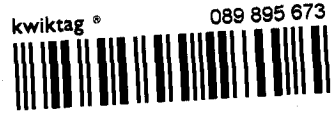


ENROLLMENT(S)



(5)

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 12-229

"Workers' Compensation Amendment Act of 1998"

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P.L. 93-198 "the Act", the Council of the District of Columbia adopted Bill No. 12-192, on first and second readings, November 10, 1998 and December 1, 1998, respectively. Following the signature of the Mayor on December 23, 1998, pursuant to Section 404(e) of "the Act", and was assigned Act No. 12-571 and published in the February 5, 1999, edition of the D.C. Register (Vol. 46 page 891) and transmitted to Congress on February 9, 1999 for a 30-day review, in accordance with Section 602(c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 12-229 effective April 16, 1999.



LINDA W. CROPP
Chairman of the Council

Dates Counted During the 30-day Congressional Review Period:

Feb. 9,10,11,12,22,23,24,25

Mar. 1,2,3,4,5,8,9,10,11,15,16,17,18,19,22,23,24,25

Apr. 12,13,14,15

AN ACT
D.C. ACT 12-571

*Codification
District of
Columbia
Code
1999 Supp.*

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
DECEMBER 23, 1998

To amend the District of Columbia Workers' Compensation Act of 1979 to clarify application of the act to professional athletes and to define safe workplace programs, to require the Mayor to report to the Council by February 1st of each year on specific statistics pertaining to the workers' compensation program, to place a 500 week cap on the payment of disability benefits where 1 injury causes temporary or permanent partial disability, to permit American Medical Association Guidelines along with 5 other factors to evaluate permanent injuries, to provide a rate of compensation for seasonal workers and workers that are newly employed for less than 26 weeks, to reduce the length of scheduled permanent partial disability compensation periods by 25%, to require the use of the athletic life expectancy basis for wage replacement benefit calculations for professional athletes, to repeal the subsequent injury fund provisions with respect to injuries occurring after the effective date of this act, to require the Mayor to hold a formal hearing no later than 90 days after receipt of application for formal hearing, to require the employer to send, by certified mail, a copy of the workers' compensation accident report filed with the Department of Employment Services to the injured worker, to require the workers' compensation assessment on insurers and self-insurers to be paid at the beginning of the fiscal year, to calculate workers' compensation benefits on wages earned over a 6-month period, to grant a 5% discount in the workers' compensation insurance premium for implementing a voluntary and certified workplace safety program, to require the Mayor to recommend reclassifying hearing examiners as Administrative Law Judges, raise the level of compensation and to develop performance measures and qualifications for the Administrative Law Judges, to require the Office of Workers' Compensation to implement the performance standards, to require the Mayor to submit to the Council an evaluation of the Workers' Compensation program, to require the Commissioner of Insurance and Securities to consider the profits of insurers when evaluating rate filings for worker's compensation insurance; and to amend the District of Columbia Municipal Regulations to eliminate the use of prehearing conferences.

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BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Workers' Compensation Amendment Act of 1998".

Sec. 2. The District of Columbia Workers' Compensation Act of 1979, effective July 1, 1980 (D.C. Law 3-77; D.C. Code § 36-301 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Code § 36-301) is amended by adding new subsections (q-2), (q-3), and (q-4) to read as follows:

Section
36-301

"(q-2) "Professional athlete" means a skilled athlete under a contract of hire or collective bargaining agreement.

"(q-3) "Professional athlete's work life expectancy" means the work life expectancy of a professional athlete that is determined separately for each professional sports franchise in the District by the Office of Workers' Compensation through its rulemaking authority.

"(q-4) "Safe workplace program" means a program that an employer implements voluntarily to promote safety in the workplace. A certified program shall include a formal written safety policy developed by a safety committee made up of equal numbers of management representatives and employee representatives who are elected by their peers and who serve on the clock, and whose functions include a workplace inspection at least annually, regular meetings with written records, and making recommendations to the employer of ways to eliminate workplace hazards and unsafe work practices, appropriate training in hazard assessment and control, effective accident and incident identification and the role of the federal and local Occupational Safety and Health Administration. Where there is a duty to bargain collectively, the employer shall collectively bargain the use and implementation of the safe workplace program."

(b) Section 3(b) (D.C. Code § 36-302(b)) is amended to read as follows:

Section
36-302

"(b) The Mayor shall report annually to the Council by February 1st of each year on the status, from the previous fiscal year, of the workers' compensation program. The report shall include the following:

"(1) The total number of cases, the total number of lost time cases, the number of medical only cases, the number of cases where no compensation was paid, the number of cases that are more than 500 weeks, the number of permanent partial disability scheduled cases, the number of permanent partial disability nonscheduled cases, the number of permanent total disability cases, the number of temporary total disability cases, the total number of lost time cases, the number of medical only cases, the number of cases in which claimant was represented by an attorney, cumulative total attorney fees paid, the number of cases controverted, the number of controverted cases decided in favor of employer and decided in favor of claimant, the growth in the assigned risk plan, the number of cases in and the future liability of the special fund; and

ENROLLED ORIGINAL

"(2) The percentage of the total number of cases each year that are: more than 500 weeks; permanent partial disability; permanent partial disability nonscheduled; permanent total disability; and temporary total disability."

(c) Section 6(b) (D.C. Code § 36-305(b)) is amended by adding the following language at the end to read as follows:

Section
36-305

"For any 1 injury causing temporary or permanent partial disability, the payment for disability benefits shall not continue for more than a total of 500 weeks. Within 60 days of the expiration of the duration of the compensation provided for in this subsection, an employee may petition the Mayor for an extension of up to 167 weeks. The extension shall be granted only upon a finding by an independent medical examiner appointed by the Mayor of continued whole body impairment exceeding 20% under the American Medical Association's *Guides to the Evaluation of Permanent Impairment*. An injured employee shall have up to 3 years after termination of nonscheduled benefits to re-open his or her case due to changes in condition."

(d) Section 8(a-1)(5) (D.C. Code § 36-307(a-1)(5)) is amended to read as follows:

Section
36-307

"(5) Each provider of medical care or services pursuant to this act shall use a standard coding system for reports and bills generated pursuant to this act. Medical care and services shall be billed at the rate established in the medical fee schedule adopted by the Mayor. This fee schedule shall be based on 113% of Medicare's reimbursement amounts."

(e) Section 9 (D.C. Code § 36-308) is amended as follows:

Section
36-308

(1) Subsection (c) is amended as follows:

(A) Add a new paragraph (21A) to read as follows:

"(21A) In determining disability pursuant to paragraphs (1) through (19) of this subsection, the most recent edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* may be utilized, along with the following 5 factors:

"(A) Pain;

"(B) Weakness;

"(C) Atrophy;

"(D) Loss of endurance; and

"(E) Loss of function."

(B) Paragraph (22)(C) is amended by adding a new sentence at the end to read as follows:

"Notwithstanding the provisions of this section, in the case of injury occurring on or after the effective date of the Workers' Compensation Amendment Act of 1998, the periods of compensation set forth in paragraphs (1) through (19) of this subsection shall each be reduced by a proportion of 25% of the stated period of weeks, rounded upward to the nearest whole week."

(C) A new paragraph (23) is added to read as follows:

"(23) The compensation and remuneration payable to a professional athlete claimant pursuant to paragraph (22)(B) of this subsection shall be determined by referring to the

ENROLLED ORIGINAL

date of the claimant's disability and a date that is not later than the date on which the claimant's employment as a professional athlete would have ended if the disability for which he or she seeks compensation and remuneration pursuant to paragraph (22)(B) of this subsection had not occurred."

(2) A new subsection (f)(3) is added to read as follows:

"(3) The requirements of this subsection shall apply to injuries occurring prior to the effective date of the Workers' Compensation Amendment Act of 1998."

(3) Subsection (h) is amended to read as follows:

"(h) The Mayor may approve lump-sum settlements agreed to in writing by the interested parties, discharging the liability of the employer for compensation, notwithstanding sections 17 and 18, in any case where the Mayor determines that it is in the best interest of an injured employee entitled to compensation or individuals entitled to benefits pursuant to section 10. The Mayor shall approve the settlement, where both parties are represented by legal counsel who are eligible to receive attorney fees pursuant to section 31. These settlements shall be the complete and final dispositions of a case and shall be a final binding compensation order."

(4) Subsection (i) is repealed.

(f) Section 12(a) (D.C. Code § 36-311(a)) is amended as follows:

**Section
36-311**

(1) Paragraph (4) is amended to read as follows:

"(4) If at the time of injury wages are fixed by the day, hour, or by the output of the employee, the average weekly wage shall be computed by dividing by 26 the total wages the employee earned in the employ of the employer in the 26 consecutive calendar weeks immediately preceding the injury. If the employee has been in the employ of the employer less than 26 weeks, the total wages referred to in paragraph 3 of this subsection shall be the amount the employee would have earned had the employee been employed by the employer for the full 26 calendar weeks immediately preceding the injury and had worked, when work was available to other employees, in a similar occupation; or"

(2) Add a new paragraph (6) to read as follows:

"(6) If the injured employee has not worked in this employment during substantially the whole of the period, the employee's average weekly wage shall consist of 130 times the average daily wage or salary, which an employee of the same class working substantially the whole of the immediately preceding period in the same or similar employment, in the same or a similar neighboring place, shall have earned in the employment during the days when so employed."

(g) Section 21(c) (D.C. Code § 36-320(c)) is amended to read as follows:

**Section
36-320**

"(c) The Mayor shall make or cause to be made investigations of claims as he considers necessary, which may include processing the claim through a central system to give the Mayor an advisory opinion on the rate and degrees of disability. Upon application of any interested party the Mayor shall order a hearing within 90 days, unless the Mayor grants a special extension of time for the development of facts. The Mayor shall not use pre-hearing conferences to resolve

ENROLLED ORIGINAL

workers' compensation claims. If a hearing on the claim is ordered, the Mayor shall give the claimant and other interested parties at least 10 days notice of the hearing, served personally upon the claimant and other interested parties or sent to the claimant and other interested parties by registered or certified mail. No additional information shall be submitted by the claimant or other interested parties after the date of hearing, except under unusual circumstances as determined by the Mayor. Within 20 days after a hearing is held, the Mayor shall by order reject the claim or make an award in respect of the claim based on substantial evidence before him. The Mayor shall, by order, reject the claim or make an award in respect of the claim based upon substantial evidence before him, if no hearing is ordered within 20 days after notice is given as provided in subsection (b) of this section."

(h) Section 33(a) (D.C. Code § 36-332(a)) is amended by adding a new sentence at the end to read as follows:

**Section
36-332**

"The employer shall send to the employee or the employee's next of kin, by certified mail, return receipt requested, concurrent with the submission of the report to the Department of Employment Services, a statement of the employee's rights and obligations pursuant to this act, including the right to file a claim for compensation within 1 year from the date of injury or death."

(i) Section 39 (D.C. Code § 36-338) is amended by adding a new subsection (c) to read as follows:

**Section
36-338**

"(c)(1) Employers implementing a safe workplace program shall qualify for certification for a 5% premium discount under the employer's workers' compensation insurance policy.

"(2) For each policy of workers' compensation insurance issued or renewed in the District on and after the effective of date of the Workers' Compensation Amendment Act of 1998, there shall be granted, by the insurer, a 5% premium reduction pursuant to rules issued by the Department of Insurance and Securities Regulations, in the premium for the policy if the insured has been certified by the Department of Employment Services, as having a safe workplace program that complies with the requirements of this act and has notified its insurer in writing of the certification. Certification of an insured shall be required for each of the 4 years in which the premium discount is granted. Thereafter, any premium discount authorized pursuant to this act shall be determined from the experience rating plan of the insured, or in the case of an insured not rated upon experience.

"(3) The workers' compensation insurance policy of an insured shall be subject to an additional premium for the purposes of reimbursement of a previously granted premium discount and to cancellation in accordance with the policy if it is determined by the Department of Employment Services that the insured misrepresented the compliance of its safe workplace program.

"(4) The Commissioner of Insurance and Securities may promulgate rules and regulations necessary for the implementation and enforcement of this section."

(j) Section 41(d) (D.C. Code § 36-340(d)) is amended as follows:

(1) Paragraph 3 is amended to read follows:

"(3) The total assessment amount shall be allocated between self-insured employers and insured employers based on paid losses for the fiscal year preceding the year in which the assessment is based. The method of assessing self-insured employers shall be based upon paid losses. The method of assessing insured employers shall be a surcharge based on premium as set forth in this subsection. The portion of the total aggregate assessment to be collected from self-insured employers shall be equal to that proportion of the total paid losses during the preceding fiscal year, which the total paid losses of all self-insured employers bore to the total paid losses made by all self-insured employers and insurers on behalf of all insured employers during the preceding fiscal year. The portion of the total aggregate assessment that shall be collected from insured employers shall be equal to that proportion of total paid losses during the preceding fiscal year, which the total paid losses made on behalf of all insured employers bore to the total paid losses made by all self-insured employers and insurers on behalf of all insured employers during the preceding fiscal year.

(2) Add new paragraphs (4), (5), (6), and (7) to read as follows:

"(4) Any employer which becomes self-insured shall be assessed as if it were insured for 24 months after conversion. The new self-insured employer shall be assessed on the basis of premium. The premium basis shall be equal to its premium for the policy period immediately preceding conversion to be self-insured, multiplied by the percentage change in the self-insured's payroll. The payroll measurement period shall be the fiscal year immediately preceding conversion and the subsequent 2 fiscal years.

"(5) On or after September 1, 1999, and annually thereafter, the Mayor shall notify insurers of the premium surcharge rate to be effective for policies written or renewed on and after October 1, 1999, and annually thereafter. The Mayor shall notify self-insured employers, at the same time, of the amount to be assessed against self-insured employers for the following fiscal year. The assessment against self-insurers and the surcharge rate applicable to policies of insured employers, together with amounts generated by subsections (d)(1) and (d)(2) of this section, shall be sufficient to generate revenue needed to satisfy obligations to the Special Fund. Should the Mayor subsequently determine that the assessments are insufficient to meet the Special Fund's obligations during a fiscal year, the Mayor may assess self-insurers and insured employers to cover any anticipated deficiency, based upon the allocation method set forth in this subsection. Self-insured employers and insurers, on behalf of their policyholders, shall remit any emergency assessment within 30 calendar days of receipt of notice from the Mayor.

"(6) Every workers' compensation insurer shall collect, from each of its policyholders, an amount equal to the insured employers' assessment through a surcharge based on premium. These assessments shall include any amounts paid by insurers on behalf of their policyholders to cover an emergency assessment by the Mayor during the previous fiscal year.

Assessments when collected shall not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, shall be treated as separate costs imposed upon insured employers. The total of the assessment imposed by this subsection shall be stated as a separate cost on an insured employer's policy, or on a separate document submitted to the insured employer, and shall be identified as the "Workers' Compensation Policyholder Surcharge." Each assessment shall be shown as a percentage of the total workers' compensation policyholder premium. The premium surcharge shall be excluded from the definition of premiums for all purposes, including computation of agents' commissions or premium taxes.

"(7) Insurers and self-insurers shall forward to the Special Fund all amounts collected pursuant to this section. These collections shall be for the administration of the Special Fund and shall not be part of the General Fund of the District of Columbia. Any balance remaining at the end of any fiscal year shall not revert to the General Fund and shall be used exclusively to offset any Special Fund assessment required in the next immediate fiscal year."

(k) Section 42 (D.C. Code § 36-341) is amended to read as follows:

Section
36-341

"(a)(1) There is established in the Treasury of the District of Columbia a fund to provide for the payment of all expenses to administer the provisions of this act. The fund shall be administered by the Mayor.

"(2) The Mayor shall determine, for fiscal years commencing on or after October 1, 1999, the cost of administration of this act for each fiscal year and shall prorate and assess the costs of administration as provided in subsections (d) and (f) of this section. The cost of administration shall include any expenses that have been incurred, will be incurred, or that will accrue during the fiscal year.

"(3) The Mayor shall determine, in each fiscal year commencing on or after September 30 of the fiscal year in which the Workers' Compensation Amendment Act of 1998 becomes effective, prior to the commencement of the fiscal year, the cost of administration of this act. The cost of administration shall include any expenses to be incurred or that will accrue during the fiscal year.

"(b) The provisions of section 41(b) and (e) shall apply to the fund established pursuant to subsection (a)(1) of this section.

"(c) The Mayor shall determine, at the end of each fiscal year, the cost of the administration of this act. The cost of administration shall include any expenses to be incurred or which will accrue during the fiscal year.

"(d) The total amount of costs to administer this act, shall be pro rated among the carriers and self-insurers authorized to insure pursuant to section 35. The assessment base shall be the total amount of compensation and medical payments that carriers and self-insurers have paid pursuant to this act during the preceding fiscal year; provided, however, beginning with the

ENROLLED ORIGINAL

fiscal year commencing on or after October 1, 1999, the Mayor shall have the authority to assess each carrier or self-insured a minimum annual amount of \$1,000.

"(e) The assessment for each carrier and self-insurer for the preceding fiscal year shall be redetermined, subsequent to each fiscal year, based upon the actual total amount of compensation and medical payments paid and the administrative costs incurred that year. Adjustments for differences between the beginning year assessment and the year end actual determination, if any, shall be made to the next ensuing assessment.

"(f) The Mayor shall assess each carrier and self-insurer for its pro rata share of the total amount of costs to administer this act in the fiscal year pursuant to this section, and shall give written notice by certified or registered mail to each carrier or self-insurer of the assessment against it.

"(g)(1) Assessments shall be paid within the time prescribed by the Mayor.

"(2) For a period not to exceed 12 months following the effective date of the Workers' Compensation Amendment Act of 1998, the Mayor may permit payment of the assessment of each carrier or self-insured in quarterly installment payments.

"(h) If a deficit is projected to occur in the administration of the fund created pursuant to subsection (a) of this section, prior to the end of the fiscal year, the Mayor is authorized to implement an emergency assessment in an amount deemed necessary to avoid the deficit. Self-insurers and carriers, on behalf of their policyholders, shall remit the emergency assessment within 30 calendar days of receipt of the assessment.

"(i) The Mayor is authorized to promulgate rules deemed necessary or appropriate to carry out the purposes of this section, including provisions for making and preserving appropriate records, paying of assessments, inspecting these records, and the submission by carriers and self-insurers of reports prescribed by the Mayor.

"(j) If a carrier or self-insurer fails to pay the assessment referred to in subsection (f) or (h) of this section, or to make and preserve records in the form and manner required by the Mayor, to file a report in the form and manner required by the Mayor, or to allow the Mayor to inspect records required by rules issued pursuant to this section, the Mayor may suspend or revoke the authorization of a carrier to insure for workers' compensation or a self-insurer to act as a self-insurer pursuant to this act."

(l) Section 44 (D.C. Code § 36-343) is amended as follows:

(1) The existing text is designated as subsection (a).

(2) New subsections (b), (c), and (d) are added to read as follows:

"(b) The Mayor shall study and report to the Council on a proposal to reclassify Office of Workers' Compensation Hearing Examiners as Administrative Law Judges ("ALJs") and to raise their level of compensation.

"(c) The Mayor shall develop performance measures and qualifications for the ALJs for the Office of Workers' Compensation and recommend compensation levels within 90 days after the effective date of the Workers' Compensation Amendment Act of 1998.

Section
36-343

decision. These revised rates shall be applicable to all new and renewal workers' compensation insurance policies effective on or after the effective date of the Workers' Compensation Amendment Act of 1998. For any policy in effect on the effective date of the Workers' Compensation Amendment Act of 1998, through the end of the policy period the premium shall be reduced by a percentage which equals the benefit level reduction. With respect to new and renewal policies effective on or after the effective date of the Workers' Compensation Amendment Act of 1998, and before the final approval of the rates filed pursuant to this section, each workers' compensation insurance carrier shall, not later than 45 days after the rates approved pursuant to this section become final, adjust the premium of the new or renewal policy for the period after the effective date of the Workers' Compensation Amendment Act of 1998, to reflect the difference between the premium on the policy as issued and the premium which reflects the rates as finally approved."

Sec. 3. Chapter 2 of Title 7 of the District of Columbia Municipal Regulations (Employment Benefits) (7 DCMR 200) is amended as follows:

DCMR

(a) Section 220 is amended to read as follows:

"220 HEARINGS ON CLAIMS

"220.1 An original application for formal hearing shall be in writing, signed by the moving party, and filed with the Hearings and Adjudication Section. A copy of the application shall also be filed with the Office of Workers' Compensation, and served on all opposing parties, or their representatives, if known.

"220.2 Upon receipt of an application for formal hearing, the formal hearing shall be scheduled no later than ninety (90) days from the date of application for formal hearing except, where for good cause shown an extension may be granted by the Hearing Examiner for a reasonable period of time.

"220.3 Upon receipt of an application for formal hearing, the Hearing and Adjudication Section shall issue a Scheduling Order. The Scheduling Order shall be issued within ten (10) working days of receipt of the application for formal hearing.

"220.4 Notice of formal hearing shall be served upon all interested parties or their representatives at least ten (10) working days before the hearing."

(b) Subsection 221.1 is amended to read as follows:

"221.1 All formal hearings on claims shall be conducted by a Hearing or Attorney Examiner designated by the Hearing and Adjudication Section."

(c) Section 222 is amended to read as follows:

"222 PRE-HEARING PROCEDURES

"222.1 The Hearing and Adjudication Section shall furnish interested parties or their representatives with a copy of a Joint Pre-Hearing Statement Form. Unless otherwise ordered by the Hearing Examiner or Attorney, the party applying for the formal hearing or their representative shall, after consultation with the opposing party, prepare the Joint Pre-Hearing

"(d) Within 2 years following enactment of the Workers' Compensation Amendment Act of 1998, the Mayor shall submit to the Council an evaluation of the District's workers' compensation program that shall include the following:

"(1) An analysis of the impact of provisions contained in this act in reducing costs, improving efficiency, and maintaining access to health care;

"(2) A recommendation on whether the District government should assume additional administrative functions related to the workers' compensation program including the statistical analysis and ratemaking now undertaken by the National Council on Compensation Insurance, including an assessment of costs involved;

"(3) A recommendation on whether the District should adopt a managed care approach and a preferred provider approach and rationale if such a policy is recommended;

"(4) An evaluation of the effectiveness of the Department of Insurance and Securities Regulation in regulating workers' compensation insurance including the basis of ratemaking decisions and encompassing any recommended changes in law, regulation or administration to improve effectiveness;

"(5) An analysis of and recommendation to address the disproportionate burden on District businesses posed by the pre-1982 claims under the Longshore and Harbor Workers' Act including estimates on savings possible if the U.S. Department of Labor is held to administrative cost standards equal to those associated with post-1982 claims;

"(6) A recommendation on whether the District should create a "state accident fund" as exists in other jurisdictions as a means to reduce overall premium costs through more effective risk management; and

"(7) An evaluation of the current occupational class codes and a recommendation for restructuring if advisable."

(m) A new section 43b is added to read as follows:

"Sec. 43b. Commissioner of Insurance and Securities; rate filings.

"(a) The Commissioner of Insurance and Securities ("Commissioner") shall take into consideration the profits of the insurers when evaluating the rate filing for workers' compensation insurance.

"(b) Each rating organization shall file, within 60 days after enactment of the Workers' Compensation Amendment Act of 1998, a loss cost filing for new and renewal policies for workers' compensation insurance to be effective on and after the effective date of the Workers' Compensation Amendment Act of 1998.

"(c) The filing shall reflect no less than a 11.3% reduction in benefits. The filing shall be subject to approval or disapproval by the Commissioner, but an approval or disapproval shall be made not later than 60 calendar days after first receipt of the loss cost filing.

"(d) Within 30 days of the Commissioner's final decision regarding a filing by a rating organization made pursuant to this section, each insurer writing workers' compensation insurance in the District shall file revised rates for the voluntary market in accordance with this

New Section
36-342.2

Statement for the signature of each party. Failure by any interested party to participate in the timely completion and submission of the Joint Pre-Hearing Statement shall result in the imposition of an appropriate sanction against the non-participating party by the Hearing Examiner or Attorney. The Joint Pre-Hearing Statement shall be filed with the Hearing and Adjudication Section as required by the Scheduling Order.

"222.2 The Joint Pre-Hearing Statement shall include the following:

- "(a) The name of each party's representative;
- "(b) The basis for jurisdiction, or if contested, the jurisdictional questions;
- "(c) A brief statement of the facts as claimed by the interested parties;
- "(d) A listing of all uncontested or stipulated material facts;
- "(e) A listing of the contested issues of fact and law;
- "(f) A statement that discovery is complete;
- "(g) A listing of each party's exhibits, and witnesses, excepting impeachment witnesses;
- "(h) A statement informing the parties of the availability of, and need to request an interpreter for a party or witness who cannot understand or communicate in the spoken English language or because of a hearing impediment cannot readily understand or communicate in the spoken English language;
- "(i) A realistic estimate of the time the formal hearing will require;
- "(j) The statement, "This Joint Pre-Hearing Statement has been formulated after conference between counsel or the representatives of the respective parties and reasonable opportunity has been afforded the participants for corrections, or additions, prior to signing"; and
- "(k) The statement, "The possibility of settlement of this case has been actively considered.

"222.3 The Hearing and Adjudication Section shall furnish a Scheduling Order to all interested parties, or their representatives, within ten (10) working days of its receipt of the application for formal hearing. The Scheduling Order shall contain the date for the submission to Hearing and Adjudication Section of the Joint Pre-Hearing Statement; the date for the close of the discovery period if discovery is not complete prior to the application for formal hearing; the date for the exchange of all documentary exhibits between the parties or their representatives, and the submission to the Hearing and Adjudication Section of exhibits; and, the date by which Motions to Amend the Joint Pre-Hearing Statement must be served upon the opposing party and filed with the Hearing and Adjudication Section.

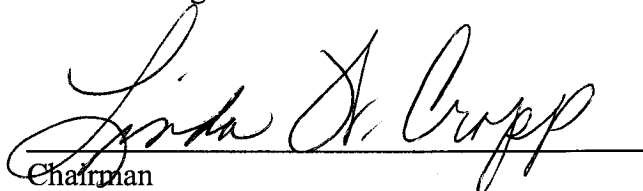
"222.4 If the party applying for a formal hearing fails to perform pursuant to the Scheduling Order, without good cause, the application for formal hearing shall be dismissed. If the party who has not requested the formal hearing fails to perform pursuant to the Scheduling Order, the formal hearing may be scheduled for *ex parte* proof. A request by either party to set aside the dismissal of an application for formal hearing or to vacate an Order setting a formal

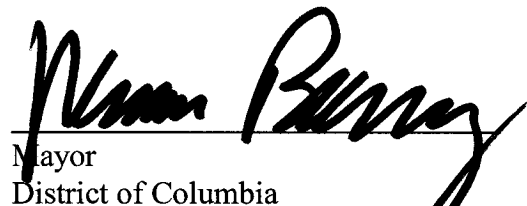
hearing on *ex parte* proof may be granted where the Hearing Examiner has found the party's failure to comport with the Scheduling Order was for good cause.

"222.5 Requests for continuances of dates set in the Scheduling Order shall not be granted except for good cause shown. Where good cause has been shown and a previously scheduled date has been extended, this will extend by the identical time period the ninety (90) working day period for convening the formal hearing as contained in subsection 220.2 of this chapter."

Sec. 4. 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. Code § 1-233(c)(3)).

Sec. 5. 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), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(a)), 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. Code § 1-233(c)(1)), and publication in the District of Columbia Register.


Chairman
Council of the District of Columbia


Mayor
District of Columbia

APPROVED: December 23, 1998



COUNCIL OF THE DISTRICT OF COLUMBIA

COUNCIL PERIOD TWELVE

RECORD OF OFFICIAL COUNCIL VOTE

B12-192

Docket No.

ITEM ON CONSENT CALENDAR

ACTION & DATE

ADOPTED FIRST READING, 11-10-98

VOICE VOTE RECORDED VOTE ON REQUEST

APPROVED, JARVIS AND THOMAS VOTED NO MASON

ABSENT

ROLL CALL VOTE - Result

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Cropp					Chavous					Schwartz				
Allen					Evans					Smith, Jr.				
Ambrose					Jarvis					Thomas, Sr.				
Brazil					Mason									
Catania					Patterson									

X - Indicates Vote

AB - Absent

NV - Present not Voting

CERTIFICATION RECORD

Secretary to the Council

Date

ITEM ON CONSENT CALENDAR

ACTION & DATE

ADOPTED FINAL READING, 12-01-98

VOICE VOTE RECORDED VOTE ON REQUEST

ABSENT

ROLL CALL VOTE - Result

PASSED

8500

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Cropp	X				Chavous		X			Schwartz	X			
Allen	X				Evans	X				Smith, Jr.	X			
Ambrose		X			Jarvis	X				Thomas, Sr.		X		
Brazil		X			Mason		X							
Catania	X				Patterson	X								

X - Indicates Vote

AB - Absent

NV - Present not voting

CERTIFICATION RECORD

Secretary to the Council

Date

ITEM ON CONSENT CALENDAR

ACTION & DATE

VOICE VOTE RECORDED VOTE ON REQUEST

ABSENT

ROLL CALL VOTE - Result

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Cropp					Chavous					Schwartz				
Allen					Evans					Smith, Jr.				
Ambrose					Jarvis					Thomas, Sr.				
Brazil					Mason									
Catania					Patterson									

X - Indicates Vote

AB - Absent

NV - Present not Voting

CERTIFICATION RECORD

Secretary to the Council

Date