

AN ACT

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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To clarify the independence of the Attorney General for the District of Columbia and the obligation of that position to represent the public interest, to provide for a 4-year term of office for the Attorney General to coincide with the term of office of the Mayor, to set minimum qualifications and requirements for the position of Attorney General, to require for the automatic forfeiture of the position of Attorney General if the incumbent fails to meet the requirements of this act, to codify the salary of the Attorney General, to codify the budget process for the Office of the Attorney General, to require the appointment of a Chief Deputy Attorney General, to authorize the administration of oaths, to permit the appointment of special counsel in the event of conflict, and to address the inability of the Attorney General to carry out the duties of office; to amend the District of Columbia Election Code of 1955 to provide for the election of the Attorney General; and to amend the District of Columbia Home Rule Act to establish the Attorney General for the District of Columbia as an elected position.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010”.

TITLE I -- ATTORNEY GENERAL FOR THE DISTRICT OF COLUMBIA  
PART A.

Sec. 101. Duties of the Attorney General for the District of Columbia.

(a)(1) The Attorney General for the District of Columbia (“Attorney General”) shall have charge and conduct of all law business of the said District and all suits instituted by and against the government thereof, and shall possess all powers afforded the Attorney General by the common and statutory law of the District and shall be responsible for upholding the public interest. The Attorney General shall have the power to control litigation and appeals, as well as the power to intervene in legal proceedings on behalf of this public interest.

(2) The Attorney General shall furnish opinions in writing to the Mayor and the Council whenever requested to do so. All requests for opinions from agencies subordinate to

the Mayor shall be transmitted through the Mayor. The Attorney General shall keep a record of requests, together with the opinions. Those opinions of the Attorney General issued pursuant to Reorganization Order No. 50 shall be compiled and published by the Attorney General on an annual basis.

(b) The authority provided under this section shall not be construed to deny or limit the duty and authority of the Attorney General as heretofore authorized, either by statute or under common law.

**Sec. 102. Appointment of the Attorney General.**

(a) Until such time as an Attorney General is elected under section 201, the Attorney General for the District of Columbia shall be appointed by the Mayor with the advice and consent of the Council pursuant to section 2 of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01).

(b) The Attorney General shall:

- (1) Serve a 4-year term to coincide with the term for Mayor; and
- (2) Be eligible for reappointment by the Mayor with the advice and consent of the Council, and may serve in a holdover capacity at the expiration of his or her term pursuant to section 2(c) of the Confirmation Act of 1978, approved March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(c)).

(c) This section shall not apply to the incumbent Attorney General on the effective date of this act.

**Sec. 103. Minimum qualifications and requirements for Attorney General.**

(a) No person shall hold the position of Attorney General for the District of Columbia unless that person:

- (1) Is a registered qualified elector as defined in section 2(20) of the District of Columbia Election Code of 1955, approved August 12, 1955 (69 Stat. 699; D.C. Official Code § 1-1001.02(20));
- (2) Is a bona fide resident of the District of Columbia;
- (3) Is a member in good standing of the bar of the District of Columbia;
- (4) Has been a member in good standing of the bar of the District of Columbia for at least 5 years prior to assuming the position of Attorney General; and
- (5) Has been actively engaged, for at least 5 of the 10 years immediately preceding the assumption of the position of Attorney General, as:
  - (A) An attorney in the practice of law in the District of Columbia;
  - (B) A judge of a court in the District of Columbia;
  - (C) A professor of law in a law school in the District of Columbia; or
  - (D) An attorney employed in the District of Columbia by the United States or the District of Columbia.

(b) The Attorney General shall devote full-time to the duties of the office and shall not

engage in the private practice of law and shall not perform any other duties while in office that are inconsistent with the duties and responsibilities of Attorney General.

Sec. 104. Forfeiture of the position of Attorney General.

The occurrence of any of the following shall result in automatic forfeiture of the position of Attorney General for the District of Columbia:

- (1) Failure to maintain the qualifications required under section 103(a);
- (2) Violation of the prohibition against the private practice of law as provided in section 103(b); or
- (3) Conviction of a felony while in office.

Sec. 105. Attorney General salary.

(a) Except as provided in subsection (b) of this section, the Attorney General for the District of Columbia shall be paid at an annual rate equal to the rate of basic pay for level E5 on the Executive Schedule pursuant to section 1052 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective June 10, 1998 (D.C. Law 12-124; D.C. Official Code § 1-610.52).

(b) An Attorney General for the District of Columbia elected under section 201 shall receive compensation equal to the Chairman of the Council of the District of Columbia as provided in section 403(d) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 787; D.C. Official Code § 1-204.03(d)).

Sec. 106. Annual budget for the Office of Attorney General.

(a) The Attorney General for the District of Columbia 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 Home Rule Act, approved December 24, 1973 (87 Stat. 798; D.C. Official Code § 1-204.41 *et seq.*), for the year, annual estimates of the expenditures and appropriations necessary for the operation of the Office of the Attorney General for the year. The Mayor shall make recommendations to the Council of the District of Columbia based on said submissions for the Council's action pursuant to section 446 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 801; D.C. Official Code § 1-204.46), and section 603(c) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 814; D.C. Official Code § 1-206.03(c)).

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

Sec. 107. Chief Deputy Attorney General, Deputy Attorneys General, and Assistant Attorneys General.

(a) The Attorney General shall appoint a Chief Deputy Attorney General who shall meet the qualifications of section 103. The Chief Deputy Attorney General shall serve under the direction and control of the Attorney General and shall perform such duties as may be assigned to him or her by the Attorney General.

(b)(1) The Deputy Attorneys General and Assistant Attorneys General shall serve under the direction and control of the Attorney General and shall perform such duties as may be assigned to them by the Attorney General.

(2) A Deputy Attorney General shall be a resident of the District of Columbia within 180 days of his or her appointment.

**Sec. 108. Authority to administer oaths.**

The Attorney General, Chief Deputy Attorney General, Deputy Attorneys General, and Assistant Attorneys General are authorized to administer oaths and affirmations in the discharge of their official duties within the District of Columbia.

**Sec. 109. Appointment of special counsel.**

(a) Except as provided in subsection (b) of this section, if the Attorney General determines that his or her duty to represent the public interest in a particular matter may prevent him or her from adequately representing the government, an agency, or an official, the Attorney General shall notify the Mayor of this circumstance and the Mayor shall appoint special counsel to represent the government, an agency, or an official for the matter.

(b) If the Attorney General determines that he or she is unable to provide adequate representation pursuant to subsection (a) of this section in a matter in which the Mayor is expected to be adverse to the special counsel, the Attorney General shall notify the Chief Judge of the District of Columbia Court of Appeals, who shall appoint the special counsel for the matter.

**PART B.**

**Subpart 1.**

**Sec. 121. Inability to carry out duties as Attorney General.**

(a)(1) If the Attorney General for the District of Columbia is temporarily unable or unavailable to carry out the duties of the office, the Chief Deputy Attorney General shall serve as acting Attorney General as of the date that notice of such disability or unavailability is provided under paragraph (2) of this subsection and until the date that notice of resolution of the disability is provided under paragraph (3) of this subsection.

(2) Upon determining that he or she is temporarily unable or unavailable to carry out the duties of the office, the Attorney General shall provide written notice of the disability to the Chief Deputy Attorney General. If the Attorney General is incapable of providing the notice, the Mayor shall provide the notice.

(3) Upon determining that the disability or unavailability under paragraph (1) of

this subsection has been resolved, the Attorney General shall provide written notice to the acting Attorney General that the Attorney General is able to carry out the duties of the office. The Attorney General shall reassume the position as of the date of the written notice.

(b) This section shall apply upon the election of an Attorney General for the District of Columbia pursuant to section 201.

Subpart 2.

Sec. 131. The District of Columbia Election Code of 1955, approved August 12, 1955 (69 Stat. 699; D.C. Official Code § 1-1001.01 *et seq.*), is amended as follows:

(a) Section 1 (D.C. Official Code § 1-1001.01) is amended by striking the phrase “Council of the District of Columbia,” and inserting the phrase “Council of the District of Columbia, the Attorney General for the District of Columbia,” in its place.

Amend  
§ 1-1001.01

(b) Section 2 (D.C. Official Code § 1-1001.02) is amended as follows:

Amend  
§ 1-1001.02

(1) A new paragraph (9A) is added to read as follows:

“(9A) The term “Attorney General” or “Attorney General for the District of Columbia” means the Attorney General for the District of Columbia provided for by the Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010, passed on 2<sup>nd</sup> reading on February 2, 2010 (Enrolled version of Bill 18-65).”

(2) Paragraph (13) is amended by striking the phrase “Council,” and inserting the phrase “Council, the Attorney General,” in its place.

Sec. 132. Applicability.

Section 131 shall apply upon the enactment by Congress of section 201 or an amendment to Title IV of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 777; D.C. Official Code § 1-204.01 *et seq.*), that provides for the election of the Attorney General for the District of Columbia.

PART C.

Sec. 141. Conforming amendments.

(a) Sections 18 and 19 of Chapter 108 of the Acts of the Legislative Assembly, adopted August 23, 1871 (D.C. Official Code §§ 1-301.111 and 1-301.112), are repealed.

Repeal  
§§ 1-301.111,  
1-301.112,  
1-301.113

(b) Chapter 51 of the Acts of the Legislative Assembly, adopted August 19, 1871 (D.C. Official Code § 1-301.113), is repealed.

TITLE II -- ELECTION OF ATTORNEY GENERAL

Sec. 201. The District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 777; D.C. Official Code § 1-201.01 *et seq.*), is amended as follows:

(a) Section 103 (D.C. Official Code § 1-201.03) is amended by adding a new paragraph (16) to read as follows:

Amend  
§ 1-201.03

“(16) The term “Attorney General” means the Attorney General for the District of Columbia provided for by part C-i of title IV.”.

(b) Title IV is amended by adding a new Part C-i to read as follows:

“PART C-i – THE ATTORNEY GENERAL  
“ELECTION OF THE ATTORNEY GENERAL

“Sec. 435. (a) The Attorney General for the District of Columbia shall be elected on a partisan basis by the registered qualified electors of the District. Nothing in this section shall prevent a candidate for the position of Attorney General from belonging to a political party.

“(b)(1) If a vacancy in the position of Attorney General occurs as a consequence of resignation, permanent disability, death, or other reason, the Board of Elections and Ethics shall hold a special election in the District on the 1st Tuesday occurring more than 114 days after the date on which the vacancy occurs, unless the Board of Elections and Ethics determines that the vacancy could be more practicably filled in a special election held on the same day as the next general election to be held in the District occurring within 60 days of the date on which a special election would otherwise have been held under the provisions of this paragraph. The person elected Attorney General to fill a vacancy in the Office of the Attorney General shall take office on the day in which the Board of Elections and Ethics certifies his or her election, and shall serve as Attorney General only for the remainder of the term during which the vacancy occurred unless reelected.

“(2) When the position of Attorney General becomes vacant, the Chief Deputy Attorney General shall become the Acting Attorney General and shall serve from the date the vacancy occurs until the date on which the Board of Elections and Ethics certifies the election of the new Attorney General at which time he or she shall again become the Chief Deputy Attorney General. While the Chief Deputy Attorney General is Acting Attorney General, he or she shall receive the compensation regularly paid the Attorney General, and shall receive no compensation as Chief Deputy Attorney General.

“(c) The term of office for the Attorney General shall be 4 years and shall begin on noon on January 2<sup>nd</sup> of the year following his or her election. The term of office of the Attorney General shall coincide with the term of office of the Mayor.

“(d) Any candidate for the position of Attorney General shall meet the qualifications of section 103 of the Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010, passed on 2<sup>nd</sup> reading on February 2, 2010 (Enrolled version of Bill 18-65), prior to the day on which the election for the Attorney General is to be held.

“(e) The first election for the position of Attorney General shall be after January 1, 2014.”.

Sec. 202. Applicability.

Section 201 shall apply upon enactment by Congress.

**TITLE III – FISCAL IMPACT; EFFECTIVE DATE**

**Sec. 301. Fiscal impact statement.**

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

**Sec. 302. Effective date.**

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

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Chairman  
Council of the District of Columbia

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Mayor  
District of Columbia