

Committee Print 1
Committee on Public Safety and the Judiciary 2
December 16, 2009 3

A BILL 4
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18-65 8

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA 9

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To clarify the independence of the Attorney General and the obligation of that position to 11
represent the public interest, to provide for a four year term of office for the Attorney 12
General to coincide with the term of office of the Mayor, to set minimum qualifications 13
and requirements for the position of Attorney General, to require for the automatic 14
forfeiture of the position of Attorney General if the incumbent fails to meet the 15
requirements of this act, to codify the salary of the Attorney General, to codify the budget 16
process for the Office of the Attorney General, to require the appointment of a Chief 17
Deputy Attorney General, to authorize the administration of oaths, to permit the 18
appointment of special counsel in the event of conflict, to address the inability of the 19
Attorney General to carry out the duties of office, and to address a potential vacancy in 20
the position of Attorney General; and to amend the District of Columbia Home Rule Act 21
to establish the Attorney General for the District of Columbia as an elected position. 22

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this 23
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act may be cited as the “Attorney General for the District of Columbia Clarification and Elected 25
Term Amendment Act of 2009”. 26

TITLE I -- ATTORNEY GENERAL FOR THE DISTRICT OF COLUMBIA 27

PART A. 28

Sec. 101. Duties of the Attorney General.

(a) The Attorney General for the District of Columbia shall have charge and conduct of all law business of the said District and all suits instituted by and against the government thereof, and shall possess all powers afforded the Attorney General by the common and statutory law of the District and shall be responsible for upholding the public interest. He or she shall have the power to control litigation and appeals, as well as the power to intervene in legal proceedings on behalf of this public interest. The Attorney General shall furnish opinions in writing to the Mayor and the Council whenever requested to do so. All requests for opinions from agencies subordinate to the Mayor shall be transmitted through the Mayor. The Attorney General shall keep a record of requests, together with the opinions.

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

Sec. 102. Appointment of the Attorney General.

(a) Until such time as an Attorney General is elected under section 435 of the of the District of Columbia Home Rule Act, the Attorney General for the District of Columbia shall be appointed by the Mayor with the advice and consent of the Council pursuant to section 2 the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01).

(b) The Attorney General shall:

- (1) Serve a 4-year term to coincide with the term for Mayor; and
- (2) Be eligible for reappointment by the Mayor with the advice and consent of the Council, and may serve in a holdover capacity at the expiration of his or her term pursuant to

section 2(c) of the Confirmation Act of 1978, approved March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(c)).

Sec. 103. Minimum Qualifications and Requirements for Attorney General.

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

(1) Is a qualified elector as defined in the Election Act of 1955 (D.C. Official Code § 1-1001, *et seq.*);

(2) Is a member in good standing of the bar of the District of Columbia;

(3)(A) Except as provided in subparagraph (B) of this paragraph, has been a member in good standing of the bar of the District of Columbia for at least seven years prior to assuming the position of Attorney General;

(B) In the case of a professor of law in a law school in the District of Columbia or of an attorney employed in the District of Columbia by the United States or the District of Columbia, has been employed in such capacity for at least five years and has been eligible for membership in the bar of the District of Columbia for at least seven years prior to appointment;

(4) Has been actively engaged, for at least five years of the ten years immediately preceding the assumption of the position of Attorney General, as an attorney in the practice of law in the District of Columbia, as a judge of a court in the District of Columbia, as a professor of law in a law school in the District of Columbia, or as an attorney employed in the District of Columbia by the United States or the District of Columbia;

(5) Is a bona fide resident of the District of Columbia, or becomes a bona fide resident of the District of Columbia within 180 days of his or her taking office, and maintains

residency in the District of Columbia throughout his or her term of office. 1

(b) The Attorney General shall devote full-time to the duties of the Office and shall not 2
engage in the private practice of law or perform any other duties while in office that are 3
inconsistent with the duties and responsibilities of Attorney General. 4

Sec. 104. Forfeiture of the position of Attorney General. 5

The following shall result in an automatic forfeiture of the position of Attorney General 6
for the District of Columbia: 7

(1) Failure to maintain the qualifications required under section 102(a) of the Attorney 8
General for the District of Columbia Clarification and Elected Term Amendment Act of 2009; 9

(2) Violation of the prohibition against the private practice of law as provided in section 10
102(b) of the Attorney General for the District of Columbia Clarification and Elected Term 11
Amendment Act of 2009; or 12

(3) Conviction of a felony while in office. 13

Sec. 105. Attorney General salary. 14

The Attorney General for the District of Columbia shall be paid at an annual rate equal to 15
the rate of basic pay for level E5 on the Executive schedule. 16

Sec. 106. Annual budget for the Office of Attorney General. 17

(a) The Attorney General for the District of Columbia shall prepare and submit to the 18
Mayor, for inclusion in the annual budget of the District of Columbia under Part D of title IV of 19
the District of Columbia Home Rule Act for the year, annual estimates of the expenditures and 20
appropriations necessary for the operation of the Office of the Attorney General for the year. 21
The Mayor shall make recommendations to the Council of the District of Columbia based on 22
said submissions for the Council's action pursuant to section 446 of the District of Columbia 23

Home Rule Act, approved December 24, 1973 (87 Stat. 801; D.C. Official Code § 1-204.46) and section 603(c) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 814; D.C. Official Code § 1-206.03(c)).

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

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

(a) The Attorney General shall appoint a Chief Deputy Attorney General who shall meet the qualification of section 103 of the Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2009. The Chief Deputy Attorney General shall serve under the direction and control of the Attorney General and shall perform such duties as may be assigned to him or her by said Attorney General.

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

Sec. 108. Authority to administer oaths.

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

Sec. 109. Appointment of Special Counsel.

(a) Except as provided in subsection (b) of this section, in the event the Attorney General

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

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

PART B.

Sec. 110. Inability to carry out duties as Attorney General.

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

(2) Upon determining that he or she is temporarily unable or unavailable to carry out the duties of the Office, the Attorney General shall provide written notice of the disability to the Chief Deputy Attorney General;

(3) Upon determining that the disability or unavailability under paragraph (1) of this section has been resolved, the Attorney General shall provide written notice to the acting Attorney General that the Attorney General is able to carry out the duties of the Office. The Attorney General shall reassume the position as of the date of the written notice.

(b)(1) If a vacancy in the position of Attorney General occurs as a consequence of resignation, permanent disability, death, or other reason, the Mayor shall appoint a replacement by and with the consent of the Council to fill the unexpired term; provided that the Mayor shall submit the nomination to the Council within 30 days after the occurrence of the vacancy. A person appointed to fill the unexpired term shall serve only for the remainder of the term, unless reappointed pursuant to section 102(b)(2) of the Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2009 or elected under section 435 of the of the District of Columbia Home Rule Act.

(2) If a vacancy occurs, no person shall serve on an acting basis as Attorney General unless the person meets the qualifications of section 102 of the Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2009.

Sec. 111. Applicability.

This part shall apply upon the election of an Attorney General for the District of Columbia pursuant to Section 435 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 777; D.C. Official Code § 1-204.01).

PART C.

Sec. 112. Conforming Amendment.

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

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

TITLE II -- ELECTION OF ATTORNEY GENERAL

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Sec. 201. Title IV of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 777; D.C. Official Code § 1-204.01), is amended by adding a new section 435 to read as follows:

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“Sec. 435. Election of the Attorney General for the District of Columbia.

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

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

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“(c) Any candidate for the position of Attorney General shall meet the qualifications of section 102 of the Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2009 prior to the day on which the general election for the Attorney General is to be held.”

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Sec. 202. Applicability.

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This title shall apply upon enactment by Congress.

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TITLE III – FISCAL IMPACT; EFFECTIVE DATE

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Sec. 301. The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

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Sec. 302. This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional

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review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved 1
December 24, 1973 (87 Stat. 813: D.C. Official Code § 1-206.02(c)(1)) and publication in the 2
District of Columbia Register. 3