Co.*, App. D.C., 531 A.2d 274 (1987); *Rasul v. District of Columbia*, 680 F. Supp. 436 (D.D.C. 1988); *Paden v. Galloway*, App. D.C., 550 A.2d 1128 (1988); *Deskins v. Barry*, 729 F. Supp. 1 (D.D.C. 1989); *Spann v. Carley Capital Group*, 734 F. Supp. 1 (D.D.C. 1988); *Fair Emp. Council of Greater Wash., Inc. v. BMC Mktg. Corp.*, 28 F.3d 1268 (D.C. Cir. 1994); *Shepherd v. ABC*, 862 F. Supp. 486 (D.D.C. 1994); *Shepherd v. ABC*, 862 F. Supp. 505 (D.D.C. 1994); *East v. Graphic Arts Indus. Joint Pension Trust*, 107 F.3d 911 (D.C. Cir. 1997); *Martini v. Federal Nat'l Mtg. Ass'n*, 977 F. Supp. 482 (D.D.C. 1997); *East v. Graphic Arts Indus. Joint Pension Trust*, App. D.C., 718 A.2d 153 (1998).

## § 1-2557. Referral to licensing agencies.

(a) Whenever it appears that the holder of a permit, license, franchise, benefit, or advantage issued by any agency or authority of the government of the District is a person against whom the Office has made a finding of probable cause pursuant to § 1-2545, the Office, notwithstanding any other action it may take or may have taken under the authority of the provisions of this chapter, may refer to the proper agency or authority the facts and identities of all persons involved in the complaint for such action as such agency or authority, in its judgment, considers appropriate, based upon the facts thus disclosed to it.

(b) The Commission, upon a determination of a violation of any of the provisions of this chapter by a holder of, or applicant for any permit, license, franchise, benefit, exemption, or advantage issued by or on behalf of the government of the District of Columbia, and upon failure of the respondent to correct the unlawful discriminatory practice and comply with its order, in accordance with § 1-2555(a), shall refer this determination to the appropriate agency or authority. Such determination shall constitute prima facie evidence that the respondent, with respect to the particular business in which the violation was found, is not operating in the public interest. Such agency or authority shall, upon notification, issue to said holder or applicant an order to show cause why such privileges related to that business should not be revoked, suspended, denied or otherwise restricted. (1973 Ed., § 6-2297; Dec. 13, 1977, D.C. Law 2-38, title III, § 317, 24 DCR 6038.)

**Section references.** — This section is referred to in § 1-2517.

**Legislative history of Law 2-38.** — See note to § 1-2501.

## CHAPTER 26. YOUTH SERVICES.

Sec.	Sec.
1-2601. Definitions.	functions; appointment of Director; personnel.
1-2602. Purpose.	
1-2603. Office of Youth Opportunity Services abolished and functions transferred; Division of Community-Based Programs for Children and Youth established.	1-2605. Duties of Director.
1-2603.1. Neighborhood Planning Councils — Established; elections; tenure.	1-2606. Transfer of positions and funds.
1-2604. Office of Youth Advocacy established;	1-2607. Accounting and voucher systems.
	1-2608. Conflict of interest procedures.
	1-2609. Rules of operation for neighborhood planning councils.
	1-2610. Budget request.
	1-2611. Severability.

## § 1-2601. Definitions.

As used in this chapter, the term:

(1) "Youth" means those residents of the District of Columbia between the ages of 13 and 17, inclusive.

(2) "Children" means those residents of the District of Columbia ages 12 and under.

(3) "Neighborhood planning council" means the structure designated for adult and youth participation in the development, implementation, and evaluation of programs for children and youth, pursuant to Commissioner's Order No. 68-219, March 25, 1968, subject to modifications made by the Mayor pursuant to § 1-2603.1.

(4) "Councilmember" means any person 13 years and over who lives within the geographic area of a neighborhood planning council who has registered his/her name, address, and telephone number with that particular council.

(5) "Council of chairpersons" means the body of assembled chairpersons of each of the neighborhood planning councils.

(6) "Office," "Director," and other such terms mean the Office of Youth Advocacy, established in § 1-2604, and further specified in other parts of this chapter.

(7) "Division," "Director," and other such terms mean the Division of Community-Based Programs for Children and Youth of the Department of Recreation, established in § 1-2603, and further specified in other parts of this chapter. (1973 Ed., § 6-2001; Mar. 29, 1977, D.C. Law 1-93, § 2, 23 DCR 9532b; Mar. 16, 1993, D.C. Law 9-194, § 2(a), 39 DCR 9010.)

**Legislative history of Law 1-93.** — Law 1-93 was introduced in Council and assigned Bill No. 1-307, which was referred to the Committee on Education, Recreation and Youth Affairs. The Bill was adopted on first and second readings on July 27, 1976 and September 15, 1976, respectively. Enacted without signature by the Mayor on October 20, 1976, it was assigned Act No. 1-162 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 9-151.** — See note to § 1-2603.1.

**Legislative history of Law 9-194.** — See note to § 1-2603.1.

**Delegation of authority under D.C. Act 9-231, the District of Columbia Youth Services Act of 1976 Emergency Amendment Act of 1992.** — See Mayor's Order 92-102, September 4, 1992.

**§ 1-2602. Purpose.**

It is the purpose of this chapter to:

- (1) Promote and support programs for children and youth in existing agencies of the District of Columbia government;
  - (2) Reorganize the current pattern of programs and services for children and youth offered through the Office of Youth Advocacy;
  - (3) Ensure that an effective mechanism exists to facilitate youth employment;
  - (4) Provide a review and evaluation mechanism for existing services and programs for children and youth; and
  - (5) Promote and support programs for Hispanic youth in D.C. agencies.
- (1973 Ed., § 6-2002; Mar. 29, 1977, D.C. Law 1-93, § 3, 23 DCR 9532b.)

**Legislative history of Law 1-93.** — See note to § 1-2601.

**Grants for youth oriented programs.** — D.C. Law 10-195 authorized the Youth Initia-

tives Office to make grants to community based organizations for youth oriented programs and for other purposes in order to address the crisis affecting District of Columbia youth.

**§ 1-2603. Office of Youth Opportunity Services abolished and functions transferred; Division of Community-Based Programs for Children and Youth established.**

(a) The Commissioner's Order No. 70-93 (approved March 17, 1970) establishing the Office of Youth Opportunity Services, is hereby repealed and that Office is hereby abolished. All of the powers, duties, and functions assigned to that Office under any provision of law are hereby transferred to the departments and agencies as indicated in the following provisions of this chapter.

(b) There are hereby transferred to the Department of Recreation (Organization Order No. 10; Commissioner's Order No. 68-440, June 27, 1968, amended August 6, 1968, October 3, 1968, and March 14, 1970) the following functions, previously performed by the Office of Youth Opportunity Services:

- (1) Assist and facilitate programs for children and youth carried on by neighborhood planning councils (Commissioner's Order No. 68-219, March 25, 1968) and other community organizations including, but not limited to, any and all organizations providing services to Hispanic youth pursuant to programs, under programs, previously funded by the Office of Youth Opportunity Services, providing maximal community participation in decision-making;
- (2) As directed by the Mayor, conduct special and citywide youth programs; and
- (3) Operate juvenile delinquency prevention programs.

(c)(1) There is hereby established in the Department of Recreation, a Division of Community-Based Programs for Children and Youth, which shall provide administrative and operational support for programs for children and youth conducted by the neighborhood planning councils and other community organizations.

(2) The Division of Community-Based Programs for Children and Youth will have the responsibility for the administration of community recreational,

educational, cultural, and economic development programs of the neighborhood planning councils. All appropriated and grant funds for the operation of such programs will be administered separately within the Division, under the auspices of the Department of Recreation. All youth development block grant funds received by the District government from the federal Community Services Administration, as designated for such purposes, shall be obligated in programs for children and youth conducted by the neighborhood planning councils.

(3) Local program planning, project selection, and designation of project grants will be performed by the neighborhood planning councils. There will be an equitable allocation of funds, based on children and youth population, for each neighborhood planning council.

(4) The authority and fiscal responsibility to manage community elections for the neighborhood planning councils will be assigned to the Division of Community-Based Programs for Children and Youth, under the direction of the Department of Recreation.

(5) The Director of the Division of Community-Based Programs for Children and Youth shall be appointed by the Director of the Department of Recreation.

(6) The Division of Community-Based Programs for Children and Youth shall, in consultation with the council of chairpersons, prepare an operational manual for the development and implementation of programs.

(7) The Director of the Division of Community-Based Programs for Children and Youth will be responsible for coordinating all community-based programs for children and youth. Decisions on community program priorities will be made by each neighborhood planning council according to criteria specified in the operational manual developed by the Division. The Director of the Division of Community-Based Programs for Children and Youth will serve as liaison to the neighborhood planning councils and the council of chairpersons, and be accountable to both the neighborhood planning councils and the Department of Recreation for the effective administration of community-based programs for children and youth. The Director of the Division will insure that adequate technical assistance is available to the council of chairpersons and each neighborhood planning council.

(8) The neighborhood planning councils shall continue to abide by their uniform constitution and bylaws, consistent with this chapter and other District laws. Changes and amendments to the uniform constitution and by-laws shall be made only by the consent of the council of chairpersons.

(d) There are hereby transferred to the Department of Manpower (Organization Order No. 46, Commissioner's Order No. 74-144, June 29, 1974) the functions of the Office of Youth Opportunity Services relating to the coordination of programs designed to provide jobs for youth.

(e) There are hereby transferred to the School of Continuing Education, Federal City College, University of the District of Columbia (D.C. Law 1-36) the functions of the Office of Youth Opportunity Services with respect to the administration and supervision of the District of Columbia Street Academy.

(f) There are hereby assigned to the Board of Education of the District of Columbia the functions of the Office of Youth Opportunity Services with

respect to the summer lunch program for children and youth. (1973 Ed., § 6-2003; Mar. 29, 1977, D.C. Law 1-93, § 4, 23 DCR 9532b.)

**Section references.** — This section is referred to in § 1-2601.

**Legislative history of Law 1-93.** — See note to § 1-2601.

**References in text.** — D.C. Law 1-36, referred to in subsection (e), is the District of Columbia Public Postsecondary Education Reorganization Act Amendments.

### § 1-2603.1. Neighborhood Planning Councils — Established; elections; tenure.

(a) There shall be 2 neighborhood planning councils in each election ward established pursuant to § 1-1308. The Mayor, by rulemaking, shall draw boundaries for neighborhood planning councils, after each decennial census, so that they are approximately equal in population.

(b)(1) Regular elections for the neighborhood planning councils shall be held in even numbered years on a date set by the Mayor by rulemaking.

(2) Any neighborhood planning council member holding office immediately prior to June 19, 1992, may continue to hold office until a successor is elected and qualifies for office pursuant to this chapter. (Mar. 29, 1977, D.C. Law 1-93, § 4a, as added Mar. 16, 1993, D.C. Law 9-194, § 2(b), 39 DCR 9010.)

**Section references.** — This section is referred to in § 1-2601.

**Legislative history of Law 9-151.** — Law 9-151, the "District of Columbia Youth Services Act of 1976 Temporary Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-555. The Bill was adopted on first and second readings on June 2, 1992, and June 23, 1992, respectively. Signed by the Mayor on June 26, 1992, it was assigned Act No. 9-233 and transmitted to both Houses of Congress for its review. D.C. Law 9-151 became effective on September 15, 1992.

**Legislative history of Law 9-194.** — Law 9-194, the "District of Columbia Youth Services Act of 1976 Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-450, which was referred to the Committee on Public Services. The Bill was adopted on first and second readings on October 6, 1992, and November 4, 1992, respectively. Signed by the Mayor on November 23, 1992, it was assigned Act No. 9-315 and transmitted to both Houses of Congress for its review. D.C. Law 9-194 became effective on March 16, 1993.

### § 1-2604. Office of Youth Advocacy established; functions; appointment of Director; personnel.

(a) There is hereby established in the executive branch an Office of Youth Advocacy which shall perform a planning, review and evaluation function for all programs operated by the District of Columbia government impacting on children and youth, including employment, health, counseling recreation, and training.

(b) The Director of the Office of Youth Advocacy shall be appointed by the Mayor. The Director may hold no other public office.

(c) The following positions and their associated funding are hereby authorized to be transferred from the Office of Youth Opportunity Services to the Office of Youth Advocacy:

One special assistant to the Mayor  
(Subject to the prior approval of the  
Civil Service Commission pursuant  
to 5 U.S.C. § 5108.)

GS-16



One program analyst officer	GS-13
One education specialist	GS-12
One research assistant	GS-11
One program director	GS-11
Two field technical assistants	GS-9
One computer program analyst	GS-11
Two program analysts	GS-9
One secretary	GS-7

(d) Consistent with this chapter and other District laws, the Director may hire employees, assign work, and delegate the duties, exercise the powers, and carry out the functions of the Office.

(e) All positions and personnel so transferred shall continue to be governed by personnel legislation enacted by Congress, and rules and regulations promulgated pursuant thereto, until such time as the District government personnel system is established in accordance with § 1-242(3). Such positions and personnel may be reclassified, realigned, or found in excess and separated from the service in accordance with this chapter or an administrative order of the Director. (1973 Ed., § 6-2004; Mar. 29, 1977, D.C. Law 1-93, § 5, 23 DCR 9532b; Apr. 28, 1978, D.C. Law 2-75, § 2, 24 DCR 7498.)

**Section references.** — This section is referred to in §§ 1-2601 and 1-2605.

**Legislative history of Law 1-93.** — See note to § 1-2601.

**Legislative history of Law 2-75.** — Law 2-75 was introduced in Council and assigned Bill No. 2-119, which was referred to the Com-

mittee on Education, Recreation and Youth Affairs. The Bill was adopted on first and second readings on January 24, 1978 and February 7, 1978, respectively. Signed by the Mayor on February 24, 1978, it was assigned Act No. 2-153 and transmitted to both Houses of Congress for its review.

## § 1-2605. Duties of Director.

The Director of the Office shall:

(1) Systematically review and evaluate the full array of programs operated by the District of Columbia impacting on children and youth, as specified in § 1-2604(a);

(2) Plan and develop demonstration youth programs for transfer to other operating agencies upon their validation after no more than 3 years of operation;

(3) Present the interest of children and youth before other administrative and regulatory agencies and legislative bodies of the District of Columbia government;

(4) Assist, advise, and cooperate with local, federal, and private agencies to promote the interest of children and youth in the District of Columbia;

(5) Develop criteria for the validation of programs for children and youth which shall be widely disseminated and utilized in the review and evaluation of programs;

(6) Issue an annual report on the current status of programs for children and youth on a citywide basis, both governmental and private; and

(7) Perform such other functions and duties consistent with the purpose of this chapter which may be deemed necessary and appropriate to promote the

welfare of children and youth. (1973 Ed., § 6-2005; Mar. 29, 1977, D.C. Law 1-93, § 6, 23 DCR 9532b.)

**Legislative history of Law 1-93.** — See note to § 1-2601.

## § 1-2606. Transfer of positions and funds.

(a) The following positions and their associated funding are hereby transferred from the Office of Youth Opportunity Services to the Department of Manpower:

One deputy director	GS-15
One manpower specialist	GS-14
One computer systems analyst	GS-13
One program analyst officer	GS-12
One research assistant	GS-9
One research assistant	GS-7
Three clerks	GS-4

(b) The following positions and their associated funding, initially transferred in the Budget Act of 1977 to the Department of Manpower, are hereby transferred from the Office of Youth Opportunity Services to the Department of Recreation for the support of neighborhood planning council programs:

One recreation specialist	GS-14
One program analyst officer	GS-12
One social science analyst	GS-11
Two field technical assistants	GS-9
One secretary	GS-6
One clerk	GS-4

(c) The funds available to the Office of Youth Advocacy, Department of Manpower, Department of Recreation, Federal City College, and District of Columbia Public Schools to carry out the purposes of this chapter will be as delineated in the Budget Act of 1977, Act 1-94 (March 9, 1976) except as altered in subsections (a) and (b) of this section.

(d) All positions and personnel so transferred shall continue to be governed by personnel legislation enacted by Congress, and rules and regulations promulgated pursuant thereto, until such time as the District of Columbia government personnel system is established in accordance with § 1-242(3). Such positions and personnel may be reclassified or found in excess and separated from the service in accordance with this chapter or an administrative order of the directors or president of the aforementioned agencies and departments. (1973 Ed., § 6-2006; Mar. 29, 1977, D.C. Law 1-93, § 7, 23 DCR 9532b; Apr. 28, 1978, D.C. Law 2-75, § 2, 24 DCR 7498.)

**Legislative history of Law 1-93.** — See note to § 1-2601.

**Legislative history of Law 2-75.** — See note to § 1-2604.

**Editor's notes.** — "Federal City College", referred to in (c), has been merged into the University of the District of Columbia.

**§ 1-2607. Accounting and voucher systems.**

The Mayor shall instruct the Office of Budget and Resource Development to coordinate with the Department of Recreation the establishment of a book-keeping and accounting system to allow for timely allocation of monies from the District of Columbia government to neighborhood planning council programs, and shall establish a regular voucher system to facilitate the swift transference of funds from the District of Columbia government to the neighborhood planning councils. (1973 Ed., § 6-2007; Mar. 29, 1977, D.C. Law 1-93, § 8, 23 DCR 9532b.)

**Legislative history of Law 1-93.** — See note to § 1-2601.

**§ 1-2608. Conflict of interest procedures.**

The neighborhood planning councils shall, with the assistance of the Department of Recreation, establish procedures in their bylaws and constitution to handle conflicts of interest in the award of subgrants to programs, when any councilmember has either a structural or fiduciary relationship with a grant applicant or grantee. (1973 Ed., § 6-2008; Mar. 29, 1977, D.C. Law 1-93, § 9, 23 DCR 9532b.)

**Legislative history of Law 1-93.** — See note to § 1-2601.

**§ 1-2609. Rules of operation for neighborhood planning councils.**

The neighborhood planning councils shall establish, under the auspices of the Director of the Department of Recreation, uniform rules governing their operation and internal structure. These rules shall include a statement of neighborhood planning council responsibilities, voting procedures, the establishment of standing committees, the manner of selecting chairpersons and other officers, procedures for prompt review and action on committee recommendations, and procedures for receipt and action upon community recommendations at both the local neighborhood planning council and citywide council of chairpersons levels. Said rules shall be filed with the Director of the Department of Recreation and published in the D.C. Register. (1973 Ed., § 6-2009; Mar. 29, 1977, D.C. Law 1-93, § 10, 23 DCR 9532b.)

**Legislative history of Law 1-93.** — See note to § 1-2601.

**§ 1-2610. Budget request.**

The Department of Recreation shall develop an annual fiscal year budget request to administer and support programs of the neighborhood planning councils; such budget requests shall be submitted to the neighborhood planning councils each year for their review and comment. The budget shall be

submitted by the Mayor to the Council, accompanied by such comments, on such date which may be required to conform with the District of Columbia budget schedule. (1973 Ed., § 6-2010; Mar. 29, 1977, D.C. Law 1-93, § 11, 23 DCR 9532b.)

**Legislative history of Law 1-93.** — See note to § 1-2601.

**§ 1-2611. Severability.**

If any provision of this chapter is held invalid, the remainder of this chapter shall not be affected. (1973 Ed., § 6-2011; Mar. 29, 1977, D.C. Law 1-93, § 12, 23 DCR 9532b.)

**Legislative history of Law 1-93.** — See note to § 1-2601.

## CHAPTER 26A. COMMISSION ON YOUTH AFFAIRS.

Sec.

1-2621 to 1-2629. [Repealed.]

**§ 1-2621. Definitions.**

Repealed.

(Mar. 16, 1989, D.C. Law 7-227, § 2, 36 DCR 607; Apr. 29, 1998, D.C. Law 12-86, § 401, 45 DCR 1172.)

**Legislative history of Law 12-86.** — Law 12-86, the "Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-458, which was referred to the Committee on Public Works and the Environment and the Committee on Consumer and Regulatory Affairs. The Bill was

adopted on first and second readings on December 19, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 21, 1998, it was assigned Act No. 12-256 and transmitted to both Houses of Congress for its review. D.C. Law 12-86 became effective on April 29, 1998.

**§ 1-2622. Commission on Youth Affairs; established.**

Repealed.

(Mar. 16, 1989, D.C. Law 7-227, § 3, 36 DCR 607; Apr. 29, 1998, D.C. Law 12-86, § 401, 45 DCR 1172.)

**Legislative history of Law 12-86.** — See note to § 1-2621.

**§ 1-2623. Powers and duties of Commission.**

Repealed.

(Mar. 16, 1989, D.C. Law 7-227, § 4, 36 DCR 607; Apr. 29, 1998, D.C. Law 12-86, § 401, 45 DCR 1172.)

**Legislative history of Law 12-86.** — See note to § 1-2621

**§ 1-2624. Donation and grants.**

Repealed.

(Mar. 16, 1989, D.C. Law 7-227, § 5, 36 DCR 607; Apr. 29, 1998, D.C. Law 12-86, § 401, 45 DCR 1172.)

**Legislative history of Law 12-86.** — See note to § 1-2621.

**§ 1-2625. Interdepartmental advisory committee.**

Repealed.

(Mar. 16, 1989, D.C. Law 7-227, § 6, 36 DCR 607; Apr. 29, 1998, D.C. Law 12-86, § 401, 45 DCR 1172.)

**Legislative history of Law 12-86.** — See note to § 1-2621.

**§ 1-2626. Expenses of Commission members.**

Repealed.

(Mar. 16, 1989, D.C. Law 7-227, § 7, 36 DCR 607; Apr. 29, 1998, D.C. Law 12-86, § 401, 45 DCR 1172.)

**Legislative history of Law 12-86.** — See note to § 1-2621.

**§ 1-2627. Staffing and budget.**

Repealed.

(Mar. 16, 1989, D.C. Law 7-227, § 8, 36 DCR 607; Apr. 29, 1998, D.C. Law 12-86, § 401, 45 DCR 1172.)

**Legislative history of Law 12-86.** — See note to § 1-2621.

**§ 1-2628. Biannual reports.**

Repealed.

(Mar. 16, 1989, D.C. Law 7-227, § 9, 36 DCR 607; Apr. 29, 1998, D.C. Law 12-86, § 401, 45 DCR 1172.)

**Legislative history of Law 12-86.** — See note to § 1-2621.

**§ 1-2629. Rules.**

Repealed.

(Mar. 16, 1989, D.C. Law 7-227, § 10, 36 DCR 607; Apr. 29, 1998, D.C. Law 12-86, § 401, 45 DCR 1172.)

**Legislative history of Law 12-86.** — See note to § 1-2621.

## CHAPTER 27. PUBLIC DEFENDER SERVICE.

Sec.	Sec.
1-2701. Redesignation of Legal Aid Agency as Public Defender Service.	1-2705. Employment of attorneys and other personnel; compensation; private practice by attorneys not permitted.
1-2702. Persons who may be represented; appointment of private attorneys; determination of financial eligibility.	1-2706. Annual report and audit.
1-2703. Board of Trustees.	1-2707. Appropriation; public grants and private contributions.
1-2704. Director and Deputy Director; appointment; duties; membership in bar required.	1-2708. Transition provisions.

### § 1-2701. Redesignation of Legal Aid Agency as Public Defender Service.

The Legal Aid Agency for the District of Columbia is redesignated the District of Columbia Public Defender Service (hereafter in this chapter referred to as the "Service"). (July 29, 1970, 84 Stat. 654, Pub. L. 91-358, title III, § 301; 1973 Ed., § 2-2221.)

### § 1-2702. Persons who may be represented; appointment of private attorneys; determination of financial eligibility.

(a)(1) The Service is authorized to represent any person in the District of Columbia who is a person described in any of the following categories and who is financially unable to obtain adequate representation:

(A) Persons charged with an offense punishable by imprisonment for a term of 6 months, or more;

(B) Persons charged with violating a condition of probation or parole;

(C) Persons subject to proceedings pursuant to Chapter 5 of Title 21 (Hospitalization of the Mentally Ill);

(D) Persons for whom civil commitment is sought pursuant to Title III of the Narcotic Addict Rehabilitation Act of 1966 (42 U.S.C. § 3411 et seq.) or the provisions of §§ 24-601 to 24-611;

(E) Juveniles alleged to be delinquent or in need of supervision;

(F) Persons subject to proceedings pursuant to § 24-527 (relating to commitment of chronic alcoholics by court order for treatment);

(G) Persons subject to proceedings pursuant to § 24-301 (relating to confinement of persons acquitted on the ground of insanity); or

(H) Persons incarcerated in District of Columbia corrections facilities, not including community residential facilities or community-based corrections facilities, in administrative matters related to their incarceration before any court or administrative body.

(2) The Service shall not represent an inmate in a suit for damages against the District of Columbia or its employees for conduct within the scope of their employment, nor shall it represent an inmate in a suit in which the payment of attorney's fees or costs is sought against the District of Columbia

or its employees for conduct within the scope of their employment. Representation may be furnished at any stage of a proceeding, including appellate, ancillary, and collateral proceedings. Not more than 60 per centum of the persons who are annually determined to be financially unable to obtain adequate representation and who are persons described in the above categories may be represented by the Service, but the Service may furnish technical and other assistance to private attorneys appointed to represent persons described in the above categories. The Service shall determine the best practicable allocation of its staff personnel to the courts where it furnishes representation.

(b) The Service shall establish and coordinate the operation of an effective and adequate system for appointment of private attorneys to represent persons described in subsection (a) of this section, but the courts shall have final authority to make such appointments. The Service shall report to the courts at least quarterly on matters relating to the operation of the appointment system and shall consult with the courts on the need for modifications and improvements.

(c) Upon approval of its Board of Trustees, the Service may perform such other functions as are necessary and appropriate to the duties described above.

(d) The determination whether a person is financially unable to obtain adequate representation shall be based on information provided by the person to be represented and such other persons or agencies as the court in its discretion shall require. Whoever in providing this information knowingly falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry shall be fined not more than \$1,000, or imprisoned not more than 1 year, or both. (July 29, 1970, 84 Stat. 654, Pub. L. 91-358, title III, § 302; 1973 Ed., § 2-2222; Dec. 10, 1987, D.C. Law 7-52, § 2(a), (b), 34 DCR 6891.)

**Cross references.** — As to representation of indigents generally, see § 11-2601 et seq.

As to right to counsel of child alleged to be delinquent or in need of supervision, see § 16-2304.

**Legislative history of Law 7-52.** — Law 7-52 was introduced in Council and assigned Bill No. 7-173, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on July 14, 1987 and September 29, 1987, respectively. Signed by the Mayor on October 16, 1987, it was assigned Act No. 7-85 and transmitted to both Houses of Congress for its review.

**Service to represent involuntary mental illness patient.** — The Public Defender Service should be appointed to represent a patient who has been involuntarily detained on the grounds that he has symptoms of mental illness and is likely to injure himself or others, at least until retained counsel notes his appearance. In re Barnard, 455 F.2d 1370 (D.C. Cir. 1971).

**Alleged ineffectiveness of Service Attorney.** — If a real conflict of interest exists as to whether the alleged ineffectiveness of a Public Defender Service trial attorney may have reached constitutional proportions the Service may be permitted to withdraw as appellate counsel. However, the Service is not entitled to carte blanche authority to withdraw from the appellate handling of a case which was tried by another of its attorneys simply by stating that "ethical considerations" are present. Angarano v. United States, App. D.C., 329 A.2d 453 (1974).

A specific showing that prima facie ineffectiveness exists is required before the District of Columbia Court of Appeals will grant the Public Defender Service leave to withdraw and appoint new counsel to determine whether to assert such an issue in the reviewing court or to seek collateral relief in the trial court. Angarano v. United States, App. D.C., 329 A.2d 453 (1974).



**Cited in** *United States v. Bryant*, 471 F.2d 1040 (D.C. Cir. 1972), cert. denied, 409 U.S. 1112, 93 S. Ct. 923, 34 L. Ed. 2d 693 (1973); *Public Defender Serv. v. Saint-Preux*, App. D.C., 691 A.2d 1160 (1997); *District of Columbia v. Jerry M.*, App. D.C., 717 A.2d 866 (1998).

### § 1-2703. Board of Trustees.

(a) The powers of the Service shall be vested in a Board of Trustees composed of 11 members. The Board of Trustees shall establish general policy for the Service but shall not direct the conduct of particular cases.

(b)(1) Members of the Board of Trustees shall be appointed by a panel consisting of:

(A) The Chief Judge of the United States District Court for the District of Columbia;

(B) The Chief Judge of the District of Columbia Court of Appeals;

(C) The Chief Judge of the Superior Court of the District of Columbia; and

(D) The Mayor of the District of Columbia.

(2) The panel shall be presided over by the Chief Judge of the District of Columbia Court of Appeals (or in his absence, the designee of such Judge). A quorum of the panel shall be 4 members.

(3) Four of the 11 members of the Board of Trustees shall be non-attorneys and shall be residents of the District of Columbia.

(4) Judges of the United States courts in the District of Columbia and of District of Columbia courts may not be appointed to serve as members of the Board of Trustees.

(5) The term of office of a member of the Board of Trustees shall be 3 years. No person shall serve more than 2 consecutive terms as a member of the Board of Trustees. A vacancy in the Board of Trustees shall be filled in the same manner as the original appointment. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term.

(c) The trustees of the Legal Aid Agency for the District of Columbia in office on the date of enactment of this chapter shall serve the unexpired portions of their terms as trustees of the Service.

(d) For the purposes of any action brought against the trustees of the Service, they shall be deemed to be employees of the District of Columbia. (July 29, 1970, 84 Stat. 655, Pub. L. 91-358, title III, § 303; 1973 Ed., § 2-2223; Mar. 6, 1979, D.C. Law 2-155, § 2, 25 DCR 6986; Oct. 28, 1986, 100 Stat. 3228, Pub. L. 99-573, § 17; Aug. 5, 1997, 111 Stat. 762, Pub. L. 105-33, § 11272(a); Oct. 21, 1998, 112 Stat. 2427, Pub. L. 105-274, § 7(d).)

**Section references.** — This section is referred to in § 1-2704.

**Effect of amendments.** — Section 11272(a) of Pub. L. 105-33, 111 Stat. 762, rewrote (a).

**Legislative history of Law 2-155.** — Law 2-155 was introduced in Council and assigned Bill No. 2-241, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 28, 1978 and December 12, 1978, respectively.

Signed by the Mayor on December 28, 1978, it was assigned Act. No. 2-322 and transmitted to both Houses of Congress for its review.

**Section 11272 of Pub. L. 105-33.** — Section 7(d) of Pub. L. 105-274 provided that § 11272 of Pub. L. 105-33, which rewrote (a), is repealed, effective October 21, 1998. Subsection (a) is set out above as it appeared prior to the enactment of § 11272.

**Change in government.** — This section

originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the

District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Cited in** *Jones v. Public Defender Serv.*, 553 F. Supp. 1031 (D.D.C.), *aff'd*, 720 F.2d 215 (D.C. Cir. 1983); *Sims v. District of Columbia*, App. D.C., 531 A.2d 648 (1987); *Public Defender Serv. v. Saint-Preux*, App. D.C., 691 A.2d 1160 (1997).

## § 1-2704. Director and Deputy Director; appointment; duties; membership in bar required.

The Board of Trustees shall appoint a Director and Deputy Director of the Service, each of whom shall serve at the pleasure of the Board. The Director shall be responsible for the supervision of the work of the Service and shall perform such other duties as the Board of Trustees may prescribe. The Deputy Director shall assist the Director and shall perform such duties as he may prescribe. The Director and Deputy Director shall be members of the bar of the District of Columbia. (July 29, 1970, 84 Stat. 656, Pub. L. 91-358, title III, § 304; 1973 Ed., § 2-2224; Mar. 3, 1979, D.C. Law 2-139, § 3205(cc), 25 DCR 5740; Aug. 5, 1997, 111 Stat. 762, Pub. L. 105-33, § 11272(b); Oct. 21, 1998, 112 Stat. 2427, Pub. L. 105-274, § 7(d).)

**Cross references.** — As to effective date of D.C. Law 2-139, see § 1-637.1.

**Section references.** — This section is referred to in § 1-637.1.

**Effect of amendments.** — Section 11272(b) of Pub. L. 105-33, 111 Stat. 762, rewrote the section.

**Legislative history of Law 2-139.** — Law 2-139 was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respec-

tively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

**Section 11272 of Pub. L. 105-33.** — Section 7(d) of Pub. L. 105-274 provided that § 11272 of Pub. L. 105-33, which rewrote this section, is repealed, effective October 21, 1998. This section is set out above as it appeared prior to the enactment of § 11272.

**Cited in** *Jones v. Public Defender Serv.*, 553 F. Supp. 1031 (D.D.C.), *aff'd*, 720 F.2d 215 (D.C. Cir. 1983).

## § 1-2705. Employment of attorneys and other personnel; compensation; private practice by attorneys not permitted.

(a) The Director shall employ a staff of attorneys and clerical and other personnel necessary to provide adequate and effective services. The Director shall make assignments of the personnel of the Service. The compensation of all employees of the Service, other than the Director and the Deputy Director, shall be fixed by the Director, but shall not exceed the compensation which may be paid to persons of similar qualifications and experience in the office of the United States Attorney for the District of Columbia. All attorneys employed by the Service to represent persons shall be members of the bar of the District of Columbia.

(b) No attorney employed by the Service shall engage in the private practice of law or receive a fee for representing any person.

(c)(1) Employees of the Service shall be treated as employees of the federal government solely for purposes of any of the following provisions of Title 5, United States Code: subchapter 1 of Chapter 81 (relating to compensation for work injuries), Chapter 83 (relating to retirement), Chapter 84 (relating to Federal Employees' Retirement System), Chapter 87 (relating to life insurance), and Chapter 89 (relating to health insurance).

(2) The Service shall make contributions under the provisions referred to in paragraph (1) of this subsection at the same rates applicable to agencies of the federal government.

(3) An individual who is an employee of the Service on the date of the enactment of this subsection may make, within 60 days after the issuance of regulations under paragraph (4) of this subsection, an election under § 8351 or § 8432 of Title 5, United States Code, to participate in the Thrift Savings Plan for federal employees.

(4) This subsection shall apply with respect to all months beginning after the date on which the Director of the Office of Personnel Management issues regulations to carry out this subsection.

(5) For purposes of vesting pursuant to § 1-627.10(b), creditable service with the District for employees whose participation in the District Defined Contribution Plan ceases as a result of implementation of this subsection shall include service performed thereafter for the Service. (July 29, 1970, 84 Stat. 656, Pub. L. 91-358, title III, § 305; 1973 Ed., § 2-2225; Mar. 3, 1979, D.C. Law 2-139, § 3205(cc), 25 DCR 5740; Dec. 10, 1987, D.C. Law 7-52, § 2(c), 34 DCR 6891; Oct. 21, 1998, 112 Stat. 2427, Pub. L. 105-274, § 7(e)(1).)

**Cross references.** — As to effective date of D.C. Law 2-139, see § 1-637.1.

**Section references.** — This section is referred to in §§ 1-612.16 and 1-637.1.

**Effect of amendments.** — Public Law 105-274 added (c).

**Legislative history of Law 2-139.** — See note to § 1-2704.

**Legislative history of Law 7-52.** — See note to § 1-2702.

## § 1-2706. Annual report and audit.

(a) The Board of Trustees of the Service shall submit a fiscal year report of the Service's operations to the Congress of the United States, to the chief judges of the federal courts in the District of Columbia and of the District of Columbia courts, and to the Office of Management and Budget. The report shall include a statement of the financial condition of the Service and a summary of services performed during the year.

(b) The Board of Trustees shall annually arrange for an independent audit to be prepared by a certified public accountant or by a designee of the Office of Management and Budget. (July 29, 1970, 84 Stat. 657, Pub. L. 91-358, title III, § 306; 1973 Ed., § 2-2226; Aug. 5, 1997, 111 Stat. 762, Pub. L. 105-33, § 11272(c); Oct. 21, 1998, 112 Stat. 2428, Pub. L. 105-274, § 7(d), (e)(2)(A).)

**Effect of amendments.** — Section 11272(c) of Pub. L. 105-33, 111 Stat. 762, in (a), substituted “Director” for “Board of Trustees,” and substituted “to the Director of the District of Columbia Offender Supervision, Defender and Courts Services Agency, and to the Office of Management and Budget” for “and to the Mayor of the District of Columbia”; and in (b), substituted “Director” for “Board of Trustees,” and substituted “the Director of the District of Columbia Offender Supervision, Defender and Courts Services Agency” for “the Administrative Office of the United States Courts.”

Section 7(e)(2)(A) of Pub. L. 105-274 substituted “Office of Management and Budget” for “Mayor of the District of Columbia” in (a); and substituted “Office of Management and Budget” for “Administrative Office of the United States Courts” in (b).

**Section 11272 of Pub. L. 105-33.** — Section 7(d) of Pub. L. 105-274 provided that § 11272 of Pub. L. 105-33, which had amended this section, is repealed, effective October 21, 1998. This section is set out above as it would have appeared absent the enactment of § 11272.

## § 1-2707. Appropriation; public grants and private contributions.

(a) There are authorized to be appropriated through the Court Services and Offender Supervision Agency for the District of Columbia (or, until such Agency assumes its duties pursuant to § 24-1233(a), through the Trustee appointed pursuant to § 24-1232) in each fiscal year such sums as may be necessary to carry out this chapter. Funds appropriated pursuant to this subsection shall be transmitted by the Agency (or, if applicable, by the Trustee) to the Service. The Service may arrange by contract or otherwise for the disbursement of appropriated funds, procurement, and the provision of other administrative support functions by the General Services Administration or by other agencies or entities, not subject to the provisions of the District of Columbia Code or any law or regulation adopted by the District of Columbia Government concerning disbursement of funds, procurement, or other administrative support functions. The Service shall submit an annual appropriations request to the Office of Management and Budget.

(b) Upon approval of the Board of Trustees, the Service may accept public grants and private contributions made to assist it in carrying out the provisions of this chapter.

(c) The Service shall not be subject to any general personnel or budget limitations which otherwise apply to the District of Columbia government or its agencies in any appropriations act. (July 29, 1970, 84 Stat. 657, Pub. L. 91-358, title III, § 307; 1973 Ed., § 2-2227; Aug. 5, 1997, 111 Stat. 762, Pub. L. 105-33, § 11272(d); Oct. 21, 1998, 112 Stat. 2428, Pub. L. 105-274, § 7(d), (e)(2)(B), (f).)

**Effect of amendments.** — Section 11272(d) of Pub. L. 105-33, 111 Stat. 762, rewrote the section.

Section 7(e)(2)(B) of Pub. L. 105-274 rewrote (a).

Section 7(f) of Pub. L. 105-274 added (c).

**Section 11272 of Pub. L. 105-33.** — Section

7(d) of Pub. L. 105-274 provided that § 11272 of Pub. L. 105-33, which rewrote the section, is repealed October 21, 1998. This section is set out above as it would have appeared absent the enactment of § 11272.

**Cited in** Public Defender Serv. v. Saint-Preux, App. D.C., 691 A.2d 1160 (1997).

**§ 1-2708. Transition provisions.**

All employees of the Legal Aid Agency for the District of Columbia on the date of enactment of this chapter shall be deemed to be employees of the Service and shall be entitled to the same compensation and benefits as they are entitled to as employees of the Legal Aid Agency for the District of Columbia. (July 29, 1970, Pub. L. 91-358, title III, § 308; 1973 Ed., § 2-2228.)

CHAPTER 28. SOIL AND WATER CONSERVATION.

Sec.	Sec.
1-2801. Findings; declaration of policy.	vation program; annual work plan.
1-2802. Definitions.	
1-2803. Soil and Water Conservation District — Established.	1-2809. Same — Cooperative agreements; documentary function; public hearings; annual report.
1-2803.1. Same — Reestablished.	
1-2804. Same — Composition.	1-2810. Same — Participation in loan or grant.
1-2805. Same — Chairperson; meetings; employees.	1-2811. Same — Annual budget.
1-2806. Same — Citizen Advisory Committee.	1-2812. Same — Limitations on authority.
1-2807. Same — Powers.	1-2813. [Repealed].
1-2808. Same — Long-range resource conser-	1-2814. Same — Terms.

§ 1-2801. Findings; declaration of policy.

The Council of the District of Columbia finds and declares that:

(1) The lands and waters of the District of Columbia are basic assets. The construction of housing, industrial and commercial developments, streets, highways, recreation areas, schools and universities, public utilities and facilities, and other land disturbing activities have accelerated the process of soil erosion and sediment deposition. This results in the pollution of and damage to the waters, the lands, the forests, the recreational areas, and the wildlife of the District of Columbia.

(2) A soil and water conservation district is an appropriate organization to preserve and enhance natural resources; to control, reduce, and help alleviate soil erosion; to alleviate past and prospective damage caused by wind and water erosion, flood waters, and sediment; to conserve, improve, and enhance water resources and water quality; to protect wildlife; and to protect and promote the health, safety, and general welfare of the people of the District of Columbia.

(3) Mutual cooperation and assistance among all agencies, departments, or offices of the District of Columbia government whose activities directly affect the conservation of the renewable natural resources of the District of Columbia is necessary to fulfill the requirements of this chapter. It shall further be the responsibility of the heads of the District of Columbia government agencies, departments, or offices to take the necessary and proper steps to achieve the purposes of this chapter. (Sept. 14, 1982, D.C. Law 4-143, § 2, 29 DCR 3118.)

**Cross references.** — As to water pollution control, see subchapter III of Chapter 9 of Title 6.

**Legislative history of Law 4-143.** — Law 4-143, the "District of Columbia Soil and Water Conservation Act of 1982," was introduced in Council and assigned Bill No. 4-82, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on June 8, 1982 and June 22, 1982, respectively. Signed by the Mayor on July 12, 1982, it was assigned Act No. 4-211 and transmitted to both Houses of Congress for its review.

**Soil Erosion and Sedimentation Engineering and Geological Analysis.** — For temporary provisions providing for the study of soil erosion and sedimentation of properties in Square S-5542, see §§ 2-5 of the Soil Erosion and Sedimentation Engineering and Geological Analysis Emergency Act of 1997 (D.C. Act 12-195, November 14, 1997, 44 DCR 7248).

**Air quality control regulations enacted.** — Section 3 of D.C. Law 5-165, as amended by § 15 of D.C. Law 6-192, effective February 24, 1987, enacted air quality control regulations of the District of Columbia as chapters 1 through 9 of Title 20 of the District of Columbia Munic-

ipal Regulations, "Environment and Energy."

Section 485 of D.C. Law 6-42 amended §§ 100.4 and 105.1 of the air quality control regulations, effective March 15, 1985 (D.C. Law 5-165; 20 DCMR Chapters 1 through 9) to provide for adjudication of infractions pursuant to Chapter 27 of Title 6. Section 501(b) of D.C. Law 6-42 provided that the provisions of the act shall apply only to infractions which occur or are discovered by inspection after October 5, 1985.

**Soil Erosion and Sedimentation Control in Square 6126.** — Title II, §§ 201–205, of

D.C. Law 8-229 gave the Mayor powers to make an immediate determination of nature and cost of remedial actions for sediment control in Square 6126, power to undertake such actions, power to prohibit activities in Square 6126, power to enter private property to carry out the actions, and power to levy an assessment on the property in Square 6126; however, expenditure of funds for remedial actions or permanent improvements other than in Square 6126 is not authorized, nor is any claim or right of relief for such actions created in any person by Title II.

## § 1-2802. Definitions.

For the purposes of this chapter, the term:

(1) "District of Columbia government agency" means any agency, department, unit, and instrumentality, corporate or otherwise, of the District of Columbia government.

(2) "Renewable natural resources" means the land, the soil, the water, the vegetation, the trees, the fish, and the wildlife of the District of Columbia.

(3) "Conservation" means conservation, improvement, maintenance, preservation, and protection of the renewable natural resources.

(4) "Mayor" means the Mayor of the District of Columbia or the Mayor's designee.

(5) "United States government agency" means any agency, department, unit, or instrumentality of the United States government. (Sept. 14, 1982, D.C. Law 4-143, § 3, 29 DCR 3118.)

**Legislative history of Law 4-143.** — See note to § 1-2801.

## § 1-2803. Soil and Water Conservation District — Established.

There is established the Soil and Water Conservation District as a District of Columbia government agency. (Sept. 14, 1982, D.C. Law 4-143, § 4, 29 DCR 3118.)

**Cross references.** — As to the reestablishment of the Soil and Water Conservation District as a government agency, see § 1-2803.1.

**Section references.** — This section is referred to in §§ 1-2803.1 and 1-2804.

**Legislative history of Law 4-143.** — See note to § 1-2801.

**Editor's notes.** — Section 15 of D.C. Law

4-143 provided that the Soil and Water Conservation District, established by § 1-2803, shall terminate on January 1, 1987, unless it is subsequently reestablished by an act of the Council of the District of Columbia. Section 1-2803.1, reestablishing the Soil and Water Conservation District, was enacted July 25, 1987.

### § 1-2803.1. Same — Reestablished.

The Soil and Water Conservation District established by § 1-2803 is reestablished as a District of Columbia government agency. (July 25, 1987,

D.C. Law 7-14, § 2, 34 DCR 3795; Oct. 9, 1987, D.C. Law 7-39, § 2, 34 DCR 5331.)

**Legislative history of Law 7-14.** — Law 7-14 was introduced in Council and assigned Bill No. 7-188. The Bill was adopted on first and second readings on April 14, 1987 and May 5, 1987, respectively. Signed by the Mayor on June 1, 1987, it was assigned Act No. 7-28 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 7-39.** — Law 7-39 was introduced in Council and assigned Bill No. 7-189, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 30, 1987 and July 14, 1987,

respectively. Signed by the Mayor on July 23, 1987, it was assigned Act No. 7-67 and transmitted to both Houses of Congress for its review.

**Editor's notes.** — Section 15 of D.C. Law 4-143 provided that the Soil and Water Conservation District, established by § 1-2803, shall terminate on January 1, 1987, unless it is subsequently reestablished by an act of the Council of the District of Columbia. Section 1-2803.1, reestablishing the Soil and Water Conservation District, was enacted July 25, 1987.

## § 1-2804. Same — Composition.

(a) The Soil and Water Conservation District, reestablished by § 1-2803, 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.)

**Legislative history of Law 4-143.** — See note to § 1-2801.

**Legislative history of Law 6-117.** — Law 6-117 was introduced in Council and assigned Bill No. 6-336, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on March 11, 1986 and March 25, 1986, respectively. Signed by the Mayor on April 8, 1986, it was assigned Act No. 6-152 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 7-39.** — See note to § 1-2803.1.

**Legislative history of Law 7-104.** — Law 7-104 was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on Nov. 24, 1987 and Dec. 8, 1987, respectively. Signed by the Mayor

on Dec. 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

**Editor's notes.** — The Soil and Water Conservation District referred to in this section was originally established by § 1-2803 and was reestablished by § 1-2803.1. The reference to § 1-2803, appearing in (a), should probably be to § 1-2803.1.

**Transfer of functions.** — The functions of the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

The functions of the Department of Environmental Services were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.



**§ 1-2805. Same — Chairperson; meetings; employees.**

(a) The Soil and Water Conservation District shall organize annually and shall select a Chairperson from among its members. The Chairperson shall convene meetings of the Soil and Water Conservation District when necessary to perform the functions of the Soil and Water Conservation District. All meetings of the Soil and Water Conservation District shall be open to the public. A majority of the members shall constitute a quorum and all actions of the Soil and Water Conservation District shall be by a majority vote of the members present and voting at a meeting at which a quorum is present.

(b) The Soil and Water Conservation District may employ a secretary, technical experts, and other officers, agents, employees, and advisers, permanent and temporary, as may be permitted by the budget of the District of Columbia government for the Soil and Water Conservation District. The Soil and Water Conservation District may seek legal services from the Corporation Counsel of the District of Columbia. Staff assigned and employed in the member's office or District of Columbia government agency may provide services for the Soil and Water Conservation District. The Soil and Water Conservation District may delegate the powers and duties enumerated in this chapter to its Chairman, to 1 or more of its members, or to 1 or more agents or employees of the Soil and Water Conservation District. (Sept. 14, 1982, D.C. Law 4-143, § 6, 29 DCR 3118.)

**Legislative history of Law 4-143.** — See note to § 1-2801.

**§ 1-2806. Same — Citizen Advisory Committee.**

There is established a Citizen Advisory Committee to the Soil and Water Conservation District. The Mayor shall select, for a term of 2 years, 1 advisory neighborhood commissioner from each of the 8 wards of the District of Columbia, to serve on the Citizen Advisory Committee. The function of the Citizen Advisory Committee shall be to ensure communication between the Soil and Water Conservation District and the residents of the District of Columbia affected by the operation of the Soil and Water Conservation District. The members shall keep the Citizen Advisory Committee informed of its work. The Citizen Advisory Committee shall submit recommendations to the members and shall meet with the members at least semiannually. (Sept. 14, 1982, D.C. Law 4-143, § 7, 29 DCR 3118.)

**Legislative history of Law 4-143.** — See note to § 1-2801.

**§ 1-2807. Same — Powers.**

The Soil and Water Conservation District shall discharge its powers and authority on all the lands within the boundaries of the District of Columbia except those lands owned by the United States government. The Soil and Water Conservation District shall have the following powers:

(1) To conduct surveys, investigations, and research relating to the conservation of renewable natural resources;

(2) To conduct demonstration projects within the Soil and Water Conservation District on land owned or controlled by any District of Columbia government agency, with the consent and cooperation of the District of Columbia government agency administering and having jurisdiction thereof, and on any other land located within the Soil and Water Conservation District upon obtaining the consent and cooperation of the owner of the land. The projects will demonstrate the manner and the methods of improvement by which the conservation of renewable natural resources may be implemented;

(3) To implement preventive, improvement, and control measures within the Soil and Water Conservation District. This shall include, but not be limited to, engineering operations, methods of cultivation, and the growing of vegetation on land owned or controlled by any District of Columbia government agency with the cooperation and consent of the District of Columbia government agency administering and having jurisdiction thereof, and on any other land located within the Soil and Water Conservation District, upon obtaining the consent and cooperation of the owner of the land or the necessary rights or interests in the land;

(4) To assist in the implementation of the functions of the Mayor with respect to erosion and sediment control pursuant to § 45-508 as may be agreed to by the Mayor and the Soil and Water Conservation District;

(5) To provide to individuals and organizations agricultural, gardening, and engineering equipment, fertilizer, seeds and seedlings, and other material or equipment as will assist individuals or organizations in the conservation of renewable natural resources on their property located within the Soil and Water Conservation District. The Soil and Water Conservation District shall establish a fee schedule, after notice and comment, to provide for the loan, use, grant, or transfer of any material or equipment of the Soil and Water Conservation District;

(6) To develop and implement long-range resource conservation programs and annual work plans pursuant to § 1-2808;

(7) To enter into agreement with and to coordinate assistance from a United States government agency; to accept donations, gifts, and contributions in money, personnel, services, materials, equipment, or otherwise, from a United States government agency, or from any other source, and to use or expend the money, services, materials, or other contributions exclusively for the purpose of implementing this chapter;

(8) To make and execute contracts, agreements, and other instruments necessary to exercise the powers granted in this chapter: Provided, that the contracts, agreements, and other instruments shall not obligate or require the Water and Soil Conservation District or the District of Columbia government to perform any function, duty, or obligation after January 1, 1987;

(9) To issue rules to implement this chapter;

(10) To conduct educational programs and activities; and

(11) To review, comment, and make recommendations on proposed zoning regulations and amendments, proposed laws and regulations affecting renew-

able natural resources and their uses, and on the proposed location of highways, schools, housing developments, industries, and other facilities and structures within the District of Columbia. (Sept. 14, 1982, D.C. Law 4-143, § 8, 29 DCR 3118.)

**Legislative history of Law 4-143.** — See note to § 1-2801.

**§ 1-2808. Same — Long-range resource conservation program; annual work plan.**

(a) The Water and Soil Conservation District shall prepare, and revise annually in cooperation with other District of Columbia government agencies, a long-range program for the conservation of renewable natural resources. The program shall be directed toward conservation of resources for their best use and in a manner that will meet the needs of the District of Columbia. The program shall include an inventory of all renewable natural resources in the Soil and Water Conservation District, a compilation of current resource needs, projections of future resource requirements, priorities for various resource activities, projected time tables, descriptions of available alternatives, and provisions for coordination with other programs.

(b) The Soil and Water Conservation District shall prepare an annual work plan which shall describe the programs, services, facilities, materials, working arrangements, and estimated funds needed to carry out the parts of the long-range program that are of the highest priority in the coming year.

(c) The long-range program and work plan shall be made available to the Mayor, to the Council of the District of Columbia, to District of Columbia government agencies, to United States government agencies, and to the general public. (Sept. 14, 1982, D.C. Law 4-143, § 9, 29 DCR 3118.)

**Section references.** — This section is referred to in § 1-2807.

**Legislative history of Law 4-143.** — See note to § 1-2801.

**§ 1-2809. Same — Cooperative agreements; documentary function; public hearings; annual report.**

(a) Appropriate United States government agencies and District of Columbia government agencies may designate liaison representatives and assign employees, on a temporary or permanent basis, for the consultation on programs and plans for resource conservation, and in the preparation and coordination of local planning and programming for resource conservation.

(b) The Soil and Water Conservation District shall consult, cooperate, and the Mayor, upon the advice and recommendation of the Soil and Water Conservation District, may enter into agreements with adjacent local, state, regional, interstate, and United States government agencies to promote efficient resource conservation policies in implementing the purposes of this chapter.

(c) The Soil and Water Conservation District shall fully inform the Mayor, the Council of the District of Columbia, and other appropriate local and

regional agencies concerning the status and progress of the preparation of its resource conservation programs and plans and shall, upon request, provide the Mayor, the Council of the District of Columbia, and other appropriate agencies with reports, data, rules, orders, contracts, forms, and other documents.

(d) The Soil and Water Conservation District shall hold public hearings in connection with the preparation of the annual work plan and other major programs and shall give careful consideration to the views expressed in the hearings. The Soil and Water Conservation District shall keep the public informed concerning its programs, plans, and activities by hearings and other meetings as it deems appropriate.

(e) The Soil and Water Conservation District shall publish an annual report of its plans, programs, activities, budget, receipts, and expenditures and shall include therein descriptions of its official resource conservation program, the current annual program related thereto, and the status of all activities initiated under the program. It shall submit copies of each annual report to the Mayor and to the Council of the District of Columbia, and shall make copies of reports, summaries, and digests available to the appropriate agencies and to the general public.

(f) All actions of the Soil and Water Conservation District shall be in compliance with subchapter I of Chapter 15 of this title. (Sept. 14, 1982, D.C. Law 4-143, § 10, 29 DCR 3118.)

**Legislative history of Law 4-143.** — See note to § 1-2801.

### **§ 1-2810. Same — Participation in loan or grant.**

The Soil and Water Conservation District may obtain a loan or grant of any funds, property, equipment, or services from any United States government agency or District of Columbia government agency for any of the purposes of this chapter. In connection with any loan or grant, the Soil and Water Conservation District may pledge, encumber, or obligate any property or monies of the Soil and Water Conservation District: Provided, that the encumbrance, obligation, or pledge shall not extend beyond January 1, 1987. (Sept. 14, 1982, D.C. Law 4-143, § 11, 29 DCR 3118.)

**Legislative history of Law 4-143.** — See note to § 1-2801.

### **§ 1-2811. Same — Annual budget.**

The Soil and Water Conservation District shall submit to the Mayor of the District of Columbia an annual budget requesting appropriations for the purpose of implementing this chapter. Such budget shall be submitted in the same manner as are budgets of other District of Columbia government agencies. (Sept. 14, 1982, D.C. Law 4-143, § 12, 29 DCR 3118.)

**Legislative history of Law 4-143.** — See note to § 1-2801.

**§ 1-2812. Same — Limitations on authority.**

Nothing in this chapter shall authorize the Soil and Water Conservation District, any of its members, or any of its employees to obligate, encumber, pledge, necessitate, or require the Soil and Water Conservation District or the District of Columbia government to perform, execute, or to take any action subsequent to January 1, 1987. Any property, materials, equipment, land, money, records, or any other asset of the Soil and Water Conservation District shall become the possession of the District of Columbia government on January 2, 1987. (Sept. 14, 1982, D.C. Law 4-143, § 13, 29 DCR 3118.)

**Legislative history of Law 4-143.** — See note to § 1-2801.

**§ 1-2813. Same — Termination.**

Repealed.

(Sept. 14, 1982, D.C. Law 4-143, § 15, 29 DCR 3118; Oct. 9, 1987, D.C. Law 7-39, § 5, 34 DCR 5331.)

**Legislative history of Law 7-39.** — See note to § 1-2803.1.

**§ 1-2814. Same — Terms.**

Each member of the Soil and Water Conservation Board appointed by the Council of the District of Columbia shall serve a 2-year term, which shall expire at the conclusion of the Council period during which the Councilmember was appointed. (Sept. 14, 1982, D.C. Law 4-143, § 17, as added Oct. 9, 1987, D.C. Law 7-39, § 4, 34 DCR 5331; Apr. 30, 1988, D.C. Law 7-104, § 8(b), 35 DCR 147.)

**Legislative history of Law 7-39.** — See note to § 1-2803.1.

**Legislative history of Law 7-104.** — See note to § 1-2804.

CHAPTER 29. PUBLIC RECORDS MANAGEMENT.

Sec.	Sec.
1-2901. Definitions.	1-2907. Confidentiality safeguarded.
1-2902. Establishment of District of Columbia Office of Public Records Management, Archival Administration, and Library of Governmental Information.	1-2908. Copies, printouts, and photographs of public records.
1-2903. Responsibilities and duties of Public Records Administrator.	1-2909. Disposition of public records at end of official's term.
1-2904. Reporting requirements.	1-2910. Right of examination of public records.
1-2905. Records Disposition Committee.	1-2911. Annual report.
1-2906. Maintenance of public records.	1-2912. Funding.
	1-2913. Civil enforcement.
	1-2914. Applicability.

§ 1-2901. Definitions.

For the purposes of this chapter, the term:

(1) "Administrator" means the Public Records Administrator of the District of Columbia, established by § 1-2902(b).

(2) "Agency" means any board, commission, department, division, institution, authority, or part thereof, of the District, except the entities listed in § 1-2914(b).

(3) "Archival quality" means a quality of photographic reproduction consistent with standards specified by the American National Standards Institute.

(4) "Archival record" means any non-current record of an organization or institution that is preserved permanently because of its continuing and enduring administrative, legal, fiscal, or historical value. For the purposes of this definition, the term:

(A) "Administrative value" means the usefulness of a record to the agency in which the record originated or to the succeeding agency for conducting current business.

(B) "Fiscal value" means any record necessary or useful to document and verify financial authorizations, obligations, or transactions.

(C) "Historical value" means a record that merits long-term preservation because the record contains significant information about the organization and function of government agencies, or unique information about persons, places, and subjects with which public agencies deal.

(D) "Legal value" means any record that documents the legal or civil rights of individuals or government agencies.

(5) "Committee" means the Records Disposition Committee established by § 1-2905.

(6) "Custodian" means the public official in charge of an office having public records.

(6A) "Digital" means in a format that is computer readable.

(7) "District" means the District of Columbia government.

(8) "Executive Office" means the Executive Office of the Mayor of the District of Columbia.

(9) "Inactive public record" means a public record which the agency which created or received the record no longer needs to retain in its custody for the transaction of public business.

(10) "Microreproduction equipment" means photographic equipment designed to produce microimages of documents.

(11) "Nonrecord" means any library or other reference materials or records maintained solely for convenience or reference.

(12) "Office" means the District of Columbia Office of Public Records Management, Archival Administration, and Library of Governmental Information established by § 1-2902(a).

(13) "Public record" means any document, book, photographic image, electronic data recording, paper, sound recording, or other material, regardless of physical form or characteristic, made or received pursuant to law or in connection with the transaction of public business by any officer or employee of the District.

(14) "Records disposition" means the removal by a District agency or other governmental unit of a record no longer necessary for the conduct of public business in accordance with records control schedules and removal methods and procedures approved by the Office.

(14A) "Records management officer" means any person whose responsibilities, according to § 1-2906, include the development and oversight of an agency's records management program.

(15) "Records retention schedule" means a document listing all records series of a given class, or originating in a particular agency, specifying records to be retained permanently and authorizing on a continuing basis the destruction of other series of records after a specified time period has elapsed.

(16) "Retention period" means the period of time for which a record must be retained.

(17) "Secretary" means the Secretary of the District of Columbia. (Sept. 5, 1985, D.C. Law 6-19, § 2, 32 DCR 3590; Mar. 8, 1991, D.C. Law 8-235, § 2(a), 38 DCR 302.)

**Cross references.** — As to administrative procedure for legal publications, see subchapter III of Chapter 15 of this title.

As to enrollment of Council acts and resolutions, and filing with Archives, see § 1-1604.

As to codification and publication duties of Administrator of the District of Columbia Office of Documents, see § 1-1612.

**Legislative history of Law 6-19.** — Law 6-19, the "District of Columbia Public Records Management Act of 1985," was introduced in Council and assigned Bill No. 6-139, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 14, 1985 and May 28, 1985, respectively. Signed by the Mayor on

June 10, 1985, it was assigned Act No. 6-34 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 8-235.** — Law 8-235 was introduced in Council and assigned Bill No. 8-559, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-318 and transmitted to both Houses of Congress for its review.

**District of Columbia Records Disposition Committee established.** — See Mayor's Order 85-173, October 21, 1985.

**§ 1-2902. Establishment of District of Columbia Office of Public Records Management, Archival Administration, and Library of Governmental Information.**

(a) There is established the District of Columbia Office of Public Records Management, Archival Administration, and Library of Governmental Information within the Office of the Secretary.

(b) The head of the Office shall be the Public Records Administrator of the District of Columbia who shall be appointed by the Mayor. The Administrator shall be qualified by training and experience in records and archives management. Other staff shall be appointed as necessary.

(c) Subject to the approval of the Mayor, the Administrator is authorized to adopt, alter, and use a seal which shall establish the authenticity or true copy of any public record in the Administrator's custody. A true copy shall then have the same force and effect as the original.

(d) Repealed.

(e) The Mayor shall issue rules and regulations to implement the provisions of this chapter pursuant to subchapter I of Chapter 15 of Title 1. (Sept. 5, 1985, D.C. Law 6-19, § 3, 32 DCR 3590; Mar. 8, 1991, D.C. Law 8-235, § 2(b), 38 DCR 302.)

**Section references.** — This section is referred to in §§ 1-2901 and 1-2906.

**Legislative history of Law 6-19.** — See note to § 1-2901.

**Legislative history of Law 8-235.** — See note to § 1-2901.

**Office of Public Records Management, Archival Administration, and Library of Government Information established.** — See Mayor's Order 86-28, February 11, 1986.

**§ 1-2903. Responsibilities and duties of Public Records Administrator.**

(a)(1) The Administrator shall act as the chief records manager for the District and shall, except as otherwise provided by law:

(A) Organize and administer a records center for the District's semi-current and inactive records;

(B) Implement rules for effective and economical records management; and

(C) Perform other functions to implement this chapter or the rules issued pursuant to this chapter.

(2) The Administrator shall establish the standards for the number, selection, qualifications, basic and advance training, certification, and recertification of agency records management officers.

(3) The Administrator shall, as the historian of the District, establish a program for the identification and preservation of documentation of significance to the history of the District.

(4) The Administrator may:

(A) Publish or republish any material of historical interest;

(B) Compile, edit, and print any publication of historical interest;



(C) Subject to the approval of the Mayor, enter into agreements with publishers to produce books on District history; or

(D) Sell publications, reproductions, or replicas, postcards, and historical souvenirs at any location administered by the Office of Public Records.

(5) The Administrator, with a goal of economy through disposal of original paper records, shall establish standards for the storage of records by a photographic, microphotographic, or non-erasable optical process. A certified or authenticated reproduction of a photograph, microphotographic non-erasable optical disk, or enlargement of a record made in compliance with this chapter shall be considered equal to the original when admitted as evidence.

(b) The Administrator shall establish and maintain the official archives of the District of Columbia, implement regulations for the preservation and use of archival records, and perform other functions to implement this chapter or the regulations issued pursuant to this chapter.

(c) The Administrator shall establish and maintain a Library of Governmental Information of the District of Columbia which shall serve as an effective source reference and research information with respect to the business of the District; develop programs and establish standards for the management of services provided under this section; and perform the other functions to implement this chapter or the regulations issued pursuant to this chapter.

(d)(1) The Administrator shall collect, compile, and maintain data and information pertaining to the operation of the District as well as other municipalities, governmental bodies, and public authorities, and arrange for the exchange, sale, purchase, and loan of informational materials from and with legislative and research services, libraries, and institutions in other municipalities, governmental bodies, and public authorities.

(2) The Administrator shall accept, compile, and maintain every public record or document requested to be preserved by:

(A) The Council of the District of Columbia;

(B) The Board of Education; and

(C) The District of Columbia Court of Appeals and the Superior Court of the District of Columbia. (Sept. 5, 1985, D.C. Law 6-19, § 4, 32 DCR 3590; Mar. 8, 1991, D.C. Law 8-235, § 2(c), 38 DCR 302.)

**Legislative history of Law 6-19.** — See note to § 1-2901.

**Legislative history of Law 8-235.** — See note to § 1-2901.

## § 1-2904. Reporting requirements.

(a) Except as provided in subsection (b) of this section, the head of each agency shall transmit to the Library of Governmental Information at least 2 copies of each report, study, or publication of the agency and those prepared by independent contractors, immediately after they have been issued. At least 1 copy of each report, study, or publication of the District or agency shall be available at the Library of Governmental Information at all times.

(b) The provisions of subsection (a) of this section shall not apply to drafts or unofficial copies of accounting, auditing, or financial reports, studies, or

## § 1-2905

### ADMINISTRATION

publications. (Sept. 5, 1985, D.C. Law 6-19, § 5, 32 DCR 3590; Mar. 8, 1991, D.C. Law 8-235, § 2(d), 38 DCR 302.)

**Legislative history of Law 6-19.** — See note to § 1-2901.

**Legislative history of Law 8-235.** — See note to § 1-2901.

## § 1-2905. Records Disposition Committee.

(a) There is established a Records Disposition Committee ("Committee") consisting of the following:

(1) A chairperson, the State Historic Records Coordinator, appointed by the Mayor;

(2) The following ex officio members or their designees:

(A) The City Administrator/Deputy Mayor for Operations;

(B) The Secretary of the District of Columbia;

(C) The Secretary to the Council;

(D) The Director of Public Libraries;

(E) The Deputy Mayor for Finance;

(F) The Corporation Counsel;

(G) The Inspector General;

(H) The District of Columbia Auditor;

(I) The Superintendent of Schools; and

(J) The Chief Judge of the District of Columbia Court of Appeals; and

(3) The Public Records Administrator shall serve as the secretary of the Committee.

(b) The Committee shall convene when called by the chairperson or by any 3 members to:

(1) Review and act upon a records retention schedule submitted for consideration by the Administrator;

(2) Review and act upon requests for exceptions from the records retention schedule for disposal authority;

(3) Accept for the archives nonpublic records of historic significance on the recommendation of the Administrator; and

(4) Consider and resolve policy and other matters affecting the District records disposition program.

(c) The concurrence of the Administrator shall be necessary for the destruction of any public record. (Sept. 5, 1985, D.C. Law 6-19, § 6, 32 DCR 3590; Mar. 8, 1991, D.C. Law 8-235, § 2(e), 38 DCR 302.)

**Section references.** — This section is referred to in § 1-2901.

**Legislative history of Law 8-235.** — See note to § 1-2901.

**Legislative history of Law 6-19.** — See note to § 1-2901.

## § 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 pursuant to § 1-2902(d), 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.)

**Section references.** — This section is referred to in § 1-2901.

**Legislative history of Law 6-19.** — See note to § 1-2901.

**References in text.** — Subsection (d) of § 1-2902, referred to in (b)(2), was repealed effective March 8, 1991, by D.C. Law 8-235, § 2(b), 38 DCR 302.

## § 1-2907. Confidentiality safeguarded.

(a) Any public record made confidential by law shall be so treated.

(b) No provision of this chapter shall be construed to authorize or require the opening of any records ordered to be sealed by a court. (Sept. 5, 1985, D.C. Law 6-19, § 8, 32 DCR 3590.)

**Legislative history of Law 6-19.** — See note to § 1-2901.

**Cited in** *Salazar v. District of Columbia*, 954 F. Supp. 278 (D.D.C. 1996).

## § 1-2908. Copies, printouts, and photographs of public records.

Whenever a person has the right to inspect any public record subject to the requirements of this chapter, the person shall be furnished a copy, printout, or photograph of the record for a reasonable fee. (Sept. 5, 1985, D.C. Law 6-19, § 9, 32 DCR 3590.)

**Legislative history of Law 6-19.** — See note to § 1-2901.

**§ 1-2909. Disposition of public records at end of official's term.**

(a) On or before the expiration of the term of office of an elected or appointed official, all public records, books, writings, and letters in the custody of the official shall be promptly transmitted or relinquished to the official's successor or, if there is none, to the Administrator.

(b) Any official who maliciously destroys, defaces, or removes any public record, as defined by this chapter, shall be subject to the penalties established in section 14. (Sept. 5, 1985, D.C. Law 6-19, § 10, 32 DCR 3590.)

**Legislative history of Law 6-19.** — See Law 6-19, which amended §§ 22-3106 and note to § 1-2901. 1-617.1(d)(14).

**References in text.** — "Section 14", referred to at the end of subsection (b), is § 14 of D.C.

**§ 1-2910. Right of examination of public records.**

(a) The Administrator shall from time to time review the condition of public records, and shall give advice and assistance to officials in the solution of problems of preserving, cataloging, filing, and making readily available for governmental and public use the records in their custody.

(b) Upon request by the Administrator, each custodian shall prepare an inclusive inventory of all public records in his or her custody. (Sept. 5, 1985, D.C. Law 6-19, § 11, 32 DCR 3590.)

**Legislative history of Law 6-19.** — See note to § 1-2901.

**§ 1-2911. Annual report.**

(a) The Office shall submit an annual report covering the preceding fiscal year to the Mayor by January 1st.

(b) A copy of the annual report shall be sent to each member of the Council and placed in each branch of the public library. (Sept. 5, 1985, D.C. Law 6-19, § 12, 32 DCR 3590.)

**Legislative history of Law 6-19.** — See note to § 1-2901.

**§ 1-2912. Funding.**

All projected expenditures required for the administration of this chapter shall be included as a part of the annual budget submitted for the operation of the Office of the Secretary. (Sept. 5, 1985, D.C. Law 6-19, § 13, 32 DCR 3590.)

**Legislative history of Law 6-19.** — See note to § 1-2901.

**§ 1-2913. Civil enforcement.**

The Corporation Counsel is authorized to initiate a civil action in the Superior Court of the District of Columbia or any court of competent jurisdiction to protect the interests of the District of Columbia in any public record. (Sept. 5, 1985, D.C. Law 6-19, § 15, 32 DCR 3590.)

**Legislative history of Law 6-19.** — See note to § 1-2901.

**§ 1-2914. Applicability.**

(a) The requirements and provisions of this chapter shall apply to and be binding upon the executive branch, the operating departments and agencies, including independent agencies of the District, Advisory Neighborhood Commissions, the Board of Elections and Ethics, the Zoning Commission, the Armory Board, the Public Service Commission, and the boards, commissions, and task forces whose memberships are appointed by the Mayor.

(b) The requirements and provisions of this chapter shall not be binding upon:

- (1) The Council of the District of Columbia;
- (2) The Board of Education;
- (3) The District of Columbia Court of Appeals and the Superior Court of the District of Columbia; and
- (4) The regional and national bodies in which the District participates as a member. (Sept. 5, 1985, D.C. Law 6-19, § 16, 32 DCR 3590.)

**Section references.** — This section is referred to in § 1-2901.

**Legislative history of Law 6-19.** — See note to § 1-2901.

## CHAPTER 30. SPOUSE EQUITY.

Sec.

1-3001. Application.

1-3002. Definitions.

1-3003. Compliance with court orders.

Sec.

1-3004. Enrollment in health benefits plan.

1-3005. Rules.

### § 1-3001. Application.

This chapter shall apply to any District employee or District retiree who is covered by the retirement program defined under § 1-702(7), or the retirement program established by §§ 1-627.3 to 1-627.12, or an officer, member, or retiree of the United States Park Police Force, or an officer, member or retiree of the United States Secret Service to whom the District of Columbia Policemen and Firemen's Retirement and Disability Act (D.C. Code § 4-607 et seq.) applies. (Mar. 16, 1989, D.C. Law 7-214, § 2, 36 DCR 513; Oct. 16, 1992, 106 Stat. 2167, Pub. L. 102-422, § 1(1); June 28, 1994, 108 Stat. 730, Pub. L. 103-268, § 1(a).)

**Section references.** — This section is referred to in §§ 1-3003 and 1-3004.

**Emergency act amendments.** — Section 5 of D.C. Law 11-218 repealed D.C. Act 11-369.

For temporary repeal of the Police Officers', Fire Fighters', and Teachers' Defined Benefit Pension Program Emergency Establishment Act of 1996 (D.C. Act 11-369, August 21, 1996, 41 DCR 4637), see § 5 of the New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-10, March 3, 1997, 44 DCR 1633).

Section 7 of D.C. Act 12-10 provides for the application of the act.

**Legislative history of Law 7-214.** — Law 7-214, the "District of Columbia Spouse Equity Act of 1988," was introduced in Council and assigned Bill No. 7-389, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings

on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-289 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 11-218.** — Law 11-218, the "New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-316. The Bill was adopted on first and second readings on July 3, 1996, and October 1, 1996, respectively. Signed by the Mayor on October 18, 1996, it was assigned Act No. 11-432 and transmitted to both Houses of Congress for its review. D.C. Law 11-218 became effective on April 9, 1997.

**Effective date.** — Section 1(b) of Pub. L. 103-268 provided that the amendment made by subsection (a) shall take effect as if included in the enactment of the District of Columbia Spouse Equity Act of 1988.

### § 1-3002. Definitions.

(a) "Court order" means any judgment, decree, or property settlement issued by or approved by any court of any state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Native American court in connection with, or incident to, the divorce, annulment of marriage, or legal separation of an employee or retiree.

(b) "Employee" means an individual who performs a function of the District government and who receives compensation for the performance of the services, as provided in § 1-603.1(7) or an officer, member, or retiree of the United States Park Police Force or an officer, member, or retiree of the United States Secret Service to whom the District of Columbia Policemen and Firemen's Retirement and Disability Act (D.C. Code § 4-607 et seq.) applies.

(c) "Qualifying court order" means one that by its terms awards to a former spouse all or a portion of an employee's or retiree's retirement benefits, a payment from an employee's or retiree's retirement benefits, or a survivor annuity. The court order must state the former spouse's share as a fixed amount, or a percentage or a fraction of the annuity, and shall indicate whether the former spouse should receive the amount awarded directly from the District. For purposes of awarding a survivor annuity, the court order must also either state the former spouse's entitlement to a survivor annuity or direct the employee or retiree to provide a survivor annuity. (Mar. 16, 1989, D.C. Law 7-214, § 3, 36 DCR 513; Oct. 16, 1992, 106 Stat. 2167, Pub. L. 102-422, § 1(2), (3).)

**Legislative history of Law 7-214.** — See note to § 1-3001.

### **§ 1-3003. Compliance with court orders.**

(a) For purposes of this section, "former spouse" means a living person whose marriage to an employee or retiree has been subject to a divorce, annulment, or legal separation resulting in a court order, except that with respect to an award of a survivor annuity, it additionally means a living person:

(1) Who was married for at least 9 months to an employee or retiree who performed at least 18 months creditable service in a position covered by 1 or more of the retirement systems in § 1-3001; and

(2) Whose marriage to the employee or retiree was terminated prior to the death of the employee or retiree.

(b) The Mayor shall comply with any qualifying court order that is issued prior to the employee's retirement. Any qualifying court order that awards the entire amount the retirement system is responsible for with respect to that employee bars recovery by any other person.

(c) The Mayor shall comply with any qualifying court order that is issued after the employee's retirement only to the extent it is consistent with any election previously executed at the time of retirement by the employee regarding that former spouse. Any qualifying court order that awards the entire amount the retirement system is responsible for with respect to that employee bars recovery by any other person.

(d) The Mayor is not obligated to comply with qualifying court orders issued prior to March 16, 1989.

(e)(1) Any reduction in an employee's annuity, made pursuant to the relevant retirement system in order to provide for a survivor annuity awarded by court order, shall cease upon remarriage of the former spouse if the remarriage occurs before age 55.

(2) Payment of a survivor annuity to a former spouse pursuant to a court order shall cease upon the remarriage of the former spouse if the remarriage occurs before age 55. (Mar. 16, 1989, D.C. Law 7-214, § 4, 36 DCR 513.)

**Legislative history of Law 7-214.** — See note to § 1-3001.

**§ 1-3004. Enrollment in health benefits plan.**

(a) For purposes of this section, “former spouse” means a living person:

(1) Who was married for at least 9 months to an employee or retiree who performed at least 18 months creditable service in a position covered by 1 or more of the retirement systems referred to in § 1-3001;

(2) Whose marriage to the employee or retiree was terminated prior to the death of the employee or retiree;

(3) Who was enrolled as a family member in a health benefits plan approved under the Federal Health Benefits Program or in a plan approved under §§ 1-622.5 through 1-622.13 at any time during the 18-month period before the dissolution of the marriage by divorce, annulment, or legal separation; and

(4) Who is receiving any portion of an annuity or survivor’s annuity or is entitled to receive an annuity or survivor’s annuity pursuant to an election by the employee at the time of retirement, a qualifying court order, or the provisions of the retirement system.

(b) Any former spouse of an employee or of a retiree may enroll in a health benefits plan approved under the Federal Employee Health Benefits Program or in a plan approved under §§ 1-622.5 through 1-622.13.

(c) Any former spouse who enrolls in a health benefits plan pursuant to subsection (b) of this section may elect to enroll either as an individual or for self and family, subject to an agreement by the former spouse to pay the full subscription charge of the enrollment, including any amount set aside for the administration of the health benefits plan and any necessary reserves as determined by the Mayor.

(d) Only former spouses whose marriages were dissolved after March 16, 1989 through divorce, annulment, or legal separation shall be eligible to enroll in the health benefits plans. (Mar. 16, 1989, D.C. Law 7-214, § 6, 36 DCR 513.)

**Legislative history of Law 7-214.** — See note to § 1-3001.

**§ 1-3005. Rules.**

The Mayor shall, pursuant to subchapter I of Chapter 15 of this title, issue proposed rules to implement the provisions of this chapter. The proposed rules shall be submitted to the Council of the District of Columbia (“Council”) for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. Nothing in this section shall affect any requirements imposed upon the Mayor by subchapter I of Chapter 15 of this title. (Mar. 16, 1989, D.C. Law 7-214, § 7, 36 DCR 513.)

**Legislative history of Law 7-214.** — See note to § 1-3001.



