

**Council of the District of Columbia**  
**Committee on Government Operations**  
**Report**

1350 Pennsylvania Avenue, N.W. Washington, DC 20004

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To: Members of the Council of the District of Columbia

From: Muriel Bowser, Chairperson  
Committee on Government Operations

Date: December 5, 2011

Subject: Bill 19-511, the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011

The Committee on Government Operations, to which Bill 19-511, the “Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011” was referred, reports **favorably** on the bill and recommends its adoption by the Council of the District of Columbia.

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## STATEMENT OF PURPOSE AND EFFECT

In response to recent allegations of misconduct by several members of the Council of the District of Columbia and the Mayor, 12 measures were introduced to reform the District's ethics laws.<sup>1</sup> During the Committee's scrutiny of these measures and two public hearings, the Committee discovered that the current ethics framework is ill-suited to promoting a culture of high ethical conduct. The problems are myriad and involve fragmented laws, a lack of uniform application, an overburdened enforcement entity, a tolerant environment, a piece-meal approach to problem solving, and outdated laws that fail to address recent behavior. The current ethics framework harms the public's trust, the business environment, and potentially the government's legitimacy.

Bill 19-511 seeks to discretely address the problems of the day, resolve the problems with the current ethics regime, and establishes a framework with the ability to respond to future misconduct. The bill achieves this goal by enhancing current law, creating new regulations and prohibitions, and establishing the Board of Ethics and Government Accountability. Ultimately, the goal is to restore the public's trust in its government.

The enhanced laws pertain to public and private financial disclosure laws, centralized and professional advice related to the code of conduct, further regulation of constituent services funds and other opportunities for appearances of undue influence, and finally, enhanced penalties.

Newly created law would provide for ethics training for high-ranking government employees, remedy the fragmented application of laws by subjecting all employees to the code of conduct, and regulate fundraising committees for inaugural, transition, and legal defense purposes. Also, it would provide new penalties, and for the first time, local authority to prosecute serious ethical violations. The bill would clarify existing law by including all applicable ethics laws in one location within our Code. To further comprehension, the measure would require the production of a plain language guide to better educate government employees. Finally, the bill proposes to require public officials to certify that they have paid their taxes; diligently engaged in safe-guarding the assets of the taxpayers; reported known illegal activity; and generally conducted themselves in an upright and honorable manner.

Most importantly, the bill will establish a new entity charged exclusively with administering and enforcing the new and enhanced laws and code of conduct. To ensure that the ethics reforms contemplated by this bill will be enforced vigorously and without fear of reprisal or undue influence, the Board of Ethics and Government Accountability will be given independent

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<sup>1</sup> Bill 19-476: Government of the District of Columbia Comprehensive Merit Personnel Amendment Act of 2011; B19-511: Campaign Finance Reform and Conflict of Interest Public Disclosure Amendment Act of 2011; B19- 490: Lobbying, Finance, and Grant making Reform Amendment Act of 2011; B19-482: Full-Time Employment for Council Members Charter Amendment Act of 2011; B19-481 – Consecutive Term Limit Amendment Act of 2011; B19-478: Fundraising Accountability and Reform Amendment Act of 2011; B19-473 : Prohibition on Corporate and Lobbyist Giving to Public Officials Reform Amendment Act of 2011; B19-0359: Ethics and Accountability Task Force Act of 2011; B19-0358 : Ethics and Accountability Act of 2011; B19-0353: Campaign Finance Reporting Amendment Act of 2011; B19-0352 : Campaign Finance Accountability and Reform Amendment Act of 2011; Comprehensive Ethics Reform Act of 2011.

budget authority, hiring authority, investigative authority, 6 year terms, and protections against removal of board members.<sup>2</sup>

## **LEGISLATIVE HISTORY**

October 4, 2011	Date of introduction of B19-511, by Councilmember Muriel Bowser and Chairman Kwame Brown; co-sponsored by Councilmembers Mendelson, Cheh, Catania, Wells, Barry, Evans, Graham, Orange, Michael Brown, and Thomas
October 4, 2011	Referral to Committee on Government Operations
October 7, 2011	Notice of Public Hearing on B19-511 published in <i>District of Columbia Register</i>
October 14, 2011	Notice of Intent to Act on B19-511 is published in <i>District of Columbia Register</i>
October 26, 2011	Public Hearing on B19-511 held by the Committee on Government Operations
November 18, 2011	Notice of Roundtable on Draft Committee Print of B19-511 published in <i>District of Columbia Register</i> ; copy of Draft Committee Print is made available at <a href="http://www.dccouncil.us">www.dccouncil.us</a> .
November 30, 2011	Roundtable on Draft Committee Print of B19-511 held by the Committee on Government Operations
December 5, 2011	Consideration and vote on B19-511 by the Committee on Government Operations

## **BACKGROUND AND COMMITTEE REASONING**

As used in this report, the term “ethics” does not impute any moral or philosophical meaning. Instead, that term refers to the regulation of those behaviors which the government may seek to impose upon itself and its employees by rule of law to prevent government corruption and waste, avoid conflicts of interest, and ultimately to preserve and increase the public trust and with it the legitimacy of the government.

### **Introduction**

In response to recent allegations of misconduct by several members of Council of the District of Columbia and the Mayor, 12 measures were introduced to reform the District’s ethics

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<sup>2</sup> The initial terms will be staggered such that one member will serve two years, another 4 years, and finally, the third member will serve 6 years.

laws.<sup>3</sup> These bills varied in their scope and purpose. The Committee closely scrutinized these bills, heard from the public on two occasions, and devised a comprehensive bill that seeks to discretely address the problems of the day and establishes a framework with the ability to respond to future misconduct. Before turning to the bill, it is useful to consider the historical, legislative, and more recent historical context that has brought us to this point.

## History

### Formation of the Board of Elections

In 1955, before Home Rule, Congress created the Board of Elections for the District of Columbia.<sup>4</sup> The predecessor to today's Board of Elections and Ethics was charged with the administration and enforcement of elections to the Presidency and to local and national political committees. Its primary responsibility was to register voters, qualify candidates to those few offices to which the voters had a democratic say, and count and recount votes. And although the Board was—and still is—focused on elections administration, to a small degree the Board was charged with the enforcement of campaign finance rules.

The 1955 law limited the amount that could be raised and expended by campaign committees and required that:

“every candidate and ...committee or party committee shall, within ten days after the election, file with the Board ...an itemized statement ...setting forth all moneys received and expended in connection with said election, the names of persons from whom received and to whom paid, and the purpose for which it was expended. Such statement shall set forth any unpaid debts ...and specify the balance.”

This was the extent of the Board's authority for ethics enforcement. Nevertheless, enforcing disclosure laws is not an insignificant ethics tool. In fact, the Supreme Court has acknowledged that such laws represent a sufficiently important governmental interest in that they deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity. As the Court in *Buckley v. Valeo* stated, quoting an earlier article by Justice Brandeis: “Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.”<sup>5</sup>

Still, the Board was established to administer elections laws—a distinct, if occasionally overlapping discipline—rather than ethics. And it was not until Home Rule that the District formalized and took control of its own conduct.<sup>6</sup>

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<sup>3</sup> Prohibition on Corporate and Lobbyist Giving To Public Officials Reform Amendment Act of 2011; Government of District of Columbia Comprehensive Merit Personnel Amendment Act of 2011; Fundraising Accountability and Reform Amendment Act of 2011; Consecutive Term Limit Amendment of 2011; Full-Time Employment For Council Members Charter Amendment Act of 2011; Campaign Finance Reporting Amendment Act of 2011; Ethics and Accountability Act of 2011; Ethics and Accountability Task Force Act of 2011; Campaign Finance Accountability and Reform Amendment Act of 2011; Comprehensive Ethics Reform Act of 2011.

<sup>4</sup> *Buckley v. Valeo*, 424 U.S. 1 (1976).

<sup>5</sup> *Ibid*,

<sup>6</sup> Bill 19-511 does not seek to alter any elections laws.

## Federal Ethics

As a federal enclave, the District has, and continues to be, subject to a host of federal ethics laws administered and enforced by a host of federal agencies. For instance, public officials are subject to federal bribery laws, post-employment restrictions, financial conflicts of interest provisions, lobbying regulations, rules against nepotism, and the Hatch Act to name a few. The provisions are enforced against District employees by different entities including the Attorney General and the Office of Special Counsel. To a large degree these laws substantially mirror local ethics and criminal laws. Where they are not echoed, federal law controls and sets a base standard on which District law builds.<sup>7</sup>

## The Board of Elections *and* Ethics

In preparation for Home Rule and local representative elections for Council, the Mayoralty, and Advisory Neighborhood Commission, the need for a more robust local campaign finance framework was manifest. As the legislative history notes, the law at the time was “dangerously weak or silent when it comes to the regulation of political campaigns for offices established under the... Home Rule Act.”<sup>8</sup> In August of 1974, Congress approved the District of Columbia Campaign Finance Reform and Conflict of Interest Act (Conflicts Act). That law, since amended, set out in far greater detail than existed previously the requirements for forming campaign committees, accepting and reporting contributions, and limits on expenditures. Lobbying registration requirements were instituted, too. Interestingly, the law also allowed for surplus campaign funds to be preserved for future campaigns.

The 1974 law also included, for the first time, the recognition that elected officials should be held to a higher standard. Public disclosure rules were applied specifically to Councilmembers, the Mayor, and those employees who performed executive level tasks.<sup>9</sup> In time for the first election under Home Rule, officials were now required to report outside income, taxes, gifts, assets and liabilities. Congress makes its intent clear: “One of the greatest problems facing our nation today is the eroding confidence of the American people in our political system. We cannot ignore the fact that our current political campaign process tends to corrupt our principles, our leaders, and ourselves. Neither can we be blind to the fact that too many of our citizens believe, rightly, or wrongly, that government at all levels is operated mainly for the benefit of big money interests.”

To this end, Congress set forth personal financial disclosure requirements. The Senate Committee Report reads in part “one principal means by which we may prevent public distrust of those who are chosen to conduct the affairs of the District government is to provide for disclosure of personal financial interest by candidates, elected officials, and high-ranking appointees of the District government. Not only should public officials be free from the undue influence of special interest groups and powerful favor-seeking individuals, but also the people must believe this to be so.”

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<sup>7</sup> Bill 19-511 does not alter the applicability of any of federal laws to the District of Columbia. However, the bill does task the newly established Board of Ethics and Government Accountability to undertake a study of federal law and make recommendations to the Council as to whether the new Board should enforce local versions of all federal ethics laws.

<sup>8</sup> See page 110 of the Report of the Senate Committee on the District of Columbia accompanying H.R. 1507

<sup>9</sup> Section 602(b) of the organic act which includes those employees who perform duties of the type generally performed by an individual occupying grade GS-15 on the federal government General Schedule.

As the Committee report and Justice Brandeis note, the public has a great interest in knowing some personal financial information about its highest officials. Disclosure deters corruption, provides information to assist the voter at the polls, and allows the public to identify potential conflicts. Thus, the law required then, as it does now, elected officials (except Advisory Neighborhood Commissioners) to disclose assets and liabilities, gifts, transactions in securities or commodities, and real estate sales; and to make those reports public. Notably, the original law made no distinction between where outside income was derived; seemingly, Congress felt that the potential for undue influence was not limited to the District's geographic boundaries. Current law requires only the disclosure of financial interests in firms transacting business with the District.

The public interest in financial disclosures is not as great however for those government employees who are not elected or who are not otherwise in a position in which the actual or perceived threat of misconduct or corruption is as high. Nonetheless, conflicts of interest may arise in regard to government employees who award contracts, make grants, or decide policy. The original and current law requires the reporting by certain employees of financial information. These disclosures are confidential, and are intended to aid in the identification of conflicts.

To enforce these new provisions and collect the various reports, the Office of the Director of Campaign Finance (OCF) was organized within the Board of Elections and the name of that entity was duly amended. The Board of Elections and Ethics was now responsible for administering the campaign laws and handing out penalties for violations of the disclosure and conflicts rules: civil fines were capped at \$50 (now \$200) for each violation, and up to 5 years in prison for criminal violations. Though Congressional operation of the District was soon to be diminished, Home Rule had its limits; criminal prosecutions were the sole province of the United States Attorney for the District of Columbia.<sup>10</sup>

### Lobbying

Congress set out basic disclosure guidelines for lobbying in the District. Regulating lobbying, like much governmental ethics, is an attempt to strike a balance: in this case, between the constitutional right to petition the government, the educational benefit conferred by lobbyists, and the need to limit undue influence within the legislative process. As originally enacted, the District's law strikes this balance by requiring lobbyists to register and disclose the matter on which they are working, their name and address; the name and address of the client for whom they work; how much they are paid and by whom; all contributors to the lobbying effort and the amount of their contribution; an accounting of all monies received and expended, specifying to whom the money was paid and for what purposes; the names of any publications in which the lobbyist has caused articles or editorials to be published; and the particular legislation they have been hired to support or oppose.

In the 36 years since the law was passed, it has been broadened some. Whereas the original law required any person attempting to aid in the passage or defeat of any legislation by the Council to register and disclose, the current law applies to any communication directly with

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<sup>10</sup> Penalties for criminal violations were capped at 5,000 and 6 months in prison, or both; or 10,000 and 5 years in prison for false or misleading statements, or both. Section 701, 702 of the Conflicts Act.

any official in the legislative or executive branch of the government with the purpose of influencing any legislative action or an administrative decision.<sup>11</sup>

### Constituent Services Funds

Two years later, a number of amendments were made to the Elections Act and the Conflicts Act. These amendments generally strengthened the campaign finance reporting, lobbying, and conflicts of interest laws. Of note, however, the District of Columbia Election Amendments of 1976 included a provision that some have recently criticized as operating as a slush fund<sup>12</sup>: the establishment of constituent service funds.<sup>13</sup> Technically termed citizen-service programs, Constituent-services funds allow the Mayor and each Councilmember to raise and spend up to \$80,000 per year to benefit constituents in a variety of ways.<sup>14</sup>

Originally, only campaign-related expenditures were a prohibited expenditure. Since then, additional parameters outline how funds can be used: charitable, scientific, educational, medical, and recreational purposes; and can't be used: personal purposes, promoting or opposing a political party. A review of recent filings at the Office of Campaign Finance show that Constituent Services funds are commonly spent on overdue utility payments, rental assistance, funeral costs, to sponsor community events like block parties or picnics, to fund travel, pay for parking tickets, and occasionally admission to sporting events.<sup>15</sup>

The Committee has not found a similar fund in any other jurisdiction. Much more common are campaign war chests that can be rolled over from one campaign to another, as is the case in Congress, and expended for all manner of things.<sup>16</sup> As noted previously, in 1974, Congress explicitly allowed campaign funds to be preserved for future campaigns.

There is no evidence to suggest why constituent services funds were created, the legislative history is mum, but, for over 35 years these funds have become a reliable source of money for members to support financial needs of residents, community events and programs, and other community outreach tools. And in either case, they have become a District institution and one less pernicious than the constant campaigning that open-ended campaign committees, currently prohibited by District Law, would create. And likely lost in the creation of never-ending campaign committees in the District, would be any attention to emergency constituent needs.

### Merit Personnel Act

Acknowledging that Home Rule demands local responsibility, the newly formed government set about creating a code of conduct to regulate the day to day activities of its

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<sup>11</sup> D.C. Official Code 1-1105 *et seq.*

<sup>12</sup> "Who's really benefiting from D.C. Council 'constituent' accounts?", Washington Post editorial, August 29, 2011, [http://www.washingtonpost.com/opinions/whos-really-benefiting-from-dc-council-constituent-accounts/2011/08/26/gIQAPztJoJ\\_story.html](http://www.washingtonpost.com/opinions/whos-really-benefiting-from-dc-council-constituent-accounts/2011/08/26/gIQAPztJoJ_story.html).

<sup>13</sup> Officially known as the citizen-services funds.

<sup>14</sup> Contributions are limited to \$500 per person per year. See. 1-1104.03

<sup>15</sup> See <http://ocf.dc.gov/>

<sup>16</sup> Section 301 of the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, revised section 439a to insert replacement language. This amendment is effective as of November 6, 2002. Section 532, Division H, Title V of the Consolidated Appropriations Act of 2005, Pub. L. No. 108-447, further amended section 439a to add paragraphs (a)(5) and (a)(6). This amendment was signed into law on December 8, 2004.

employees. It was, and is, a rather basic section of District law but the fundamental intent is clear: the legitimacy of the new District government required (and requires) self-regulation.

Each employee of the District government must at all times maintain a high level of ethical conduct in connection with the performance of official duties, and shall refrain from taking, ordering or participating in any official action that would adversely affect the confidence of the public in the integrity of the District government.<sup>17</sup>

The Merit Personnel Act (MPA) goes on to authorize the mayor to promulgate rules detailing the specific conduct that would be expected from employees and to provide for ethics counselors at each subordinate agency in case an employee needed advice about what is and is not a permissible behavior. And finally, the law exempts the Mayor, the Chairman and each member of the Council (and scores of boards and commissions) from enforcement; instead subjecting these elected officials to enforcement by the independent Board of Elections and Ethics.<sup>18</sup>

*Employees:* With the grant of authority for rulemaking, the Mayor promulgated a code of conduct outlawing in great detail certain actions and behaviors. The District Personnel Manual, as it became known, prohibits the rank and file from the following:

- Using public office for private gain;
- Impeding government efficiency;
- Accepting gifts from lobbyists and others doing business with the District;
- Outside employment that creates a conflict of interest or appearance of a conflict;<sup>19</sup>
- Acquiring a financial interest in a business, stocks, bonds, real estate, which might pose a conflict of interest;
- Using government property for other than official purposes;
- Failing to pay a just debt in a timely manner;
- Gambling and betting (except as sponsored by the D.C. Lottery and Charitable Games Control Board); and
- Engaging in any post-employment work that poses a conflict of interest.

But these rules are not enforced by the BOEE. Instead, the employee's boss is responsible for taking adverse employment action, including changes in assigned duties, divestment of the conflicting interest, or termination.<sup>20</sup> Monetary penalties, however, are not available.

*Elected Officials:* As for elected officials and other executive level employees who are not answerable to a boss per se, the rules listed above are not applicable.<sup>21</sup> Instead, these officials

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<sup>17</sup> § 1-618.01

<sup>18</sup> The Mayor, the Chairman and each member of the Council, the President and each member of the Board of Education, members of boards and commissions as provided in subsection (a) of § 1-1106.02, employees in the Executive Service, and persons appointed under the authority of §§ 1-609.01 through 1-609.03 (and paid at a rate of GS-13 or above in the General Schedule or comparable compensation under subchapter XII of this chapter) or designated in § 1-609.08 shall not be included within the provisions of this subchapter for the purposes of enforcement.

<sup>19</sup> Including interests owned or held by family. See: D.C. Mun. Regs. Subt. 6-B, § 1800 et. seq.

<sup>20</sup> See 6 DCMR B1801.

<sup>21</sup> The BOEE enforces the Merit Personnel Act against the Mayor, the Chairman and each member of the Council, the President and each member of the Board of Education, members of boards and commissions as provided in

must comply only with the general policy contained in the Merit Personnel Act: that employees must at all times maintain a high level of ethical conduct and refrain from adversely affecting the public trust. But, there are no penalties for violating this policy. An elected official under this law is answerable only to the electorate every four years or by recall in the second and third years of his or her term; but recall too is an elusive penalty.<sup>22</sup>

For instance, recall for an at-large Councilmember, is unlikely to deter or punish misconduct because it so difficult to achieve. The current recall process requires 10% of the registered voters of the entire District to petition for removal of an at-large member. As of October, that means 45,323 signatures must be collected in just 6 months to get the recall on the ballot.<sup>23</sup> <sup>24</sup> In comparison, only 5,665 signatures are required to initiate a recall of a ward member; a relatively small number.<sup>25</sup>

It is true, of course, that penalties exist for violations of the Conflicts Act (discussed above), including a failure to report outside income and limits on gifts. But, that law speaks only to exposing financial conflicts—and the penalties are relatively insignificant. Left unenforced are the myriad rules prohibiting gambling, post-employment conflicts, government waste, and personal use of government resources.

## **Background**

In response to recent allegations of wrongdoing on behalf of several elected officials, 12 bills were introduced in the Council attempting a resolution. These bills attempt to restore the public's trust in varying forms, or attempt to address other ethics-related issues not immediately raised by that behavior but related more generally to an enhanced ethics regime.

### **Recent Events**

In the past two years, and certainly in the past 10 months, the District's growing respect among DC residents, in the region and across the nation has been eroded by a series of allegations of ethical or criminal misdeeds. Several Councilmembers and the Mayor have been accused of misconduct. The District's attorney general has settled a civil suit against a sitting councilmember; the United States Attorney is investigating the Mayor for campaign irregularities; Congress recently issued a report condemning the Mayor's early-term hiring practices; the chief of staff to a sitting member was convicted of accepting illegal gratuities and making a false statement in June of this year; the Board of Elections and Ethics referred matters related to the finances of the campaign of the Council Chairman to the United State Attorney; the Council censured and stripped the committee chairmanship of a member for diverting public resources for his own benefit; the Mayor and a Councilmember have been accused of failing to

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subsection (a) of § 1-1106.02, employees in the Executive Service, and persons appointed under the authority of §§ 1-609.01 through 1-609.03 (and paid at a rate of GS-13 or above in the General Schedule or comparable compensation under subchapter XII of this chapter) or designated in § 1-609.08 shall not be included within the provisions of this subchapter for the purposes of enforcement.

<sup>22</sup> See: D.C. Mun. Regs. Tit. 3, § 1100 et. seq.

<sup>23</sup> In the case of an at-large elected official, the 10 percent shall include 10 percent of the registered electors in each of 5 or more of the City's wards, see D.C. Code 1-204.112.

<sup>24</sup> 3 DCMR 1103.

<sup>25</sup> Based on an average of 56, 653 registered voters per ward.

disclose their personal and professional relationships, with regard to the eventual winner of a lucrative government contract.

### Summary of Proposals

The measures introduced since May of this year aim to resolve recent misconduct in varying forms, or attempt to address other ethics-related issues not immediately raised by that behavior but related more generally to an enhanced ethics regime.

*Independent Board or Commission:* including the committee print, three bills set forth the establishment of an independent board or commission.<sup>26</sup> Although there is some variation in the proposals, each seems premised on the foundational notion that an effective ethics regime must provide for independent enforcement. The part of government ethics where integrity most comes into play is in the set up of a good ethics program, that is, one that provides independent advice and enforcement. It is in recognizing that officials are not in the best position to deal with their own conflicts, and then creating clear rules and an independent agency to deal with them.<sup>27</sup>

*Inauguration and Transition:* two bills attempt, for the first time, to regulate transition and inaugural contributions. An attempt to reduce undue influence, these proposals require the establishment and registration of committees formed to raise funds for inaugural activities of a newly elected Mayor, and for contributions to offset the cost of the transition of a new legislative and executive leadership.

*Ethics Advisory Task Force:* two bills would establish an advisory task force with the purpose of making recommendations to the Council on changes and reforms needed in the ethical rules, laws, and regulations. One bill focuses on reforms as they relate to elected officials, the other bill takes a broader approach to ethics reform. The task force contemplated by bill 19-359 would be composed of seven members, including the Chairman of the BOEE, the Director of the Office of Campaign Finance, the Attorney General, the Special Counsel for Ethics of the AG's office, the Inspector General, the D.C. Auditor, and the Chief Financial Officer. That task force would disband after it had concluded its review no later than one year after its establishment. The advisory committee contemplated in Bill 19-297 would be composed of the Mayor, the Chairman of the Council, two members appointed by the Mayor, one appointed by the Chairman. This committee would be permanent.

*Constituent-service Funds:* three bills reduce the amount that may be contributed to and expended by Constituent services funds and limits the use of those funds to expenditures that more directly benefit constituents. These bills respond to criticisms that the funds were expended for uses that provided only indirect benefit or no benefit at all to constituents.

*Nepotism:* the Comprehensive Merit Personnel Amendment Act of 2011 would clearly define nepotism, and prohibit nepotistic hiring to the Excepted, Management Supervisory, and Executive service as well as in the Career service. The measure would also restrict the number of Excepted service hires. The Committee held a hearing on this bill on November 10<sup>th</sup> and plans to favorably report the bill out of committee as a standalone measure by the year's end. This bill was drafted in response to an investigation and report of the personnel practices within the Excepted and Executive Services of the District Government that found that within weeks of

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<sup>26</sup> B19-0358: Ethics and Accountability Act of 2011; Bill 19-0279 Comprehensive Ethics Reform Act of 2011

<sup>27</sup> Robert Wechsler, draft of *Local Government Ethics* (City Ethics, 2012), at 58.

Mayor Gray's inauguration, multiple adult children of senior officials in or connected to the Gray administration had been appointed to the Excepted Service, and other appointees were under-qualified or did not receive required background checks. The Congressional Committee on Oversight and Government Reform reported similar findings.

*LLCs:* two bills seek to prohibit multiple campaign contributions from limited liability corporations that are under common ownership or control, and require that contributions from LLCs are accompanied by the names and address of the individual members of the LLCs.<sup>28</sup>

*Lobbying:* although not proximately caused by recent misconduct, four bills attempt to redefine the parameters of lobbying activities.<sup>29</sup> These bills combine to ban contributions from lobbyists to various committees including, campaign, transition, and inaugural, and constituent-services committees. They also variously require the prompt publication of newly registered lobbyists, disclosure of any payment made to an official's staff, and prohibits discounted legal services from a lobbyist to an official.

*Term Limits:* bill 19-481, the Consecutive Term Limit Amendment Act of 2011, would limit members from serving more than two consecutive 4 year terms. The stated purpose is: to promote good government by fostering increased opportunities for public service; increase competition through rotation in office of citizens who desire to serve; prevent the establishment of entrenched incumbency; and promote new ideas, different approaches, and different perspectives to governing according to the legislation.

*Outside Employment:* bill 19-482, the Full-Time Employment for Council Members Charter Amendment Act of 2011 would prohibit members of the Council from holding outside employment. Currently, only the Chairman of the Council is considered a full-time position. According to the bill, it is intended to prevent the potential for conflicts of interest by members of the Council in their service to the District.

## **The Problem**

The current ethics framework does not promote a culture of high ethical standards in District government. With so many enforcement agencies charged with some aspect of holding public officials accountable, there is no single person or entity responsible for enforcing the District's fragmented system of ethics laws and rules. The problems are myriad and involve fragmented laws, a lack of uniform application, an overburdened enforcement entity, a tolerant environment, a piece-meal approach to problem solving, and outdated laws that fail to address recent behavior. Of course, any shortcoming in the current framework cannot account for the recent misconduct that prompted this legislation, but, remedying the problems will go a long way toward future compliance and, where necessary, enforcement. The problems with the current framework harm the public's trust, the business environment, and potentially the government's legitimacy.

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<sup>28</sup> Bills 19-473, the Prohibition on Corporate and Lobbyist Giving to Public Officials Reform Amendment Act of 2011; and Bill 19-490 the Lobbying, Finance, and Grant Making Reform Amendment Act of 2011.

<sup>29</sup> Prohibition on Corporate and Lobbyist Giving To Public Officials Reform Amendment Act of 2011; B19-0358: Ethics and Accountability Act of 2011; Comprehensive Ethics Reform Act of 2011; Lobbying, Finance, and Grant Making Reform Amendment Act of 2011.

## Lack of Application and Uniformity

The District lacks a uniform, comprehensive, code of conduct for all employees, including public officials. As discussed above, the Merit Personnel Act outlines general conduct that would be expected from employees, provides for ethics counselors at each subordinate agency in case an employee needed advice about what is and is not a permissible behavior. Rules were later promulgated specifying appropriate conduct.<sup>30</sup> These rules are enforced by subordinate agency heads against employees only and penalties are limited to adverse employment action.

Although subject to two overarching policies—to always maintain a high level of ethical conduct and refrain from adversely affecting the public trust;<sup>31</sup> and that any effort to realize personal gain is a violation of the public trust—public officials,<sup>32</sup> are not subject to any specific code of conduct. So, while the rank and file government worker can lose his or her job for misconduct such as failing to pay a just debt, gambling, or using public office for private gain, a public official's conduct in these areas is largely unchecked. An elected official under this law is answerable only to the electorate every four years or by recall in the second and third years of his or her term; but recall too is an elusive penalty.<sup>33</sup> For instance, to recall an at-large Councilmember would require 45,323 signatures just to get the recall on the ballot. In comparison, only 5,665 signatures are required to initiate a recall of a ward member; a relatively small number.<sup>34</sup>

## Lack of Enforcement

*Public Officials:* Currently, the Board of Elections and Ethics is charged with two distinct roles: enforcing and administering the District's elections laws, and doing the same against public officials for *some* ethics laws. The Board, through the Office of Campaign Finance, administers the campaign finance laws, the public financial disclosure rules, lobbying reports, and constituent services funds. In each case, the Office's role and the rules of reporting are designed to limit outside influence to a reasonable extent. The Office does a fine job, from all accounts, collecting and reviewing these reports. However, the office lacks meaningful enforcement. This is a result of the disjointed role of the Board, and a lack of penalties.

The Board's function is primarily elections-focused. As discussed earlier, the Board of Elections was formed in 1955 and absorbed campaign finance duties two decades later. Although

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<sup>30</sup> Using public office for private gain; Impeding government efficiency; Accepting gifts from lobbyists and others doing business with the District; Outside employment that creates a conflict of interest or appearance of a conflict;<sup>30</sup> Acquiring a financial interest in a business, stocks, bonds, real estate, which might pose an conflict of interest; Using government property for other than official purposes; Failing to pay a just debt in a timely manner; Gambling and betting (except as sponsored by the D.C. Lottery and Charitable Games Control Board); Engaging in any post-employment work that poses a conflict of interest.

<sup>31</sup> DC Code 1-618.01.

<sup>32</sup> The Mayor, the Chairman and each member of the Council, the President and each member of the Board of Education, members of boards and commissions as provided in subsection (a) of § 1-1106.02, employees in the Executive Service, and persons appointed under the authority of §§ 1-609.01 through 1-609.03 (and paid at a rate of GS-13 or above in the General Schedule or comparable compensation under subchapter XII of this chapter) or designated in § 1-609.08 shall not be included within the provisions of this subchapter for the purposes of enforcement. Current definition of public official

<sup>33</sup> See: D.C. Mun. Regs. Tit. 3, § 1100 et. seq.

<sup>34</sup> Based on an average of 56, 653 registered voters per ward.

the Board's name was changed to reflect its dual duties, it remained elections-centric. In fact, neither the Senate or Committee reports again mention ethics nor does that law reference a code of conduct. In fact, the Senate reports that it "hopes that after the new Mayor and Council members are elected to office they would promptly review the laws we shall enact this year and initiate any changes which they find necessary or desirable based on this year's campaigns." This seems to acknowledge that the law as enacted was not comprehensive, and that it was not ethics-related. It follows then that an Office created in haste, placed within a Board of Elections, and charged primarily with campaign finance administration, would eschew its piece-meal ethics duties.

*Rank and File:* The post-Home Rule government created a code of conduct to regulate the day-to-day activities of its employees. The Mayor promulgated rules interpreting the Merit Personnel Act (MPA), which outlaw in significant detail certain actions and behaviors. The District Personnel Manual, as it became known, prohibits the rank and file from using public office for private gain, accepting gifts from lobbyists and others doing business with the District; gambling, and failing to pay a proper debt; among other restrictions.

But, these rules are not enforced by the BOEE. Instead, the employee's boss is responsible for taking adverse employment action. This creates three problems. One, there is an inherent conflict that arises when a subordinate agency head is required to police her own personnel. Second, subordinate agency heads don't necessarily have the training, staff, or resources to investigate claims of misconduct. And third, without monetary fines, the options for penalizing misconduct are limited to adverse employment action; an inflexible tool.

#### Lack of Penalties

The Board lacks at its disposal meaningful penalties. For instance, available fines are limited to \$200 or three times the amount of an unlawful contribution, expenditure or gift. A member who accepts an improper gift of \$150 from a lobbyist is likely subject to a fine of up to \$450. A serious ethics regime, in the Committee's view, should have available fines that offer greater deterrence—so that the member would be sure to disclose, and maybe refuse the gift in the first instance—and greater punishment. And, criminal penalties, although available, can only be prosecuted by the United States Attorney; an office separated from local control.

It's also useful to note that, besides an onerous recall procedure, the Home Rule Charter did not set forth mechanisms for the expulsion of elected officials. In fact, an elected official forfeits her seat only if she is actually imprisoned. Thus, even a felony conviction—which, of course, requires a finding of guilt beyond a reasonable doubt—that subjects the elected official to significant fines, probation, or a suspended sentence would be able to continue to serve or seek reelection.

The obvious, but important, point to make here is that no ethics regime will be effective without adequate personnel to review disclosure filings, carry out investigations, provide ethics training to staff, and offer advice. The Office of Campaign Finance is funded for 16 positions but none of them are investigators. That is, the agency is comprised of auditors and attorneys who review financial statements filed by lobbyists, public officials, and campaign committees. They are not investigators who proactively seek out impropriety. In a pinch, the auditors are drafted to assist with investigations—relegating their ongoing audits. It is a clumsy approach to meaningful ethics enforcement.

### Lack of Training

Current law does not require ethics training of any public official. Only subordinate agency ethics counselors are required to undergo training. So, there is no requirement that BOEE members, staff of the Office of Campaign Finance, or even the Office of the Attorney General's Ethics specialist undergo any specified or consistent training. Thus, the expectation is that the 30,000 District employees will simply know what conduct is and is not appropriate. The District's lack of an adequate training program underscores a fundamental misunderstanding of governmental ethics.

Ethics training is, perhaps, the most important element in a governmental ethics context. Effective training avoids misconduct, instills a culture of understanding and discussion and informed decision-making.

### Ineffective Advice

The Merit Personnel Act (MPA) provides for ethics counselors at each subordinate agency in case an employee needed advice about what is and is not a permissible behavior. This is, on its face, a reasonable and thoughtful approach to advice. After all, an employee unsure of the propriety of a proposed action might be more likely to consult a colleague than to seek advice from an unknown bureaucrat. The Committee recognizes the value in the proximate availability of advice, but, problems also arise.

First, it is not very effective. In an informal review conducted in the preparation of the Fiscal Impact Statement for this bill, the Office of the Chief Financial Officer discovered that agency ethics counselors do not perform that role exclusively. Rather, counselors primarily perform another duty and are charged with ethics advice time-permitting; almost as an afterthought. There is also the likelihood that the advice given by one colleague to another will not be free of bias. It's reasonable to think that a pre-existing relationship, or the acknowledgement of a continuing professional relationship, might color the advice sought and given.

Second, ethics counselors dispersed among dozens of agencies allows for inconsistent advice. An employee at agency A may avoid conduct that an employee in agency B reasonably believes—based upon the advice of the agency ethics counselor—to be appropriate. Inconsistent advice, especially when reliance thereon immunizes misconduct, fails to advance the goals of a vigorous ethics environment.

### Loopholes in Extant Law

Several shortcomings in current law have been brought to the committee's attention during the two hearings, through its own review, and by the several ethics reform-related bills previously introduced. Of note are the following areas which if addressed would strengthen the District's ethics program.

*Legal Defense Funds:* In the political or governmental context, a Legal Defense Fund (LDF) is the formalization of fundraising intended to offset costs associated with the defense of lawsuits and other administrative proceedings brought against a public employee, which would

otherwise be borne by that employee. LDFs are funded by private contributions, which are expended for lawyers' fees, court costs, and even settlements, and penalties. Most commonly, an elected official—who is in a better position to raise money than is a rank and file employee—is sued civilly or charged criminally and undertakes fundraising to offset the legal fees incurred. Unlike many states and the Federal government, the District does not regulate these funds.

Traditionally, the scope of governmental ethics has sought to distance public officials from outright corruption, influence peddling, and quid pro quo arrangements through prohibitions on gifts from outside sources, and by limiting contributions that benefit the official. Thus, many states and the federal government regulate LDFs. Most notable is the regulation of Legal Expense Accounts by Congress. For instance, a fund must be approved by the House Ethics Committee before it can be established, it must be established as a trust, administered by a trustee who is entirely independent of the trust's beneficiary, contributions are limited to \$5,000 in a calendar year from any one person, no contribution may be accepted from a registered lobbyist, and quarterly financial reports must be filed.

Although not known to be a common practice in the District, there is no prohibition or even regulation of the legal defense funds. A recent example though bears brief mention here. In the wake of news that the United States Attorney was investigating a current member of the Council, the *Washington Examiner* reported that the member's attorney was in the process of establishing a legal defense fund to assist with legal costs.<sup>35</sup> In the same article it was reported that a local lobbyist would assist with the fundraising. For his part, the councilmember denied any knowledge of the fund.

The Committee believes that the without regulation LDFs are ready for abuse and create a pernicious appearance of undue influence. Elected officials under criminal investigation are ripe to be beholden to those who helped him or her avoid imprisonment.

*Constituent-Services Funds:* Some, including witnesses at the hearing and roundtable, have recently criticized the use and existence of constituent-service funds. Technically termed citizen-service programs, Constituent Services Funds allow the Mayor and each Councilmember to raise and spend up to \$80,000 per year to benefit constituents in a variety of ways. Several testifying seemingly relied on a definition of constituent services funds as emergency funds, which is absent from the law. In fact, the law defines provides for the funds to be spent as follows: for charitable, scientific, educational, medical, and recreational purposes.

An editorial in the *Washington Post* notes “In essence, the funds, which have become entrenched in D.C. politics, are second campaign accounts that can be used with broad discretion. That the contributors are the very same entities that underwrite the city's election campaigns—those seeking access and city business—further compounds the problem.”<sup>36</sup>

A review of recent filings at the Office of Campaign Finance shows that Constituent Services funds are commonly spent on overdue utility payments, rental assistance, funeral costs, to sponsor community events like block parties or picnics, to fund travel, pay for parking tickets, and occasionally admission to sporting events. However, a recent report by the non-profit organization D.C. for Democracy makes clear that constituent-services funds are also commonly

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<sup>35</sup> “Legal Defense Fund being set up for Thomas”, *The Washington Examiner* July 25, 2011.

<sup>36</sup> “The D.C. Council Should rethink ‘constituent service fund’”, *Washington Post* August 7, 2011.

expended for uses less closely related to assisting individual constituents. The report finds that Councilmembers expended only 12% of CSF expenditures for “immediate constituent needs”.<sup>37</sup>

The Committee believes it important to note that immediate constituent needs as that phrase is used by D.C. for Democracy is narrowly defined as “rental assistance, utility expenses, and funeral expenses”. Fairly stated, some members expend almost 50% of the funds raised for community organizations, community outreach or to sponsor community events; hardly pernicious uses. Nevertheless, the point is clear, with such latitude given to the use of these funds, members and the Mayor are prone to criticism of fund expenditures in light that they are intended to promote the general welfare of residents of the District of Columbia. Like other private fundraising and spending of elected officials, constituent services funds need better definition, disclosure and monitoring, not abolition.

*Inauguration and Transition Funds:* It has become common practice in recent years for the Mayor—and to a lesser extent—the Chairman of the Council to establish funds for the receipt and expenditure of monies for inauguration and transition activities. In the aftermath of Mayor Vince Gray’s Democratic primary victory, the Mayor-elect stated that he would not accept public money for his transition or inaugural celebration.<sup>38</sup> As of January 13, 2011, the fund had raised nearly \$670,000 and spent in excess of \$800,000. Contributions were not limited (some donors gave as much as \$25,000). And notably, a public disclosure of expenditures has not yet been made.

Similarly, Chairman-elect Kwame Brown refused public financing for transition costs and raised money privately. According to the *Washington City Paper*, Brown promised to release the names of donors and list his expenses after the transition, and in early February he kept his word and put the information on his website.<sup>39</sup> Mr. Brown raised \$91,800 and spent \$77,241 on transition expenses.

Voluntary disclosure and contribution limits are admirable but raise one primary concern: what happens if the disclosures are not made? And without disclosure, the appearance and actuality of misconduct is harmful to the public trust. This harm is magnified when contributions are not capped and almost a million dollars is contributed.

### Comprehensive, Understandable Code of Conduct

Another problem is the lack of a unified, comprehensive code that is easily accessible to, and comprehensible by, public officials, government employees, and the public. As discussed throughout this report, ethics provisions are scattered about the D.C. Code and the District of Columbia Municipal Regulations, within the Council’s Rules, and from time to time by informal policy at individual agencies. The result is that individual employees are expected to take it upon themselves to identify each applicable law and regulation, understand it, and apply it. This is an unreasonable expectation for all but those with both the capacity to understand, and the time with which to undertake a thorough review.

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<sup>37</sup> See: <http://www.dcfordemocracy.org/2011/11/23/council-constituent-services-funds-little-goes-for-actual-needs/> accessed on 11/23

<sup>38</sup> See: “Vincent Gray, presumptive next D.C. mayor, to raise private money for transition” *Washington Post*, October 10, 2010.

<sup>39</sup> See: “Kwame Brown’s Transition Fund Paid Brother’s Firm” *Loose Lips Blog*, July 28, 2011, <http://www.washingtoncitypaper.com/blogs/looselips/2011/07/28/kwame-browns-transition-fund-paid-brothers-firm>

## **Harm Caused by Poor Ethics Program**

### Harm to the Public

A weak ethics regime fails to promote adequately an actual culture of ethical responsibility. In turn, and over time, the decision-making of government officials and the rank and file is corrupted. Without a framework that encourages employees to discuss potential conflicts and seek resolution, without penalties that deter actual malfeasance, and the enforcement to punish wrongdoing, an environment of ethical behavior languishes and decays. As Robert Wechsler, ethics expert and contributor to CityEthics.com, writes in an upcoming book, when a nation's or city's culture accepts corruption, the whole pie is bad, even if most of the people in it are good apples simply going along, or too afraid to oppose or disclose what others are doing.<sup>40</sup> The result is actual misconduct in the form of outright corruption, of diverting public resources for private gain, and of waste or fraud.

### Harm to Business

Continued unethical behavior by employees and public officials sends a message of corruption that could negatively affect business investment in the District. As Barbara Lang, President and CEO of the D.C. Chamber of Commerce, notes, the government "needs to right this ship not just for governmental stability, but to send a clear message to businesses that DC is a strong and stable place to do business." The District's unemployment rate currently stands at 11.1%<sup>41</sup> and is, according to Small Business & Entrepreneurship Council, the worst place among states to start a business.<sup>42</sup> An improved ethical culture could potentially solve both problems.

### Harm to Legitimacy

In a democracy, legitimacy derives from the popular perception that government abides democratic principles in governing, and is legally accountable to its people.<sup>43</sup> Therefore, it is through public trust that the government will abide the law that confers legitimacy.<sup>44</sup> The American political theorist Robert A. Dahl explained legitimacy as a reservoir; so long as the water is at a given level, political stability is maintained, if it falls below the required level, political legitimacy is endangered. Once endangered, the government begins to lose its capacity to govern.

Although it is exaggerated to suggest that the recent misconduct by the District's elected officials endangers the legitimacy of the District government, it is appropriate to suggest that the public's patience for this government is waning. A failure by this body to act could lead to a prolonged decay of the public's trust.

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<sup>40</sup> See generally: Robert Wechsler, draft of *Local Government Ethics* (City Ethics, 2012).

<sup>41</sup> U.S. Bureau of Labor Statistics.

<sup>42</sup> <http://www.sbecouncil.org/home/index.cfm>.

<sup>43</sup> [http://en.wikipedia.org/wiki/Legitimacy\\_\(political\)#cite\\_ref-10](http://en.wikipedia.org/wiki/Legitimacy_(political)#cite_ref-10).

<sup>44</sup> O'Neil, Patrick H. (2010). *Essentials of Comparative Politics*. New York: W.W. Norton & Company. pp. 35–38.

## **Legislative Plan**

In response to recent allegations of misconduct by several members of Council of the District of Columbia and the Mayor, 12 measures were introduced to reform the District's ethics laws.<sup>45</sup> These bills varied in their scope and purpose. The Committee closely scrutinized these bills, heard on two occasions from the public, and devised a bill that seeks to discretely address the problems of the day and establishes a framework able to respond to future misconduct.

- The Board will be comprised of 3 members to be appointed by the mayor with advice and consent of Council to serve 6-year terms.
- The Board shall hold regular monthly meetings.
- The Board shall be compensated.
- The Board shall appoint a Director and a General Counsel.
- The Attorney General and Inspector general shall upon request by the Board, provide staff for investigations pursuant to this act.
- The Board shall have independent budget authority.
- At all times a quorum must be two members.
- The Board may issue a civil penalty of no more than \$5,000 per violation of the Code of Conduct.
- The maximum punishment under this section for a violation of the Code of Conduct is \$25,000 or imprisonment for no longer than 12 months.<sup>46</sup>
- The Office of the Attorney General and the United States Attorney's Office for the District of Columbia shall have prosecuting power for violations of this act.
- The Board shall have the authority under this section to censure public officials.
- To disqualify a Councilmember or Mayor from continuing to hold office upon conviction of a felony.
- A new Council Rule is added to codify the ability of the Council to remove a member from committee chair, or suspend a member's voting right.
- Recall is allowed in the first and fourth year of an elected term for a substantial violation of the code of conduct.
- Reduces the number of signatures of registered voters needed to call for the holding of an election to remove or retain an at-large elected official from 10% to 5% of registered voters.
- The Board shall issue advisory opinions.
- The Board shall issue subpoenas when appropriate to undertake an investigation.
- The Superior Court shall have the authority to enforce subpoenas.

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<sup>45</sup> Bill 19-476: Government of the District of Columbia Comprehensive Merit Personnel Amendment Act of 2011; B19-511: Campaign Finance Reform and Conflict of Interest Public Disclosure Amendment Act of 2011; B19- 490: Lobbying, Finance, and Grant making Reform Amendment Act of 2011; B19-482: Full-Time Employment for Council Members Charter Amendment Act of 2011; B19-481 – Consecutive Term Limit Amendment Act of 2011; B19-478: Fundraising Accountability and Reform Amendment Act of 2011; B19-473 : Prohibition on Corporate and Lobbyist Giving to Public Officials Reform Amendment Act of 2011; B19-0359: Ethics and Accountability Task Force Act of 2011; B19-0358 : Ethics and Accountability Act of 2011; B19-0353: Campaign Finance Reporting Amendment Act of 2011; B19-0352 : Campaign Finance Accountability and Reform Amendment Act of 2011; Comprehensive Ethics Reform Act of 2011.

<sup>46</sup> The Committee was reluctant to undertake a line-drawing in regard to those violations of the code of conduct that should be penal in nature. Thus, violations that substantially threaten the public trust would be determined by recommendation of the new Board to be followed by an act of law adopting those recommendations. This approach will ensure enforceability and clarity

- The Director shall publish a quarterly report detailing the allegations of violations of the Code of Conduct. The report shall be posted on-line.
- The identities of the complainant and respondent shall not be disclosed without consent, unless the Director has found reason to believe a violation has occurred.
- The Open Government Office is established within the Board of Ethics, and the duties, employees, assets and any unspent funds are transferred to the new Board.
- Within 10 days following publication in the DC Register the Director shall publish a summary of new lobbyists on-line.
- Lobbyists shall disclose any payment made to Committee staff as well as personal staff of Councilmembers. Current law only requires disclosure of payments to personal staff.
- All public officials shall file a public report annually that includes: the names of all business entities which the official or member of their family has an interest or performs as a honoraria; officer; partner; employee; has an agreement for leave of absence or future employment, any outstanding liability in excess of \$1,000, any real property located in the District which the official has in interest and that the property has a market value of over \$1,000 or which earns an income of \$200, all professional and occupational licenses issued by the District of Columbia held by the Official or their immediate family, all gifts received in aggregate value of \$100 value from any business entity, affidavit proof that the official has not placed in another person or entity any property for purposes of avoiding disclosure. A public official shall certify that they have: filed and paid property taxes, filed the required financial disclosures, diligently engaged in safeguarding the assets of the tax payers, reported any known illegal activity, not been offered or accepted bribes, has not misappropriated funds.
- Public official is defined as: (1) Any candidate for nomination for election, or election, to public office; (2) The Mayor and the Chairman and each member of the Council of the District of Columbia holding office under the Home Rule Act; (3) A Representative or Senator elected pursuant to section 4 of the District of Columbia Statehood Constitutional Convention Initiative of 1979, effective March 10, 1981 (D.C. Law 3-171; D.C. Official Code §1-123); (4) Advisory Neighborhood Commissioners; (5) Members of the Board of Education; (6) Persons serving as subordinate agency heads or serving in positions designated as within the Executive Service; (7) Each member of those Boards and Commissions listed in section 2(e) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(e); and (8) District of Columbia government employees who earn more than \$90,000 and who are identified by their subordinate agencies or the Chairman of the Council, as appropriate, as making decisions or participating substantially in areas of contracting, procurement, administration of grants or subsidies, developing policies, land use planning, inspecting, licensing, regulating, auditing, or acting in areas of responsibility which may create a conflict of interest or appearance thereof.
- Confidential reporting is required of those employees who advise in areas of contracting, procurement, administration of grants and subsidies, developing policies, land use planning inspecting, licensing, regulating, audit, or acting in areas of responsibilities that may create a conflict of interest.
- The Board shall provide for an annual audit of such reports.
- Reduces the constituent service program to \$40,000. Disallowable expenditures include: promotion or opposing a political party committee or candidate or issue, fines and penalties inuring to the District, advertisements, and expenditure of cash or cash equivalent, sponsorship of political organizations, year-long or season admissions to theatrical; sporting; or cultural events.

- Establishes organization and disclosure requirements for legal defense funds and to prohibit the use of those funds for settlements, penalties, or fines.
- Establishes organization and disclosure requirements for transition and inauguration funds.

### **Legislative Tailoring**

Government ethics is not a moral question of being good or bad. It is an application of ethical standards focusing on acting responsibly and professionally under certain circumstances, and following certain rules and procedures. Government ethics laws provide minimum, usually enforceable guidelines to facilitate ethical decision-making. Government ethics programs provide training and advice to further facilitate ethical decision-making. Government ethics programs also require financial disclosure, which provides information to help the public, as well as officials, better determine if conflicts might exist so that they can be dealt with responsibly. Government ethics is only about being good or bad when there are no guidelines, no training, no advice, no disclosure, and no formal, independent enforcement, that is, when there is no ethics program.<sup>47</sup> Bill 19-511 accords with these best practices.

### **Independent Enforcement**

At least 39 states have independent ethics commissions charged with administering state's ethics regimes; collecting and reviewing reports; conducting training; and, enforcing violations. The popularity of an independent ethics board, especially as it relates to elected officials, is manifest: the public's trust is undermined by an enforcement agency prone to the influence of those it is charged with investigating. Independent budget authority; hiring authority; investigative authority; and, the prerogative to investigate and enforce are thus necessary aspects to any effective ethics regime.

The part of government ethics where integrity most comes into play is in setting up of a good ethics program, that is, one that provides independent advice and enforcement. It is in recognizing that officials are not in the best position to deal with their own conflicts, and then creating clear rules and an independent agency to deal with them.<sup>48</sup>

But, even in ensuring independence as outlined above, membership independence is also vital to an effective ethics program. For instance, some states and Congress allow for members of the respective legislative bodies to sit on their ethics commissions, to self-police as it were. An ethics agency within the control—however limited—of those holding elected office immediately raises the specter of conflicts of interest if not the actuality of conflicts. Imagine the scenario of the Mayor of the District of Columbia sitting in judgment of a Councilmember responsible for shepherding a key Mayoral initiative through the legislature. Or conversely, a Councilmember enforcing the ethics code of conduct against a Mayor who has recently refused to fund capital improvements in the member's ward. The potential for conflicts of interest is too great to ensure a truly independent, un-biased, board that can effectuate real ethics reform. The sheer size of the House of Representatives allows that body's ethics arm to distance itself to some degree from conflicts of interest. With just 13 members of the Council, the inherent conflicts in such a board are obvious and direct.

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<sup>47</sup> See: Robert Wechsler, draft of *Local Government Ethics* (City Ethics, 2012) at page 1.

<sup>48</sup> See: Robert Wechsler, draft of *Local Government Ethics* (City Ethics, 2012).

Thus, to ensure that the ethics reforms contemplated by this bill will be enforced vigorously and without fear of reprisal or undue influence, the Committee establishes an independent Board of Ethics and Government Accountably. The Board will be comprised of three members appointed by the Mayor with advice and consent of Council. The members will serve six-year terms and must be qualified to serve.<sup>49</sup>

Although enforcement will lay with the new Board, the D.C. Auditor and the Inspector General will continue to play an important role investigating and unearthing waste, fraud, and abuse. Any finding of the same will be immediately investigated by the new Board.

*Current BOEE:* By centralizing ethics enforcement in an independent agency, the current BOEE will have the opportunity to focus solely on elections and campaign finance. Since, 1976 when the Board of Elections joined with the Office of Campaign Finance to become the BOEE, ethics enforcement and administration has been an afterthought. Although the Board's name was chanced to reflect its dual duties, it remained elections-centric. Removing these duties from the Board of Elections will create both a more efficient elections and ethics administration.

### Uniform Applicability of Code of Conduct

The District lacks a uniform, comprehensive, code of conduct for all employees, including public officials. As discussed above, the Merit Personnel Act outlines general conduct that would be expected from employees, and provides for ethics counselors at each subordinate agency. Rules were later promulgated specifying appropriate conduct.<sup>50</sup> These rules are enforced by subordinate agency heads against employees only and are limited to adverse employment action.

Public officials<sup>51</sup>, although subject to two overarching policies—one, always maintain a high level of ethical conduct and refrain from adversely affecting the public trust<sup>52</sup>; and two, any effort to realize personal gain is a violation of the public trust—are not subject to any specific code of conduct. So, while the rank and file government worker can lose his or her job for misconduct such as failing to pay a just debt, gambling, or using public office for private gain; a public official's conduct in these areas is largely unchecked. An elected official under this law is answerable only to the electorate every four years or by recall in the second and third years of his

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<sup>49</sup> Qualifications would require members of the Board, the Mayor and Council to consider whether the individual possesses demonstrated integrity, independence, and public credibility and whether the individual has particular knowledge, training, or experience in government ethics or in ethics law and procedure; be a registered voter; have resided in the District for one year; and, hold no other paid office in the District government.

<sup>50</sup> Using public office for private gain; Impeding government efficiency; Accepting gifts from lobbyists and others doing business with the District; Outside employment that creates a conflict of interest or appearance of a conflict; Acquiring a financial interest in a business, stocks, bonds, real estate, which might pose an conflict of interest; Using government property for other than official purposes; Failing to pay a just debt in a timely manner; Gambling and betting (except as sponsored by the D.C. Lottery and Charitable Games Control Board); Engaging in any post-employment work that poses a conflict of interest.

<sup>51</sup> The Mayor, the Chairman and each member of the Council, the President and each member of the Board of Education, members of boards and commissions as provided in subsection (a) of § 1-1106.02, employees in the Executive Service, and persons appointed under the authority of §§ 1-609.01 through 1-609.03 (and paid at a rate of GS-13 or above in the General Schedule or comparable compensation under subchapter XII of this chapter) or designated in § 1-609.08 shall not be included within the provisions of this subchapter for the purposes of enforcement. Current definition of public official

<sup>52</sup> See DC Code 1-618.01.

or her term. But recall too is an elusive penalty.<sup>53</sup> For instance, to recall an at-large Councilmember would require 45,323 signatures simply to get the recall on the ballot. In comparison, only 5,665 signatures are required to initiate a recall of a ward member; a relatively small number.<sup>54</sup>

This fragmented approach is confusing, results in uneven enforcement, varied expectations for behavior, and of course, public officials—almost 3,000 of them—are not subject at all to the most specific standards of conduct. This bill will ensure that all employees will be subject to the Merit Personnel Act and subject to enforcement by the new Board of Ethics and Government Accountability. The hope is that uniform applicability and common enforcement will create a measure of certainty and close a major loophole in current law.

### Comprehensive, Understandable Code of Conduct

Another problem is the lack of a unified, comprehensive code that is easily accessible to and comprehensible by public officials, the rank and file, and the public. As discussed throughout this report, ethics provisions are scattered about the D.C. Code and the District of Columbia Municipal Regulations, within the Council’s Rules, and from time to time by informal policy at individual agencies. The result is that individual employees are expected to take it upon themselves to identify each applicable law and regulation, understand it, and apply it. This is an unreasonable expectation.

Bill 19-511 seeks to resolve this problem by creating within the code, a single source for all ethics laws. The Committee has taken great pains to repeal existing Title 1, Chapter 11 of the D.C. Code. We have removed those provisions relating to ethics (namely lobbying, conflicts of interest, financial disclosures, constituent-services funds, honoraria and royalties) and reenacted those provisions as well as enacting the creation of the new Board; increased penalties, and enacting regulation of legal defense funds within a new title.<sup>55</sup> Added to that new title are the provisions that were previously contained in D.C. Code section 1-618 relating to standards of conduct, conflicts of interest, and advisory opinions.

Finally, the bill requires the new Board of Ethics and Government Accountability to create a plain language guide to the code of conduct.

### Increase Penalties:

*Public Officials:* The current Board lacks meaningful penalties to levy against public officials for ethical misconduct. As mentioned previously, available fines are limited to \$200 or three times the amount of an unlawful contribution, expenditure or gift. A serious ethics regime, in the Committee’s view, should have available to them fines that offer greater deterrence—so that a member would be sure to disclose, and perhaps refuse a gift in the first instance—and greater punishment.

The bill would address these shortcomings by increasing available civil fines to \$5,000 per violation. It also makes available to the Attorney General any equitable remedy at law. For

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<sup>53</sup> See: D.C. Mun. Regs. Tit. 3, § 1100 et. seq.

<sup>54</sup> Based on an average of 56, 653 registered voters per ward.

<sup>55</sup> The remaining provisions of Chapter 11 relating to the Office of Campaign Finance and reporting procedures for various campaign related committees, and the new transition and inaugural committees are reenacted within this bill.

instance, a Councilmember found to have improperly used government resources could be sued for restitution or disgorgement. The Board is empowered, by rulemaking, to establish a schedule of fines.

Further, as noted above, an elected official under current law is answerable only to the electorate every four years or by recall in the second and third years of his or her term. But recall too is an elusive penalty.<sup>56</sup> Therefore, the bill would allow for recall in the first and fourth years of an official's term for a violation of the code of conduct that threatens the public trust. It would also make the recall process more likely to deter and punish misconduct by reducing the number of signatures of registered voters needed to call for an election to remove or retain an at-large elected official from 10% to 5% of registered voters. The committee received testimony stating that the current at-large recall requirement of multiple wards and higher signatures creates an imbalance in the recall process for at-large Councilmembers. By keeping the multiple-ward requirement, but reducing the overall signature threshold to 5%, the Committee believes that there is greater parity in the recall petition-gathering process between ward and at-large Councilmembers.

Besides an onerous recall procedure, the Home Rule Charter did not set forth mechanisms for the expulsion of elected officials. In fact, an elected official forfeits her seat only if she is actually imprisoned. Thus, even a felony conviction—which, of course, requires a finding of guilt beyond a reasonable doubt—that subjects the elected official to significant fines, probation, or a suspended sentence would not prohibit a Councilmember from continuing to serve or seek reelection. Bill 19-511 would disqualify a Councilmember or Mayor from continuing to hold office upon conviction of a felony. This change would align our laws with public perception, deter misconduct, and restore public trust.

*Rank and File:* The District Personnel Manual prohibits the rank and file from using public office for private gain; accepting gifts from lobbyists (and others engaged in business with the District); gambling; and, failing to pay a proper debt, among other restrictions. But, these rules are targeted at employees and penalties are limited to adverse employment action. This creates three problems. One, there is an inherent conflict that arises when a subordinate agency head is required to police her own personnel, some of whom may be personal or professional friends. Second, subordinate agency heads don't necessarily have the training, staff, or wherewithal to investigate claims of misconduct. And third, without monetary fines, the options for penalizing misconduct are limited.

The availability of monetary penalties in addition to adverse employment action is necessary to punish and deter misconduct. Centralizing enforcement with the new Board of Ethics will avoid any likelihood of institutional or professional favoritism from the boss to the subordinate.

*Prosecutorial Authority:* While prosecutorial discretion lies with the United States Attorney's Office for the District of Columbia for some ethical violations, local prosecution is non-existent. Without local authority to prosecute, the public is at the mercy of a federal appointee who is not accountable to the voters of the District of Columbia. Moreover, preliminary investigations into criminal wrongdoing are, as a matter of practice, confidential. Thus, if the United States Attorney (USAO) investigates a District official for misconduct, the public is not necessarily notified. If that office does acknowledge an investigation, updates are

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<sup>56</sup> See: D.C. Mun. Regs. Tit. 3, § 1100 et. seq.

not frequent. Further, political or public pressure to act or, at least, provide frequent updates is lacking because the United States Attorney is not accountable to the residents of the District of Columbia.

This problem would be solved by providing prosecutorial authority to the District's Attorney General for violations of the code of conduct that substantially violate the public trust. The local attorney general, to be an elected position in 2014, will be responsible to the public. Thus the citizens of the district will expect decisive action and more frequent outreach. It is also likely that a local, accountable prosecutor will deter violations of the code of conduct.

The Committee finds that the violations of the code of conduct that should be penal in nature warrants further study by the Ethics Board. Thus, violations that substantially threaten the public trust would be determined by recommendation of the new Board to be followed by an act of law adopting those recommendations. This approach will ensure enforceability and clarity.

It's important to note here that the grant of local prosecutorial authority comports with Title 23, Section 101(c) of the D.C. Code.

Prosecutions for violations of all police or municipal ordinances or regulations and for violations of all penal statutes in the nature of police or municipal regulations, where the maximum punishment is a fine only, or imprisonment not exceeding one year, shall be conducted in the name of the District of Columbia by the [OAG], except as otherwise provided in such ordinance, regulation, or statute, or in this section.

With some exceptions “[a]ll other criminal prosecutions shall be conducted in the name of the United States” by the USAO.<sup>57</sup> This division of authority, which Congress made approximately a century ago, roughly assigns “minor crimes to the OAG, and more serious matters to the USAO.” (quoting *In re Crawley*, 978 A.2d at 610).

It is a given that the proposed regulation of a violation of an ethical code of conduct which threatens the public trust would likely satisfy the requirement that the ordinance be either a municipal or police regulation. The more critical determination is whether the penalties are such that a violation would be considered “major” and thus not within the local prosecutorial authority according to Title 23, Section 101. That determination relies on the availability of both a fine and imprisonment, and the amount of that fine.

Whether a penalty allows for both a fine and imprisonment is critical, although not dispositive. The Court in *In Re Crawley*, notes that a potential punishment of \$100,000 and one year imprisonment per violation of the false claims statute is likely too great a penalty for enforcement by the OAG as a police regulation or municipal ordinance.<sup>58</sup> But, the court in *In re Prosecution of James Hall* dismisses without analysis the notion that a fine of \$1,000 and imprisonment for one year for failing to register a firearm in violation and unlawful possession of ammunition is too light a penalty.<sup>59</sup>

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<sup>57</sup> See *In re Prosecution of James Hall*, D.C. Superior Court, November 17, 2011.

<sup>58</sup> See 978 A.2d at 611 n.3

<sup>59</sup> See *In re Prosecution of James Hall*, D.C. Superior Court, November 17, 2011. footnote 2.

The Committee has been careful to craft a regulatory scheme that ensures regulatory compliance by setting out the availability of a fine of \$5,000 or imprisonment for up to one year. The Committee believes that avoiding the application of both a fine and imprisonment comports with recent precedent. Further, a fine of just \$5,000 is likely well within the spectrum of fines sufficiently akin to “minor” misdemeanors as contemplated by Congress during the drafting of D.C. Code 12-101(c).<sup>60</sup>

### Open Government Office

Established in late 2010 by the Open Meetings Amendment Act of 2010, the Open Government Office was charged with administering and enforcing the District’s new and enhanced open meetings and FOIA laws. In fact, the OGO was funded in the Fiscal Year 2012 budget at approximately \$350,000. However, the Executive has not yet appointed a Director to oversee the operations of the Office. Consequently, public disclosure and access remains lacking.

The Committee believes that the functioning of the OGO is critical to maintaining the public’s trust in its government, and without it, the public’s trust in the operation of its government is undermined. The bill transfers the duties, employees, assets and any unspent funds to the new Board.

### Conflicts of Interest:

The foundation of all governmental ethics laws is disclosure. The Supreme Court notes in *Buckley v. Valeo* that first, disclosure provides the electorate with information "as to where political campaign money comes from and how it is spent by the candidate in order to aid the voters in evaluating those who seek federal office. It allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches. The sources of a candidate's financial support also alert the voter to the interests to which a candidate is most likely to be responsive, and thus facilitate predictions of future performance in office.

Second, disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity. This exposure may discourage those who would use money for improper purposes either before or after the election. A public armed with information about a candidate's most generous supporters is better able to detect any post-election special favors that may be given in return. And, as we recognized in *Burroughs v. United States*, 290 U.S. at 548, Congress could reasonably conclude that full disclosure during an election campaign tends "to prevent the corrupt use of money to affect elections."

Third, and not least significant, recordkeeping, reporting, and disclosure requirements are an essential means of gathering the data necessary to detect violations of the contribution limitations described above.

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<sup>60</sup> Sec. 110 of the bill states that no prosecution for a violation of this act shall be made until such time as the Board has conducted its study pursuant to Section 103(b) of this act and the Council has by law specified those violations of the code of conduct, which substantially threatens the public trust.

As such, our bill attempts enhanced disclosure through increased reporting in numerous areas, including financial disclosure of public officials, transition, inaugural, and legal defense committees. This section will focus on financial disclosure of public officials as the other three categories are discussed in detail below.

*Public Financial Disclosure:* The bill would require disclosure by public officials<sup>61</sup>, their spouses, domestic partners, and their dependent children, of income derived from business whether or not such business is with the District. Current law requires disclosure only of outside income derived by the official or her spouse from an entity doing business with the District. The bill would require disclosure of the identity of the client for whom the official performed a service if the client has a contract with the District or otherwise stands to gain a financial benefit from legislation. The bill would also require disclosure by the official (her spouse, domestic partner or dependent children) of her capacity with regard to any non-profit organization. Also newly required is disclosure about any agreement or arrangement for a leave of absence, future employment, or continuing payment by a former employer.

Notably, the bill would also require a public official to certify that she has filed her taxes; filed all disclosure forms; diligently engaged in safe-guarding the assets of the taxpayers; reported known illegal activity; not received government funds though illegal or improper means; not raised or received funds in violation of Federal or District Law; and is not engaged in any pay-to-play schemes or quid pro quo arrangements.<sup>62</sup> The bill would also apply the financial disclosure requirement to Advisory Neighborhood Commissioners for the first time. The bill would also apply to fewer people. Approximately 3,000 employees are considered public officials. The bill would exclude most boards and commissions (except those that require council approval of nominees). The hope is that by decreasing the number of filers by as much as, or more than two-thirds (and requiring confidential filers to report using the same form) the new Board of Ethics will be significantly more efficient.

*Private Financial Disclosure:* The public interest in financial disclosures is not as great, however, for those government employees who are not elected or who are not otherwise in a position in which the actual or perceived threat of misconduct or corruption is as high. Nonetheless, conflicts of interest may arise in regard to government employees who award contracts, make grants, or decide policy. The original and current laws require reporting by certain employees of financial information. These disclosures are confidential, and are intended to aid the identification of conflicts.

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<sup>61</sup> Public Official” means: (1) Any candidate for nomination for election, or election, to public office; (2) The Mayor and the Chairman and each member of the Council of the District of Columbia holding office under the Home Rule Act; (3) A Representative or Senator elected pursuant to section 4 of the District of Columbia Statehood Constitutional Convention Initiative of 1979, effective March 10, 1981 (D.C. Law 3-171; D.C. Official Code §1-123); (4) Advisory Neighborhood Commissioners; (5) Members of the Board of Education; (6) Persons serving as subordinate agency heads or serving in positions designated as within the Executive Service; (7) Each member of those Boards and Commissions listed in section 2(e) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(e); and (8) District of Columbia government employees who earn more than \$90,000 and who are identified by their subordinate agencies or the Chairman of the Council, as appropriate, as making decisions or participating substantially in areas of contracting, procurement, administration of grants or subsidies, developing policies, land use planning, inspecting, licensing, regulating, auditing, or acting in areas of responsibility which may create a conflict of interest or appearance thereof.

<sup>62</sup> Not received or been given 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, and no such official shall bias, favor, or benefit through any legislative action or an administrative decision the contributor of the thing of value.

Bill 19-511 will continue to require confidential financial filings of an employee, other than a public official, who advises in areas of procurement, grant making, policy development, land use planning, inspecting, licensing, or the like as determined by the subordinate agency head.

To assist with the identification of those doing business with the District, the bill requires the Mayor to develop a list of each business entity (including sole proprietorships, partnerships, trusts, non-profit organizations, and corporations) transacting any business with the District of Columbia government, or providing a service to the District for consideration. The list will include the business name, address, principals, and a brief summary of the business transacted within the immediately preceding 6 months. The list shall be available online and first published in July and every 6 months thereafter.

### Disclosure and Contribution Limits

*Legal Defense Funds:* In order to distance public officials from outright corruption, influence peddling, and quid pro quo arrangements, governments have instituted prohibitions on gifts from outside sources, and limited contributions to various committees and funds that benefit the official. Thus, many states and the federal government regulate LDFs. Although not known to be a common practice in the District, the Committee believes that regulating LDFs is important.

For the first time, Bill 19-511 would regulate LDFs. The bill requires similar establishment and reporting requirements as those required by campaign committees. For example, each legal defense committee shall file organization papers with the Director of the new Board of Ethics and require a chairman and treasurer to oversee the fund. Contributions would be limited to \$5,000 per person, per year—same as allowed by the House of Representatives—and lobbyists would be prohibited from contributing. Also, the Legal Defense Committee must make reports of contributions and expenditures every 30 days. Importantly, any funds raised may not be spent on payment or reimbursement for a fine, penalty, judgment or settlement, or a payment to return or disgorge contributions. Lobbyists cannot contribute.

The Committee believes that these reasonable regulations will serve the public trust by limiting and disclosing contributions to the fund as well as limiting the opportunity for undue influence while balancing the dual realities that public officials are often targets of lawsuits and legal expenses can quickly outstrip a public official's salary.

*Constituent-services Funds:* Some, including witnesses at the hearing and roundtable, have recently criticized the use and existence of constituent service funds. With such wide latitude given to the use of these funds, members and the Mayor are prone to criticism that the funds are little more than an avenue to provide political favors; or to benefit one's self; or that they are used to advantage incumbents who spend CSF monies to self-promote; in addition to posing disadvantages to challengers hoping to unseat an incumbent. Whether a fair criticism or not, the impact of the appearance of misconduct stemming from public awareness of the opportunities for abuse inherent in the use of the CSF requires that it be further regulated.

However, any further regulation must be tailored to avoid burdening the constituents who justifiably and reasonably rely on and benefit from the CSF. Hundreds of thousands of constituent services dollars have been spent over the years to directly benefit residents in need.

Removing the availability of this form of public assistance will hurt them. For 35 years these funds have become a reliable source of assistance District residents. And in any case, they have become a District institution and one less pernicious than constant campaign spending.

Instead of repealing CSFs, the better option in the Committee's mind is to address concerns of improper use while still benefitting residents. Thus, the committee proposes to reduce by half the total amount that may be raised for the CSF in any given year; as well as ensuring that the primary benefit of each dollar spent accrues to residents. For instance, CSF monies may not be expended for a political purpose, to buy advertisements, to pay fines or penalties owing to the District, or to purchase year-long or season admissions to theatrical, cultural, or sporting events.

*Inauguration and Transition Funds:* It has become common practice in recent years for the Mayor—and to a lesser extent—the Chairman of the Council to establish funds for the receipt and expenditure of monies for inauguration and transition activities. In the case of the most recent transition and inaugurations, both Mr. Gray and Mr. Brown forewent public financing and volunteered to disclose fundraising and expenditures.

In down economic times, the Committee appreciates the considerate nature of these commitments. After all, Mr. Gray spent in excess of \$800,000 for his transition and inaugural celebration; a sizeable portion of which otherwise would have been paid from the public coffers. The Committee also believes that voluntary disclosure is admirable but it raises one primary concern: what happens if the disclosures are not made? Without required reporting, there is little to keep an elected official from reporting any information. And without disclosure the appearance and actuality of misconduct is harmful to the public trust. This harm is magnified when contributions are not capped and almost a million dollars is spent.

So as not to leave disclosure to the grace of the elected official, Bill 19-511 would require the formation of committees to oversee transition and inaugural fundraising. Both committees would be formed in similar fashion to campaign committees and would be overseen by the Office of Campaign Finance. Reports would be filed at the same time as campaign committee reports.<sup>63</sup> Contributions to transitions committees for both the Chairman and the Mayor would be capped at \$1,000 and \$2,000, respectively. And, notably, no committee may be organized and thus no fund raised for transition purposes if a public appropriation has been approved. Regarding inaugural committees, only the Mayor may form such a committee and contributions would be limited to \$10,000 per person. The Committee believes that these regulations appropriately balance the potential for undue influence that arises when contributions to elected officials are not limited or disclosed against the need to offset public appropriations for events that are not necessarily closely tied to a governmental purpose.

### Lobbying

All 50 states have some regulation of lobbying. These regulations, like most governmental ethics rules, rely on disclosure. The rationale is based on the notion that because lobbyists stand to gain financially from their efforts to alter government action, and because they work closely or frequently with elected officials it is important for those officials and the public

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<sup>63</sup> On the 10th day of March, June, August, October, and December in each year during which there is held an election for the office of Mayor or Chairman of the Council, 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.

to know who is paying the lobbyists how much to lobby whom on what. The public needs this information to evaluate the integrity of their legislators.<sup>64</sup>

Legislators need this information to properly evaluate the political pressures to which they are being subjected. As Chief Justice Earl Warren remarked:

[L]egislative complexities are such that individual members of Congress cannot be expected to explore the myriad pressures to which they are regularly subjected. Yet full realization of the American ideal of government by elected representatives depends to no small extent on their ability to properly evaluate such pressures. Otherwise the voice of the people may all too easily be drowned out by the voice of special interest groups seeking favored treatment while masquerading as proponents of the public weal.<sup>65</sup>

The District's lobbying regulation requires lobbyists to register and disclose the matter on which they are working, their name and address; the name and address of the client for whom they work; how much they are paid and by whom; all contributors to the lobbying effort and the amount of their contribution; an accounting of all monies received and expended, specifying to whom the money was paid and for what purposes; the names of any publications in which the lobbyist has caused articles or editorials to be published; and the particular legislation they have been hired to support or oppose.

Generally, the Committee believes these regulations are sufficiently rigorous. However, with the creation of legal defense committees, it seems appropriate to track the Congressional prohibition against lobbyists' contributions. The Committee also believes that more can be done to limit the influence that could accrue to lobbyists. For instance, the current law bans lobbyists from giving gifts to a legislative or executive official in the amount of \$100 or more.<sup>66</sup> However, a gift is defined as anything of value [given] for the purpose of influencing the actions of a public official. Because it is difficult to prove intent, the gift limit is illusory. Simply by denying that a gift given was intended to influence an official action, a lobbyist can avoid the gift limit. Bill 19-511 would ban any gift of \$100 or more no matter the lobbyist's intent.

The bill also takes cues from four bills introduced earlier this year that seek to further regulate lobbying. The bill would variously require the prompt publication of newly registered lobbyists, disclosure of any payment or gift made to a Councilmember's personal *and* committee staff, and prohibits discounted legal services from a lobbyist to an official. The last regulation, akin to the regulation of legal defense funds, reacts to a fear among some that lobbyists—who are often lawyers—are providing legal services to elected officials at steeply discounted rates in an effort to curry favor. The Committee cannot speak to the existence or frequency of these arrangements. However, given the cost of modern day legal representation, a steep discount could be quite valuable, especially if that representation results in the avoidance of a significant penalty or imprisonment. With the intent to avoid any related undue influence, the bill will ban discounted legal services and will clarify that any such discount is a gift.

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<sup>64</sup> <http://www.citizen.org/documents/LDAorigins.pdf>

<sup>65</sup> *United States v. Harriss*, 347 U.S. 612, 625 (1954).

<sup>66</sup> See D.C. Official Code 1-1105.06.

## Training

Current law does not require ethics training of any public official. The District's lack of an adequate training program underscores a fundamental misunderstanding of governmental ethics. Ethics training is, perhaps, the most important element in a governmental ethics context. Effective training avoids misconduct, instills a culture of understanding and discussion, and informed decision-making.

The Bill will require training of all public officials. This includes everyone required to make confidential and public financial disclosures. The pool of financial filers was chosen because they either represent the most likely population to contravene the code of conduct or (because of their position) such contravention amplifies the harm to the public trust. It follows then that these employees will receive training. Annual training will be conducted by the new Board of Ethics and the Board members and staff will be required themselves to undergo training. All officials and employees subject to the training requirement will be required to certify that they have undergone training, including training in regard to post-employment conflicts. A knowing failure to do so is cause for adverse employment action, but not termination.

Government ethics training does not cure all ills. But it is an essential element of a government ethics program. It is, in fact, part of the most important part of a government ethics program: guidance. Guidance is provided not just by an ethics code, but also by training and advice that includes and goes beyond the ethics code.<sup>67</sup> The Committee believes that these provisions will greatly improve the ethics culture in the District.

## Advice

The Merit Personnel Act (MPA) provides for ethics counselors at each subordinate agency in case an employee needed advice about what is and is not a permissible behavior. This is, on its face, a reasonable and thoughtful approach to proximate advice and can be beneficial. However, in practice, the benefits of ethics counselors are illusory and pose a risk of uneven interpretation of the code of conduct and worse, actual contradiction. The Committee believes the better approach is to centralize the advice function of the ethics program with the Board of Ethics.

The bill repeals the requirement that each subordinate agency have an ethics counselor. Instead, the Board of Ethics will provide all advice. An employee can request an interpretation of the code of conduct knowing that the advice given will be accurate, confidential, consistent, and—importantly—will immunize from enforcement for good faith reliance thereon. The Committee recognizes that the provision of advice will be slower, probably, than if the current scheme was properly functioning; and it's not unreasonable to suggest that proximity to advice might encourage more frequent seeking of advice. However, there is no inherent reason to suggest that centralizing advice in the new Board will necessarily slow the provision of advice, nor reduce the frequency with which employees will seek it out. On the contrary, centralizing the advice function within a dedicated ethics body formalizes, adds a measure of gravity, and instills confidence in the knowledge that advice received is accurate, professional and provides a safe harbor.

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<sup>67</sup> See Robert Wechsler, draft of *Local Government Ethics* (City Ethics, 2012)

## Open Government Office

Established in late 2010 by the Open Meetings Amendment Act of 2010, the Open Government Office was charged with administering and enforcing the District's new and enhanced open meetings and FOIA laws. In fact, the OGO was funded in the Fiscal Year 2012 budget at approximately \$350,000. However, the Executive has not yet appointed a Director to oversee the operations of the Office and thus the public disclosure and access remains lacking.

The Committee believes that the functioning of this office is critical to maintaining the public trust's in its government, and thus is appropriate for inclusion within the new Board of Ethics. As such, the bill would provide for the Board of Ethics to appoint a Director. The remainder of the Open Meetings Act would not be altered: simply put, the OGO would be stood up within the new Board and the OGO's duties, employees, assets and any unspent funds would be transferred to the new Board.

## Conclusion

In response to recent allegations of misconduct by several members of Council of the District of Columbia and the Mayor, 12 measures were introduced to reform the District's ethics laws. During the Committee's scrutiny of these measures and during two public hearings, it was discovered that the current ethics framework is ill-suited to promote a culture of high ethical standards across the DC government. The problems are myriad and involve fragmented laws, a lack of uniform application, an overburdened enforcement entity, a tolerant environment, a piece-meal approach, and outdated laws that fail to address recent behavior. The problems with the current framework harm the public's trust, the business environment, and potentially the government's legitimacy.

Bill 19-511 seeks to discretely address the problems of the day, resolve the problems with the current ethics regime, and establish a framework able to respond to future misconduct. The bill achieves this goal by enhancing current law, creating new regulations and prohibitions, and by establishing the Board of Ethics and Government Accountability. Ultimately, the goal is to restore the public's trust in its government, starting first with its public officials.

The enhanced laws pertain to public and private financial disclosure laws; centralized, and professional advice related to the code of conduct, further regulation of constituent services funds and other opportunities for appearances of undue influence, and finally, enhanced penalties.

Newly created law would provide for the ethical training of high-ranking government employees, remedy fragmented application of laws by subjecting the code of conduct to all employees, and regulate fundraising committees for inaugural, transition, and legal defense purposes. Also, it would provide new penalties and for the first time, local authority to prosecute serious ethical violations. The bill would clarify existing law by including all applicable ethics laws in one location within our Code and further to the goal of comprehension, the measure would require the production of a plain language guide to better educate government employees. Finally, the bill proposes to require public officials to certify that they have paid their taxes;

diligently engaged in safe-guarding the assets of the taxpayers; reported know illegal activity; and generally conducted themselves in an upright and honorable manner.

Most importantly, the bill will establish a new entity charged exclusively with administering and enforcing the new and enhanced laws and code of conduct. To ensure that the ethics reforms contemplated by this bill will be enforced vigorously and without fear of reprisal or undue influence, the Board of Ethics and Government Accountability will be given independent budget authority, hiring authority, investigative authority, and the prerogative to investigate and enforce.

## **SECTION-BY-SECTION ANALYSIS**

### **Title I:** Ethics Act.

*Sec. 101.* Short title.

*Sec. 102.* Definitions for Board of Elections, Board of Ethics, Code of Conduct, Public Official and more.

### **Subtitle A:** Board of Ethics and Government Accountability Establishment.

*Sec. 103.* Establishes the Board of Ethics and Government Accountability to administer, investigate and enforce the Code of Conduct; conduct training, administer the Open Meetings Act of 2010, issue rules governing ethical conduct, operate a telephone hotline for the receipt of tips; and to conduct a study and review of national best practices in government ethics law and make recommendations for improving the District's laws to the council within 240 days.

*Sec. 104.* The Board will be comprised of 3 members to be appointed by the mayor with advice and consent of Council to serve 6-year terms. The first nominees to the board must be made within 45 days of the effective date of the act, with Council afforded an additional 45 days to actively approve. The Mayor shall designate the Chairman. Members must be: registered to vote, residents of the District of Columbia during the year prior to appointment, and hold no other office or employment. Members must not hold any office in a political organization, make speeches for a political organization, or candidate including endorsement, assist in the fundraising for a political group or candidate, be a lobbyist as defined at section 501 of the DC Conflicts of Interest Act, be convicted of a felony, be adjudged by the office of the Inspector General as having committed a violation of the Code of Conduct. The Mayor may remove a member for breach of the afore mentioned conduct if the Mayor so believes that the member is in breach. The Mayor shall notify the member that they shall have a hearing, at the Council to take place within 7 days after the notice. With regard to the members first appointed under this subtitle, one member shall be appointed to serve for a two year term, one member shall be appointed to serve for a 4-year term, and one member shall be appointed to serve for a 6-year term, as designated by the Mayor.

*Sec. 105.* The Board shall hold regular monthly meetings as established in a schedule decided by the board. The Board shall provide notice of meetings and shall conduct its meetings in compliance with the Open Meetings Amendment Act of 2010, effective March 31, 2010 (D.C. Law 18-350, D.C. Official Code §2-517 *et seq.*)

*Sec. 106.* Each member shall be compensated for service as provided in section 1108 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978. The Chairman of the Board shall receive the same as proscribed in section 1108 of the Merit Personnel Act while actually in service of the Board, but not to exceed the sum of \$26,500 per year.

*Sec. 107* The Board shall employ and fix the compensation for a Director and such staff, as the Board deems necessary, subject to the pay limitations of section 1117 Merit Personnel Act. The Board shall employ employees to serve under the Director, who once appointed cannot be reassigned without the consent of the Director. The Director shall be a resident of the District throughout his or her term, or forfeit the position. The Board may appoint General Counsel to serve at the pleasure of the Board, who would be entitled to the same rate of compensation as the Board and Director. The General Counsel shall perform such duties as may be delegated by rule, or by order of the Board. All staff of the Board shall be subject to the Code of Conduct, with the board having the authority to pass rules to ensure all persons maintain strict impartiality. The Office of the Attorney General and Inspector general shall upon request by the Board, provide for investigations pursuant to this Act. Staff shall not be provided longer than 90 days unless requested by the Board.

*Sec. 108.* The Director with approval of the Board shall submit an annual budget to the Mayor under part D of title IV of the Home Rule Act. The Council may comment or make suggestions, but has no authority to revise the budget, except for that prior to Fiscal year 2013.

*Sec. 109.* Quorum shall be established by a majority of members appointed. Any Member may make investigations inquiries, and hearings within the power of the Board. Once approved by the board, any orders or acts derived from such an investigation, inquirer or hearing shall become an order of the Board. The Board shall have rule making authority under the Administrative Procedure Act.

*Sec. 110.* Any hearing under this section shall be of record and shall be held in accordance with the Administrative Procedure Act. The Ethics Board shall issue rules and regulations for the administration of preliminary investigations, full investigations, and hearings in respect to violations of the Code of Conduct. Appeals to any order, or fine made by the Ethics Board in accordance with this act shall be made to the Superior Court of the District of Columbia.

*Sec. 111.* The Board may issue a civil penalty of no more than \$5,000 per violation of the Code of Conduct. Noncompliance for a fine assessed under this section shall be deemed a separate offense. Double postage shall be the punishment for one whom by ignorance; forgetfulness or misunderstanding improperly or unlawfully uses official mail. Civil penalties shall be leveled only after the accused has an opportunity for a hearing, and after the Board has determined that a violation occurred. If the Board so chooses, they can empower the Director to levy fines administer, which may be appealed to the Board. Violations of the Code of Conduct shall not be limited to only civil fines, but also may include remedial action in accordance with the Merit Personnel Act. The Board shall have the authority to ask for compliance with a failure to pay a fine in the Superior Court of the District of Columbia. Upon petition, the Court shall have jurisdiction to enter judgment enforcing, modifying, or setting aside in whole or in part the decision of the Board. The Court shall have de novo of all matters concerning law, but any

issues of fact are conclusive with the Board's findings. The maximum punishment under this section for a violation of the Code of Conduct is \$25,000 or imprisonment for no longer than 12 months. The Office of the Attorney General and the United States Attorney's Office for the District of Columbia shall have prosecuting power for violations of this act. The statute of limitations period starts at the time of discovery of a violation, and lasts for five years.

*Sec. 112.* The Board shall have the authority under this section to censure public officials. The Board may make a recommendation to the Council that it immediately convene an to determine if removal from committee, and/or removal of voting rights on committee are warranted. A new Council Rule 202(e) is added to codify the ability of the Council to remove a member's committee vote.

*Sec. 113.* The Board shall have the authority, upon application of an employee subject to the Code of Conduct, to issue an advisory opinion. The Board shall issue notice in the DC Register without identifying the requestor, within 20 days of receiving the request. If the Board determines that the opinion constitutes an emergency, it may waive the notice. All advisory opinions shall be published in the DC Register within 30 days of issuance. There shall be no enforcement for a violation of the Code of Conduct taken against an employee who in good faith relied on an advisory opinion.

Subsection B: Director of the Board of Ethics.

*Sec. 114.* The Director under such regulations of the Board shall have the power to: require any person to submit in writing reports and answer to questions as the Director may prescribe relating to the administration and enforcement, administer oaths, require by subpoena the attendance and testimony of witnesses and documents, order testimony in a hearing, compel said testimony, to pay a witness for expenses related to their testimony, conduct an informal hearing on an alleged violation of the Code of Conduct, retain counsel for the purpose of enforcement of the act, and require persons to submit electronic reports.

*Sec. 115.* The Superior Court shall have the authority to enforce subpoenas under section 114 of this act.

*Sec. 116.* Preliminary investigations can be initiated through media reports, anonymous tips, or through documents filed with the Board.. If Director has reason to believe that a violation may have occurred constituting an apparent violation of the Code of Conduct, he or she shall present evidence of the violation to the Board. Upon presentation of evidence the Board may authorize a formal investigation and the issuance of subpoenas if it finds reason to believe a violation has occurred. A preliminary investigation may be dismissed by the Director or the Board if insufficient evidence exists to support a reasonable belief that a violation has occurred. The identity of the subject of the preliminary investigation shall not be disclosed without such individual's consent unless or until the Board has found reason to believe a violation occurred and the Board finds that disclosure would not harm the investigation.

*Sec. 117.* Formal investigations. An investigation shall be initiated upon receipt of a written complaint to the board. A complaint shall include: the name and address of the complainant and respondent, a clear and concise statement of the facts that are alleged to have created a violation of the Code of Conduct, the complainant's signature, verification of the complaint under oath, and any supporting documentation. A person making a complaint under

this act is afforded all the protections provided in the Merit Personal and the Whistleblower Reinforcement Act of 1998. A preliminary investigation may be initiated by an anonymous tip on a provided hotline, or by media referral. A preliminary investigation may be escalated to a full investigation if the Director has reason to believe a violation occurred. All investigations are in the Directors discretion.

*Sec. 118.* Following all evidence in an open hearing where the Board finds that a violation did occur the Board may do the following: levy a civil fine against the violator, refer the case to the United States Attorney's office, or the Office of the Attorney General. No complaint may be made in this section later than 3 years after discovery of the alleged violations.

*Sec. 119.* The Director shall publish a quarterly report detailing the allegations of violations of the Code of Conduct. The report shall be posted on-line.

*Sec. 120.* The Board may dismiss any claim it considers is without merit, additionally, the board may require a complainant who brings a bad faith, meritless complaint to pay a reasonable fee for time spent investigating such a claim.

#### Subsection C: Conflicts of Interest.

*Sec. 121.* . No employee or 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.

#### Subtitle D: Lobbyists

*Sec. 122.* Establishes definitions for: Administrative Decision, Compensation, Executive Agency, Expenditure, Gift, Legislative Action, Lobbying, Lobbyist, Official in the Executive Branch, Official in the Legislative Branch, Public Official, Registrant.

*Sec. 123.* All persons who receive more than \$250 in a 3-consecutive-calendar-month period for lobbying are required to pay a fee and register. Failure to do so shall result in a civil penalty of treble the registration fee amount. The fee for lobbyists is set at \$250, except for a lobbyist who is solely lobbying for a nonprofit organization, who shall pay \$50. All fees collected under this subsection shall be paid into the General Fund of the District of Columbia.

*Sec. 124.* Exceptions to the provisions found in section 1042 include: Public Officials, a publisher or working member of the press, a candidate, and an entity specified in D.C. Official Code § 47-1802.01(4).

*Sec. 125.* All those registering shall file a form signed under oath for each person they receive compensation from, with the Director on or before January 15<sup>th</sup> of each year, not later than 15 days after becoming a lobbyist. The form shall be prescribed by the Director, but will include the name of the person lobbying, the name of the person compensating the lobbyist, the issues –if known- on which the lobbyist intends to lobby. The Director shall publish no later than February 15<sup>th</sup> and on or before August 15 of each year a summary of all information to be submitted under this subsection, in the DC Register. Within 10 days following publication in the DC Register the Director shall publish a summary on-line as well.

*Sec. 126.* Between January 1<sup>st</sup>-10<sup>th</sup> lobbyists will be required to publish reports concerning what they have done in the previous 6 months prior to the report to carry out their lobbying duties. The report shall adhere to specifications according to the Director, but shall include: A current statement pursuant including total expenditures: itemized into categories, political contributions, each official and or member of a legislative branch or members of such a persons staff that the registrant has a business relations with or who the lobbyist has conducted lobbying activities with.

*Sec. 127.* Lobbyists are restricted from the following: giving gifts or services that exceed independently or in aggregate \$100 value to any official in the legislative or executive branch in a single year, making false or misleading statements to an official, provide legal representation to a person while serving as a lobbyist. Members of legislative and executive staff are prohibited from soliciting gifts; public officials are banned from acting as lobbyist while in office.

*Sec. 128.* A person in violation of the lobbying restrictions shall be fined \$5,000 or imprisoned for 12 months, or both. A person convicted of a misdemeanor shall be prohibited from serving as a lobbyist for a period of 3 years following the conviction. A person filing a registration late shall be fined \$10 per day every day that the filing is late, excluding weekends and holidays. The Board may waive the fines if good cause is shown.

#### Subtitle E: Financial Disclosures and Honoraria

*Sec. 129.* All public officials shall file a public report annually that includes: the names of all business entities which the official or member of their family has an interest or performs as a honoraria; officer; partner; employee; has an agreement for leave of absence or future employment, any outstanding liability in excess of \$1,000, any real property located in the District which the official has in interest and that the property has a market value of over \$1,000 or which earns an income of \$200, all professional and occupational licenses issued by the District of Columbia held by the Official or their immediate family, all gifts received in aggregate value of \$100 value from any business entity, affidavit proof that the official has not placed in another person or entity any property for purposes of avoiding disclosure. A public official shall certify that they have: filed and paid property taxes, filed the required financial disclosures, diligently engaged in safeguarding the assets of the tax payers, reported any known illegal activity, not been offered or accepted bribes, has not misappropriated funds. The Board may exempt an official of the disclosures for good cause shown. All papers will be in the custody of the Board. The Board shall publish in the DC Register no later than the 15<sup>th</sup> of June a list of all officials who has filed a report. The Board shall provide for annual audits of these reports.

*Sec 130.* Any employees, other than public officials, who advises in areas of contracting, procurement, administration of grants and subsidies, developing policies, land use planning, inspecting, licensing, regulating, audit, or acting in areas of responsibilities that may create a conflict of interest, shall file annually with the appropriate agency, a statement of information required. The Board shall provide for an annual auditing of such reports.

Sec. 131. No member of the Council or of the Board of Education, nor any member of his or her immediate family shall receive honoraria exceeding \$10,000 in the aggregate during any calendar year.

Subsection F: Constituent Service Funds

Sec. 131. The Mayor, Chairman of the Council, and each member of the Council may establish a constituent service program within the district. Such funds are not to exceed \$40,000. A limitation of \$500 is placed on contributions to such funds. Funds raised for these programs may be used for the following: funeral arrangement, emergency housing, past due utility payments, food and refreshments or an in-kind equivalent on infrequent occasions, community events sponsored by the program, community-wide events, and printed electronic and telephonic information dissemination of community-wide government based activities. Disallowable expenditures include: promotion or opposing a political party committee or candidate or issue, fines and penalties inuring to the District, advertisements, and expenditure of cash or cash equivalent, sponsorship of political organizations, year-long or season admissions to theatrical; sporting; or cultural events. The Mayor upon request shall provide for office area for such operations of such programs. Each program shall have a chairman and treasurer, and no contribution shall be allowed while there is a vacancy in the office of treasurer. All contributions made to such programs shall be reported to the Board.

**Title II.** Campaign Finance Code

*Sec. 201.* Short title.

Sec. 202. Defines: Board, Candidate, Contribution, Domestic Partner, Director, Election, Expenditure, Office, Office of a political party, Person, Political committee, Political party.

Subtitle A: Office of Campaign Finance.

*Sec. 203.* Establishes an Office of Campaign Finance within the Board of Elections. The Board shall appoint the Director. The Director shall be responsible for administering operations of the Board pertaining to this title, but not for the making of regulations regarding elections. The Board retains the ability to alter rules and regulations promulgated by the Director. The Board shall prepare an annual report of the Director's performance. Cases brought under this title shall be referred by the Director to the United States Attorney's Office.

*Sec. 204.* The Director shall have the power to: require reporting of persons, administer oaths, require subpoenas be issued and witnesses compelled to answer, require testimony, pay witnesses expenses for appearance, accept gifts, institute informal hearings on alleged violations. Subpoenas issued under this subsection shall be issued upon approval of the Board. Investigations under this subsection shall be made with the discretion of the discretion of the Director.

*Sec. 205.* The Director shall: develop forms and materials for the making of reports under this title, develop filing procedures, make reports available for inspection, preserve reports, compile a database of reporting information, publish reports, disseminate information in a

manner in their discretion for the benefit of the community, conduct audits, perform other duties as the Board may require.

*Sec. 206.* Penalties under this title shall be not more than \$200 or three times the amount of an unlawful contribution whatever is greater. Each occurrence is a separate offense. The Board has the authority to issue advisory opinions on matters concerning this title. Before an opinion is issued, the Board shall publish notice in the DC Register at least 15 days prior to the opinion, unless the Board believes the opinion constitutes an emergency for the public peace, health, safety, welfare, and morals.

#### Subsection B: Campaign Finance Committees

*Sec. 207.* Defines: Board, Candidate, Contribution, Director, Domestic Partnership, Election, Expenditure, Exploratory committee, Inaugural committee, Office, Official of a political party, Person, Political committee, Political party, Transition committee.

*Sec. 208.* Committees that are established in this section are subjected to the following: filing a statement of organization within 10 days after its organization which shall include the name of its members, the name of book keepers, names of any financial institutions being used by the committee, and any other information the Director shall require. Any change in information previously submitted shall be submitted within 10 days following such a change. Every committee shall have a chairman and treasurer. No contribution shall be made while there is a vacancy of the office of treasurer. All persons who contribute greater than \$50 shall submit to the treasurer the name and address of the donors business. All committees shall keep detailed records of all amounts of contributions, including the full name and addresses of contributors principle place of business. The committees shall also keep detailed records of its expenditures, including petty cash. At all events where there is mass collections, e.g. dinners or rallies, the treasurer shall keep records of net amount of the proceeds. Each committee shall file a report annually with the Board by the committee, detailing all of the above disclosures. The Board shall publish regulations of general applicability to prescribe the manner in which contributions and expenditures shall be reported.

*Sec. 209.* Each committee shall designate, in the registration statement required under this section, one or more national banks located in the District of Columbia as the depository. 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.

*Sec. 210.* Treasurers of political, transition, inaugural, and exploratory committees shall file reports as required by the Director on the 10<sup>th</sup> day of March, June, August, October, and December.

*Sec 211.* Each statement (including the statement of organization required under section 208 or report that a political committee is required to file with or furnish to the Director under the provisions of this subchapter 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.

*Sec. 212.* In addition to the statement of organization set forth in section 208, each political committee shall also file the following information with the Director of Campaign Finance within 10 days after the political committee's organization: (1) The names, addresses, and relationships of affiliated or connected organizations; (2) The area, scope, or jurisdiction of the political committee; (3) 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

*Sec. 213.* Upon filing for candidacy, or within 5 days, each candidate shall file a registration statement in such a form as the Director may prescribe. In addition each candidate shall provide the Director with the names and addresses of the campaign financial depositories along with a title and number of accounts for such accounts.

*Sec. 214.* Each person who makes a contribution to a committee in aggregate of \$50 per year shall file a statement required by § 1-1102.06.

*Sec. 215.* the provisions this part shall not apply to a candidate spending less than \$500 in any 1 election and who has not designated a principle campaign committee.

*Sec. 216.* Campaign literature including: newspaper and magazine advertisements, bumper stickers, sample ballots, initiative; referendum; or recall petitions, shall include the words "paid for by" followed by the name and address of the pater of the committee or other person and it's treasurer on whose behalf the material appears.

*Sec. 217.* No part of this subchapter shall create liability on the part of any candidate for any financial obligation incurred by a political committee.

*Sec. 218.* Exploratory committees shall file a report specifying: contributor's names and contributions received, itemized expenditures, the balance of the committee's funds. Reports to be filed within 30 days of the committee's expiration

*Sec. 219.* Any balance after the expiration of an exploratory committee shall be transferred to a political committee, and not for personal funds.

*Sec. 220.* Details the contribution fund caps for exploratory committees for each office: \$200,000 for Mayor; \$150,000 for Chairman of Council; \$100,000 for an at-large Councilmember; \$50,000 for a ward councilmember; \$20,000 for a member of the State board of Education. Also individual contribution caps: \$2,000 for Mayor; \$1,500 for Chairman of Council; \$1,000 for an at-large Councilmember; \$500 for a ward councilmember; \$200 for a member of the State board of Education.

*Sec. 221.* The funds raised for an exploratory committee shall apply to the set limits.

*Sec. 222.* There is a maximum time of 18 months for an exploratory committee.

*Sec. 223.* Funds remaining from Inaugural funds shall only be transferal to nonprofit organizations within the meaning of 501(c) of the Internal Revenue Code of 1954.

*Sec. 224.* No person shall make a contribution to an inauguration fund when it will cause contributions given by a contributor in aggregate to exceed \$10,000.

*Sec. 225.* An inauguration fund shall terminate within 45 days following the completion of the inaugural activities.

*Sec. 226.* Funds remaining from transition committee funds shall only be transferal to nonprofit organizations within the meaning of 501(c) of the Internal Revenue Code of 1954.

*Sec. 227.* No person shall make a contribution to an inauguration fund when it will cause contributions given by a contributor in aggregate to exceed \$2,000.

*Sec. 228.* A transition committee fund shall terminate within 45 days following the completion of the transition period.

Subtitle C: Legal Defense Funds.

*Sec. 229.* Defines Legal defense committee any individual or group of individuals, organized for the purpose of soliciting, accepting, and spending funds to defray the professional fees and costs for a public official's legal defense to one or more civil, criminal, or administrative proceedings. No funds may be established to offset legal costs except pursuant to this section. Prohibits the use of funds for any penalty, fine, settlement, or judgment. Sets out organization requirements for legal defense funds.

*Sec. 230.* Requires each legal defense fund to have a chairman and treasurer. Bans prohibited sources, such as lobbyists, from contributing. Limits contributions to \$5,000.

*Sec. 231.* Requires the designation of a depository for funds raised.

*Sec. 232.* Reports of expenditures, cash on hand, contributors, and loans due every 30 days.

*Sec. 233.* Reports required must be verified by oath.

Subtitle D: Contribution Limitations.

*Sec. 234.* Sets individual contribution caps as: \$2,000 for the office of mayor, \$1,500 for the office of Chairman of the Council; \$1,000 for the at-large Councilmembers; \$500 for Councilmembers and members of the Board of Education, \$200 for any recall candidate, and \$25 for any Advisory Neighborhood Commission. Contributions are limited less than \$5,000 in aggregate for political committees. Reporting is required for each person who receives a contribution of more than \$50, including the name and location of the contributors business. Reporting does not apply to Advisory Neighborhood Commissions.

*Sec. 235.* Contribution by a partnership shall be attributed to each partner.

*Sec. 236.* 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.

**Subsection E:** Prohibited Activities and Enforcement

*Sec. 237.* Violation of this subsection shall carry with it a fine of up to \$5,000 or no more than 6 months imprisonment. A person who knowingly files a false or misleading statement shall be punished by a fine of up to \$10,000 or up to 5 years imprisonment. Prosecutions for violations of this subsection are left with the United States Attorney's Office. A 3-year statute of limitation applies to all violations under this section, starting from the time of the actual occurrence of the alleged violation.

*Sec. 238.* Notwithstanding any other provision, neither the Board nor any of its officers or employees may require that a document be submitted sworn under oath.

**Title III:** Conforming Amendments and Repealers.

*Sec. 301.*

The Home Rule Act is amended: to disqualify a Councilmember or Mayor from continuing to hold office upon conviction of a felony. This change would align our laws with public perception, deter misconduct, and restore public trust. to limit removal to between the end of the first, and beginning of the last year of an official's term, but does not apply if the Board of Ethics and Government Accountability have adjudged an official for a serious violation of the Code of Conduct; and to Reduces the number of signatures of registered voters needed to call for the holding of an election to remove or retain an at-large elected official from 10% to 5% of registered voters.

Title 1, Chapter 11 of the D.C. Official Code is repealed in whole and reenacted within this act. Those provisions of the former District of Columbia Campaign Finance Reform and Conflict of Interest Act relating to ethics—namely, lobbying, conflicts of interest, financial disclosures, constituent-services funds, honoraria and royalties—are reenacted within a newly created title.

The District of Columbia Government Comprehensive Merit Personnel Act of 1978 (MPA) is amended by repealing the requirement that each agency appoint an ethics counselor. Instead, the new Board of Ethics will perform the advisory functions. It is also amended to subject public officials and members of boards and commissions to the standards of conduct provisions there, and within Chapter B 18 of Title 6 of the District of Columbia Municipal Regulations.

The District of Columbia Home Rule Act, approved December 24, 1973 is amended to allow recall in the first and fourth year of an elected term for a significant violation of the code of conduct. It is also amended to reduce the number of signatures of registered voters needed to call for the holding of an election to remove or retain an at-large elected official from 10% to 5% of registered voters.

The Open Meetings Amendment Act of 2010 is amended by establishing the Open Government Office as an independent agency within the Board of Ethics and Government Accountability; the Director of the OGO shall be appointed by the Board.

#### **Title IV:** Transition Provisions

*Sec. 401.* The Mayor shall submit to the Council for its review the Mayor's initial nominees for appointment within 45 calendar days of the effective date of this act. A nominee shall be submitted to the Council for a 45-day period of review, excluding days of Council recess. If the Council does not approve or disapprove the nomination by resolution within this 45-day review period, the nomination shall be deemed disapproved.

*Sec. 402.* (a) Title I, Subtitle A, sections 103-109 shall take effect upon the effective date of this act. Title I, Subtitle B shall take effect upon the effective date of this act. Title II shall take effect upon the effective date of this act. Title III, sections 301-302 shall take effect upon the effective date of this act. All other provisions of this act shall take effect as of July 1, 2011.

#### **Title V:** Fiscal Impact and Effective Statement

*Sec. 501.* Fiscal impact statement

*Sec. 502.* Effective date.

### **SUMMARY OF PUBLIC HEARING**

A hearing on ten bills related to ethics reform in the District of Columbia was convened on Wednesday, October 26<sup>th</sup>, 2011. Dozens of witnesses from the public and government testified to the importance of ethics reform, many of whom offered specific recommendations. Of note, several witnesses supported the creation of an independent ethics commission responsible for enforcing the entirety of District's ethics laws, including the enforcement of new, strict penalties. Witnesses also supported increased regulation of constituent services funds and disclosure requirements for inauguration and transition activities. Testimony was also given supporting a prohibition on discounted legal services to elected officials, and to enhanced disclosure requirements for elected officials. The draft committee print embodies these suggestions and adopts specific language from the ten ethics bills previously introduced.

On November 30, 2011, the Committee convened a public roundtable on the Committee's draft print of bill 19-511, the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011.<sup>68</sup> Prior to the public roundtable, on November 18<sup>th</sup>, the Committee published a copy of the Draft print on the Council's website and copies were also referenced by the District's major news outlets. The

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<sup>68</sup> The title of the draft print reflects a proposed title change. As introduced, Bill 19-511 was entitled the Campaign Finance Reform and Conflict of Interest Public Disclosure Amendment Act of 2011. Unlike the October 26th hearing, the purpose of this public roundtable is to elicit comments on a specific proposal, and to provide the public an additional opportunity to be heard.

Committee made the print available in advance so as to allow the public an opportunity to participate more fully at the roundtable.

A video of both hearings is available at [www.dccouncil.us](http://www.dccouncil.us).

## **FISCAL IMPACT**

A fiscal impact statement, prepared by the Chief Financial Officer, will be provided to each Councilmember prior to first reading on the proposed legislation.

## **ANALYSIS OF IMPACT ON EXISTING LAW**

Bill 19-511 will affect the following existing laws:

- Title 1, Chapter 11 of the D.C. Official Code is repealed in whole and reenacted within this act. Those provisions of the former District of Columbia Campaign Finance Reform and Conflict of Interest Act relating to ethics—namely, lobbying, conflicts of interest, financial disclosures, constituent-services funds, honoraria and royalties—are reenacted within a newly created title.
- The District of Columbia Government Comprehensive Merit Personnel Act of 1978 (MPA) is amended by repealing the requirement that each agency appoint an ethics counselor. Instead, the new Board of Ethics will perform the advisory functions. It is also amended to subject public officials and members of boards and commissions to the standards of conduct provisions there, and within Chapter B 18 of Title 6 of the District of Columbia Municipal Regulations.
- The District of Columbia Home Rule Act, approved December 24, 1973 is amended to allow recall in the first and fourth year of an elected term for a significant violation of the code of conduct. It is also amended to reduce the number of signatures of registered voters needed to call for the holding of an election to remove or retain an at-large elected official from 10% to 5% of registered voters.
- The Open Meetings Amendment Act of 2010 is amended by establishing the Open Government Office as an independent agency within the Board of Ethics and Government Accountability; the Director of the OGO shall be appointed by the Board.

## **COMMITTEE ACTION**

The Committee on Government Operations met on December 5, 2011, at 10:45 a.m. in room 120 of the John A. Wilson Building to consider and vote on Bill 19-511. Present and voting were Chairperson Muriel Bowser, Councilmembers Michael Brown, David Catania, Michael Brown and Chairman Kwame Brown, an ex-officio member.

A video of the meeting is available at [www.dccouncil.us](http://www.dccouncil.us).

The Committee voted 4-1 to approve the Committee Print of Bill 19-511, with members voting as follows:

YES: Chairperson Bowser, Councilmember Catania, Councilmember Michael Brown, and Chairman Kwame Brown

NO: Councilmember Vincent Orange

PRESENT:

ABSENT: Councilmember Thomas

Chairperson Bowser then moved for approval of the Committee Report on Bill 19-511. The Committee voted 4-1 to approve the Committee Report, with members voting as follows:

YES: Chairperson Bowser, Councilmember Catania, Councilmember Michael Brown, and Chairman Kwame Brown

NO: Councilmember Vincent Orange

PRESENT:

ABSENT: Councilmember Thomas

Chairperson Bowser adjourned the meeting at 11:45 a.m.

### **LIST OF ATTACHMENTS**

- a) Bill 19-511 as introduced
- b) Notice of Intent to Act on Bill 19-511 as published in the *District of Columbia Register*
- c) Notice of Public Hearing on Bill 19-511 as published in the *District of Columbia Register*
- d) Notice of Public Roundtable on the Draft Committee Print of Bill 19-511
- e) Public Hearing Testimony, October 26, 2011
- f) Public Hearing Testimony, November 30, 2011
- g) Fiscal Impact Statement, \_\_\_\_\_ 2011

- h) Draft Committee Print
- i) Second Draft Committee Print
- j) Committee Print