

COUNCIL OF THE DISTRICT OF COLUMBIA
D.C. Law 20-60, effective December 13, 2013
(Delayed Applicability)

20 DCSTAT 2220

AN ACT

Bill 20-134
Act 20-207
effective
October 22,
2013

Codification
District of
Columbia
Official Code
2001 Edition

To amend the District of Columbia Government Comprehensive Merit Personnel Act of 1978 to create the Mayor's Office of Legal Counsel and the position of Director of the Mayor's Office of Legal Counsel, to provide that all attorneys who perform work as or for the General Counsels of the subordinate agencies shall be employed by the subordinate agencies they advise, to establish that Senior Executive Attorneys facing removal or demotion may be appointed to positions in the Office of the Attorney General or the Mayor's Office of Legal Counsel, to establish that a Senior Executive Attorney appointed by the head of subordinate agency shall serve at the pleasure of the subordinate agency head, to require the subordinate agency head to consult with the Director of the Mayor's Office of Legal Counsel before terminating an attorney who works as or for the General Counsel of a subordinate agency, to provide that attorneys who perform work as or for the General Counsels of subordinate agencies shall be appointed by the subordinate agency head after consulting with the Director of the Mayor's Office of Legal Counsel, to provide that attorneys employed by a subordinate agency shall act under the direction, supervision, and control of the subordinate agency head, to provide that the subordinate agency heads are responsible for the discipline of attorneys under their control, to require the Attorney General and the Director of the Mayor's Office of Legal Counsel to provide training and establish performance standards, to authorize the Director of the Mayor's Office of Legal Counsel to adopt rules, to transfer attorneys from the Office of the Attorney General to the subordinate agencies as of October 1, 2014, to provide that the Office of the Attorney General shall continue to be responsible for the compensation of these attorneys until the Legal Service budget for them is transferred, to provide for the transfer of resources, and to confirm the applicability of the attorney-client privilege to communications and legal advice between Legal Service attorneys and their clients in the subordinate agencies; to amend the Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010 to postpone the election for the Attorney General until 2018; and to amend the District of Columbia Election Code of 1955 and the Campaign Finance Reform and Conflict of Interest Public Disclosure Amendment Act of 2011 to include the elected Attorney General in relevant sections.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Elected Attorney General Implementation and Legal Service Establishment Amendment Act of 2013".

TITLE I – MAYOR'S OFFICE OF LEGAL COUNSEL

Sec. 101. The District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D. C. Law 2-139; D.C. Official Code § 1-601.01 *et seq.*), is amended as follows:

(a) A new section 851a is added to read as follows:

"Sec. 851a. Establishment of the Mayor's Office of Legal Counsel.

"(a) Pursuant to section 404(b) of the District of Columbia Home Rule Act, approved

Elected Attorney
General
Implementation
and Legal
Service
Establishment
Amendment Act
of 2013

New
§ 1-608.51a

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December 24, 1973 (87 Stat. 787; D.C. Official Code § 1-204.04(b)), the Council establishes the Mayor's Office of Legal Counsel, within the executive branch of the District of Columbia government. The office shall be headed by a Director who shall be appointed by the Mayor and serve at the Mayor's pleasure.

“(b)(1) The purposes of the Mayor's Office of Legal Counsel shall include:

“(A) Coordinating the hiring, compensation, training, and resolution of significant personnel-related issues for subordinate agency counsel in conjunction with agency directors;

“(B) Providing legal and policy advice to the Mayor and executive branch;

“(C) Resolving interagency legal issues for the Mayor;

“(D) Overseeing the representation of agencies in investigative matters before the executive branch of the federal government, Congress, or the Council of the District of Columbia; and

“(E) Supervising outside counsel in matters where the Office of the Attorney General is recused from a matter or otherwise not available.

“(2) The Director shall employ attorneys and support staff to assist in carrying out the purposes of the office. At least one staff member shall have as one of his or her primary duties the management of issues arising from subordinate agency general counsel-related matters.

“(c) Nothing in this section shall be construed to abrogate the provisions of sections 109 or 121 of the Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010, effective May 27, 2010 (D.C. Law 18-160; D.C. Official Code §§ 1-301.89 and 1-301.90).”.

(b) Section 852 (D.C. Official Code § 1-608.52) is amended by striking the phrase “all attorneys who perform work for subordinate agencies shall become employees of the Office of the Attorney General for the District of Columbia” and inserting the phrase “all attorneys who perform work primarily as or for the General Counsels of the subordinate agencies shall become employees of the subordinate agencies they advise.” in its place.

**Amend
§ 1-608.52**

(c) Section 853 (D.C. Official Code § 1-608.53) is amended as follows:

**Amend
§ 1-608.53**

(1) Subsection (c) is amended by striking the phrase “Attorney General” and inserting the phrase “Director of the Mayor's Office of Legal Counsel or Attorney General” in its place.

(2) Subsection (d) is amended by adding 2 new sentences at the end to read as follows: “A Senior Executive Attorney employed by a subordinate agency shall serve at the pleasure of the head of the subordinate agency. A Senior Executive Attorney employed by the Mayor's Office of Legal Counsel shall serve at the pleasure of the Director of the Mayor's Office of Legal Counsel.”.

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

“(e) A Senior Executive Attorney employed by a subordinate agency shall serve at the pleasure of the head of the subordinate agency, and the subordinate agency head shall consult

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with the Director of the Mayor's Office of Legal Counsel before making any decision concerning the termination of a Senior Executive Attorney.”.

(d) Section 854(a) (D.C. Official Code § 1-608.54(a)) is amended to read as follows:

Amend
§ 1-608.54

“(a) Attorneys employed by the Office of the Attorney General shall be hired by the Attorney General. Attorneys employed by subordinate agencies shall be hired by the subordinate agency heads after consultation with the Director of the Mayor's Office of Legal Counsel. Attorneys employed by the Mayor's Office of Legal Counsel shall be hired by the Director of the Mayor's Office of Legal Counsel.”.

(e) Section 855 (D.C. Official Code § 1-608.55) is amended as follows:

Amend
§ 1-608.55

(1) A new subsection (a-1) is added to read as follows:

“(a-1) Attorneys employed by subordinate agencies shall act under the direction, supervision, and control of the head of the subordinate agency.”.

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

“(b) Attorneys employed by the Mayor's Office of Legal Counsel shall be under the direction, supervision, and control of the Director of the Mayor's Office of Legal Counsel.”.

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

“(d) The Director of the Mayor's Office of Legal Counsel may, with the consent of a subordinate agency director, assign an attorney employed by the Mayor's Office of Legal Counsel to perform work primarily as or for the General Counsel of the affected subordinate agency, whether located at the agency or not, in the Director of the Mayor's Office of Legal Counsel's discretion.”.

(f) Section 856 (D.C. Official Code § 1-608.56) is amended as follows:

Amend
§ 1-608.56

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

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

“(1A) The Director of the Mayor's Office of Legal Counsel when the attorney is employed by the Mayor's Office of Legal Counsel and performs work primarily for that office, whether located in that office or not;”.

(B) Paragraph (2) is repealed.

(C) Paragraph (3) is amended to read as follows:

“(3) The agency head or the Senior Executive Attorney designee when the attorney is employed by an independent agency, and by the subordinate agency head in consultation with the Director of the Mayor's Office of Legal Counsel when the attorney is employed by a subordinate agency.”.

(2) Subsection (c) is amended to read as follows:

“(c) Any disciplinary action taken pursuant to this section against an attorney employed by a subordinate agency or the Mayor's Office of Legal Counsel may be appealed to the Mayor. Any such action taken against an attorney employed by the Office of the Attorney General may be appealed to the Attorney General. The Mayor's and the Attorney General's decisions regarding disciplinary actions shall be final.”.

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(g) Section 857 (D.C. Official Code § 1-608.57) is amended as follows:

**Amend
§ 1-608.57**

(1) Subsection (a) is amended to read as follows:

“(a)(1) Attorneys in the Legal Service, other than attorneys employed by independent agencies, shall participate in an annual mandatory program of continuing legal education. The Attorney General shall establish a program for attorneys employed by the Office of the Attorney General, and the Director of the Mayor’s Office of Legal Counsel shall establish a program for attorneys employed by the subordinate agencies and the Mayor’s Office of Legal Counsel.

“(2) Training programs offered by the Office of the Attorney General shall, to the extent practicable, be made available with no charge to attorneys employed by the subordinate agencies; likewise, training programs offered by the Mayor’s Office of Legal Counsel for attorneys employed by the subordinate agencies shall, to the extent practicable, be made available with no charge to attorneys in the Office of the Attorney General.

“(3) Attorneys in the Legal Service who supervise one or more other attorneys as part of their normal duties shall maintain and enhance their management and supervisory skills through at least annual in-house or other training arranged or approved by their employing agency.”.

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

“(b) The Attorney General and the Director of the Mayor’s Office of Legal Counsel shall each develop and establish performance management systems that include accountability standards and individual accountability plans for all attorneys, including Senior Executive Attorneys, in the Legal Service who are under their direction, supervision, or control. The performance management systems shall link pay to performance.”.

(3) Subsection (c) is amended by striking the second sentence and inserting the following sentence in its place: “The head of an independent agency may utilize a system developed for use by the Attorney General or the Director of the Mayor’s Office of Legal Counsel for attorneys under the independent agency head’s direction or control.”.

(h) Section 861 (D.C. Official Code § 1-608.61) is amended by striking the phrase “Attorney General may” and inserting the phrase “Attorney General and the Director of the Mayor’s Office of Legal Counsel may each” in its place.

**Amend
§ 1-608.61**

(i) Section 862(5) (D.C. Official Code § 1-608.62(5)) is amended to read as follows:

**Amend
§ 1-608.62**

“(5) Effective October 1, 2014, any attorney who is employed by the Office of the Attorney General and performs work primarily as or for the General Counsel of a subordinate agency shall become an attorney employed by the subordinate agency.”.

(j) Section 863 (D.C. Official Code § 1-608.63) is amended to read as follows:

**Amend
§ 1-608.63**

“Sec. 863. Compensation for subordinate agency attorneys and support staff during transition.

“Until the Legal Service budget for attorneys and support staff who perform work, primarily as or for the General Counsel of a subordinate agency is transferred to the budget of the subordinate agency involved, the Office of the Attorney General shall continue to be responsible for the compensation of these attorneys and support staff and for related non-

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personal services expenses. After the budget is transferred, the subordinate agency shall reimburse the Office of the Attorney General for any costs or expenses incurred between October 1, 2014, and the completion of the transfer from the Office of the Attorney General to the subordinate agency.”.

(k) Section 864 (D.C. Official Code § 1-608.64) is amended to read as follows:

**Amend
§ 1-608.64**

“Sec. 864. Transfers.

“By October 5, 2014, the District of Columbia Department of Human Resources, in collaboration with the Office of the Attorney General, shall transfer to the subordinate agencies, all attorney and support staff employees, personal property, full-time equivalent position authority, assets, records, and all unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the furnishing of legal and other services by the attorneys who perform work primarily as or for the General Counsels of the subordinate agencies as of October 1, 2014.”.

(l) Section 865 (D.C. Official Code § 1-608.65) is amended as follows:

**Amend
§ 1-608.65**

(1) Subsection (a) is repealed.

(2) Subsection (b) is repealed.

(3) Subsection (c) is amended by striking the phrase “Attorney General’s” and inserting the phrase “subordinate agencies” in its place.

(m) A new section 866 is added to read as follows:

**New
§ 1-608.66**

“Sec. 866. Privilege.

“Nothing in this act shall limit, waive, or abrogate the scope or nature of the attorney-client privilege, whether statutory or common law, with respect to communications between attorneys employed by the Office of the Attorney General and subordinate agency personnel, or legal advice given by Office of the Attorney General attorneys to subordinate agency personnel before the date of the appointment of these attorneys to positions in the subordinate agencies. This privilege shall continue to apply fully to all communications made and legal advice provided between subordinate agency personnel and attorneys employed by the subordinate agencies after attorneys are transferred to the subordinate agency.”.

TITLE II-ELECTION OF ATTORNEY GENERAL

Sec. 201. Section 102(a) of the Attorney General for the District of Columbia

**Amend
§ 1-301.82**

Clarification and Elected Term Amendment Act of 2010, effective May 27, 2010 (D.C. Law 18-160; D.C. Official Code § 1-301.82(a)), is amended to read as follows:

“(a) Until such time as an Attorney General is elected under section 435 of the District of Columbia Home Rule Act, effective May 28, 2011 (D.C. Law 18-160A; D.C. Official Code § 1-204.35), which time shall not be before January 1, 2018, 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).”.

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TITLE III – CONFORMING AMENDMENTS

Sec. 301. 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 8 (D.C. Official Code § 1-1001.08) is amended as follows:

Amend
§ 1-1001.08

(1) The heading is amended by striking the phrase “Delegate, Mayor, Chairman, members of Council” and inserting the phrase “Delegate, Chairman of the Council, members of Council, Mayor, Attorney General,” in its place.

(2) Subsection (b)(1) is amended by adding a new subparagraph (D) to read as follows:

“(D) Any candidate for the position of Attorney General shall also meet the qualifications required by section 103 of the Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010, effective May 27, 2010 (D.C. Law 18-160; D.C. Official Code § 1-301.83), before the day on which the election for Attorney General is to be held.”.

(3) Subsection (d) is amended by striking the phrase “Delegate, Mayor, Chairman of the Council, or member of the Council” and inserting the phrase “Delegate, Chairman of the Council, member of the Council, Mayor, or Attorney General” in its place.

(4) Subsection (h) is amended as follows:

(A) Paragraph (1)(A) is amended as follows:

(i) Strike the phrase “Delegate, Mayor, Chairman of the Council of the District of Columbia and the 4 at-large members of the Council” and insert the phrase “Delegate, Chairman of the Council, the 4 at-large members of the Council, Mayor, and Attorney General” in its place.

(ii) Strike the phrase “Delegate, Mayor, Chairman of the Council of the District of Columbia, and at-large members of the Council” and insert the phrase “Delegate, Chairman of the Council, the at-large members of the Council, Mayor, and Attorney General” in its place.

(B) Paragraph (2) is amended by striking the phrase “Delegate, Mayor, Chairman of the Council and member of the Council” and inserting the phrase “Delegate, Chairman of the Council, member of the Council, Mayor, and Attorney General” in its place.

(5) Subsection (i)(1) is amended by striking the phrase “Delegate, Mayor, Chairman of the Council, or at-large member of the Council” and inserting the phrase “Delegate, Chairman of the Council, at-large member of the Council, Mayor, or Attorney General” in its place.

(6) Subsection (j) is amended as follows:

(A) Paragraph (1) is amended as follows:

(i) Strike the phrase “Delegate, Mayor, Chairman of the Council, or member of the Council” and insert the phrase “Delegate, Chairman of the Council, member of the Council, Mayor, or Attorney General” in its place.

(ii) Strike the phrase “Delegate, Mayor, Chairman of the Council,

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or at-large member of the Council,” and insert the phrase “Delegate, Chairman of the Council, at-large member of the Council, Mayor, or Attorney General,” in its place.

(B) Paragraph (3) is amended by striking the phrase “Mayor, Chairman of the Council, member of the Council,” and inserting the phrase “Chairman of the Council, member of the Council, Mayor, Attorney General,” in its place.

(7) Subsection (k)(3) is amended as follows:

(A) The introductory language is amended by striking the phrase “Delegate and Mayor” and inserting the phrase “Delegate, Mayor, and Attorney General,” in its place.

(B) Subparagraph (B) is amended by striking the phrase “pursuant to § 1-1001.10(d); or” and inserting the phrase “pursuant to § 1-1001.10(d), or, in the case of the Attorney General, pursuant to section 435(b) of the District of Columbia Home Rule Act, effective May 28, 2011 (D.C. Law 18-160A; D.C. Official Code § 1-204.35(b)); or” in its place.

(b) Section 10 (D.C. Official Code § 1-1001.10) is amended as follows:

Amend
§ 1-1001.10

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

(A) Paragraph (3)(C) is amended by striking the phrase “, primary elections of each political party for the office of Mayor and Chairman” and inserting the phrase “or by section 435(b) of the District of Columbia Home Rule Act, effective May 28, 2011 (D.C. Law 18-160A; D.C. Official Code § 1-204.35(b)), primary elections of each political party for the office of Chairman of the Council, Mayor and Attorney General” in its place.

(B) Paragraph (4) is amended by striking the phrase “authorized by this subchapter,” and inserting the phrase “authorized by this subchapter or by section 435(b) of the District of Columbia Home Rule Act, effective May 28, 2011 (D.C. Law 18-160A; D.C. Official Code § 1-204.35(b)),” in its place.

(2) Subsection (d)(1) is amended by striking the phrase “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” and inserting the phrase “Delegate, member of the Council, Mayor, Attorney General, member of the Board of Education, or winner of a primary election for the office of Delegate, member of the Council, Mayor, or Attorney General” in its place.

(c) Section 11(a)(2) (D.C. Official Code § 1-1001.11(a)(2)) is amended by striking the phrase “Delegate to the House of Representatives, Mayor, Chairman of the Council, member of the Council” and inserting the phrase “Delegate to the House of Representatives, Chairman of the Council, member of the Council, Mayor, Attorney General” in its place.

Amend
§ 1-1001.11

(d) Section 15 (D.C. Official Code § 1-1001.15) is amended as follows:

Amend
§ 1-1001.15

(1) Subsection (a) is amended by striking the phrase “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.” and inserting the phrase “No person shall be a candidate for more than one office on

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the Board of Education, the Council, Mayor, or Attorney General in any election for the members of the Board of Education, the Council, Mayor, or Attorney General, and no person shall be a candidate for more than one office on the Council, Mayor, or Attorney General in any primary election.”.

(2) Subsection (b) is amended by striking the phrase “Mayor, Delegate, Chairman or member of the Council” and inserting the phrase “Delegate, Chairman or member of the Council, Mayor, Attorney General” in its place.

Sec. 302. The Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161 *et seq.*), is amended as follows:

(a) Section 226(b) (D.C. Official Code § 1-1162.26(b)) is amended to read as follows:

Amend
§ 1-1162.26

“(b) Except as provided in subsection (c) of this section, neither the Chairman of the Council, the Mayor, the Attorney General, nor any member of the Chairman of the Council’s, the Mayor’s, or the Attorney General’s immediate family shall accept royalties for works of the Chairman of the Council, the Mayor, or the Attorney General that exceed \$10,000 in the aggregate during any calendar year. For the purposes 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.”.

(b) Section 304(7) (D.C. Official Code § 1-1163.04(7)) is amended as follows:

Amend
§ 1-1163.04

(1) The introductory language is amended as follows:

(A) Strike the phrase “the Mayor, Council,” and insert the phrase “the Council, Mayor, Attorney General,” in its place.

(B) Strike the phrase “candidates for Mayor, the Chairman and members of the Council,” and insert the phrase “candidates for the Chairman and members of the Council, Mayor, and Attorney General,” in its place.

(c) Section 319 (D.C. Official Code § 1-1163.19) is amended as follows:

Amend
§ 1-1163.19

(1) Subsection (a) is amended by adding a new paragraph (1A) to read as follows:

“(1A) \$150,000 for an Attorney General exploratory committee;”.

(2) Subsection (b) is amended by adding a new paragraph (1A) to read as follows:

“(1A) \$1,500 for an Attorney General exploratory committee;”.

(d) Section 333 (D.C. Official Code § 1-1163.33) is amended as follows:

Amend
§ 1-1163.33

(1) Subsection (a) is amended by adding a new paragraph (1A) to read as follows:

“(1A) In the case of a contribution in support of a candidate for Attorney General or for the recall of the Attorney General, \$1,500;”.

(2) Subsection (b)(1) is amended by striking the phrase “for Mayor, Chairman of the Council, each member of the Council,” and inserting the phrase “for Chairman of the Council, each member of the Council, Mayor, Attorney General,” in its place.

(e) Section 336(b) (D.C. Official Code § 1-1163.36(b)) is amended as follows:

Amend
§ 1-1163.36

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(1) Paragraph (1) is amended by striking the phrase “the Mayor, the Chairman and members of the Council” and inserting the phrase “the Chairman and members of the Council, the Mayor, the Attorney General” in its place.

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

TITLE IV - APPLICABILITY.

Sec. 401. Applicability

(a) Title I shall apply as of October 1, 2014.

(b) Title II and Title III shall apply as of the effective date of this act.

Note,
§ 1-608.51a
Delayed
Applicability

TITLE V – FISCAL IMPACT AND EFFECTIVE DATE

Sec. 501. 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. 502. 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.