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"For the purposes of this act, the term:

"(1) (A) "Dangerous dog" means any dog that without provocation:

"(i) Causes a serious injury to a person or domestic animal; or

"(ii) Engages in behavior described in paragraph (4)(A)(i) of this section subsequent to having been determined to be a potentially dangerous dog pursuant to section 3.

"(B) The term "dangerous dog" shall not include dogs used by law enforcement officials when the dog is being used for legitimate law enforcement purposes.

"(2) "Impound" means taken into the custody of the Mayor.

"(3) "Owner" means any person, firm, corporation, organization, or department possessing, harboring, keeping, having an interest in, or having control or custody of a dog.

"(4)(A) "Potentially dangerous dog" means any dog that:

"(i) Without provocation, chases or menaces a person or domestic animal in an aggressive manner, causing an injury to a person or domestic animal that is less severe than a serious injury;

"(ii) In a menacing manner, approaches without provocation any person or domestic animal as if to attack, or has demonstrated a propensity to attack without provocation or otherwise to endanger the safety of human beings or domestic animals; or

"(iii) Is running at-large and has been impounded by an animal control agency 3 or more times in the District within any 12-month period.

"(B) The term "potentially dangerous dog" shall not include dogs used by law enforcement officials when the dog is being used for legitimate law enforcement purposes.

"(5) "Proper enclosure" means secure confinement indoors or secure confinement outdoors in a locked structure designed and constructed to:

"(A) Deter escape of the dog;

"(B) Protect the dog from the elements; and

"(C) Prevent contact with the dog from humans and other domestic animals.

"(6) "Serious injury" means any physical injury that results in broken bones or lacerations requiring multiple sutures or cosmetic surgery.".

(b) Section 3 (D.C. Official Code § 8-1902) is amended to read as follows: **Amend § 8-1902**

"Sec. 3. Determination of a potentially dangerous or dangerous dog.

"(a) The Mayor is authorized to conduct an investigation and make a determination as to whether a dog is a potentially dangerous or dangerous dog. In determining whether a dog is a potentially dangerous or dangerous dog, the Mayor shall consider all evidence obtained or presented to the Mayor relevant to the issue of whether the dog's behavior was the result of provocation or otherwise justified under the circumstances.

"(b)(1) A dog shall not be determined to be a potentially dangerous or dangerous dog if the dog injured:

"(A) A person who, at the time of injury, was committing a willful

trespass upon the premises lawfully occupied by the owner;

"(B) A person who, at the time of injury, was provoking, tormenting, abusing, or assaulting the dog or has repeatedly, in the past, provoked, tormented, abused, or assaulted the dog;

"(C) A person or domestic animal because, at the time of injury, the dog was responding to injury, or was protecting itself or its offspring; or

"(D) A person or domestic animal because, at the time of injury, the dog was protecting or defending a human being within the immediate vicinity of the dog from an attack or assault.

"(2) The burden of proof on establishing that the dog falls into one of the categories described in paragraph (1) of this subsection is on the owner.

"(c) The Mayor shall provide notice of the determination to the owner by personal service, posting, or prepaid mail. The owner may contest the determination and request a hearing by filing a written appeal within 15 business days of the date the notice of determination is served, posted, or mailed. The Mayor shall provide reasonable notice of the hearing to the owner.

"(d)(1) If the Mayor has probable cause to believe a dog is a potentially dangerous or dangerous dog and may pose a threat to public safety, the Mayor, after providing notice to the owner of the probable cause determination, may obtain a search warrant pursuant to Rule 204 of the Superior Court of the District of Columbia Rules of Civil Procedure and impound the dog pending final disposition of the case.

"(2) The owner shall be liable to the District for the costs and expenses of the impoundment of the dog unless the dog is determined to be neither a potentially dangerous or dangerous dog. If a dog is determined to be a potentially dangerous or dangerous dog, the owner, prior to reclaiming the dog in accordance with section 4, shall reimburse the animal control agency its costs and expenses for the care of the dogs while in the animal control agency's custody plus any reasonable veterinary fees incurred for the dog during the period of impoundment. An owner's failure to pay the costs and expenses within 5 days of a final determination shall result in ownership of the dog reverting to the animal control agency.

"(e)(1) The hearing shall be held not less than 5, and not more than 10 days, excluding holidays, Saturdays, and Sundays, after service of notice of the hearing upon the owner. The hearing shall be open to the public. The owner shall have the opportunity to present evidence as to why the dog should not be declared a potentially dangerous or dangerous dog, including evidence of provocation or justification pursuant to section 3(b), or not be determined to pose a threat to public safety if returned to its owner The Mayor may decide all issues for or against the owner regardless of whether the owner appears at the hearing.

"(f) Within 5 days after the hearing, the Mayor shall notify the owner in writing of the determination of the hearing officer.

"(g)(1) Within 5 days of the issuance of an order by the hearing officer determining that the dog is a potentially dangerous or dangerous dog, the owner may bring a petition in the

Superior Court of the District of Columbia seeking review of the determination.

"(2) A court order vacating the determination shall not prevent the Mayor from later determining that the dog is a potentially dangerous or dangerous dog or poses a threat to public safety, based upon the dog's subsequent behavior.".

(c) Section 4 (D.C. Official Code § 8-1903) is amended to read as follows: **Amend § 8-1903**

"Sec. 4. Consequences of a dangerous or potentially dangerous dog determination.

"(a) If the Mayor determines that a dog is a potentially dangerous or dangerous dog, the owner shall comply with the requirements of sections 5 and 6 and any other special security or care requirements the Mayor may establish.

"(b) If a potentially dangerous or dangerous dog has been impounded and determined to pose a threat to public safety, the Mayor may only return the dog to its owner if the owner has:

"(1) Met the registration requirements of section 5;

"(2) Agreed to comply with the requirements of section 6, where necessary; and

"(3) Met or agreed to comply with any additional security or care requirements established by the Mayor.

"(c) The Mayor may humanely destroy a dog if:

"(1) The dog has been determined to be a threat to public safety if it is returned to the owner;

"(2) The owner fails to comply with the registration requirements of section 5, the requirements of section 6, or any special security or care requirements established by the Mayor;

"(3) The owner fails to reimburse the animal control agency for the costs and expenses of the dog's impoundment as required by section 3(d)(2); or

"(4) The owner forfeits the dog for humane destruction.".

(d) Section 5 (D.C. Official Code § 8-1904) is amended to read as follows: **Amend § 8-1904**

"Sec. 5. Dangerous dog and potentially dangerous dog registration requirements.

"(a) The Mayor shall issue a certificate of registration to the owner of a potentially dangerous dog if the owner establishes to the satisfaction of the Mayor that:

"(1) The owner of the potentially dangerous dog is 18 years of age or older;

"(2) A valid license has been issued for the potentially dangerous dog pursuant to District law;

"(3) The potentially dangerous dog has current vaccinations;

"(4) The owner has a proper enclosure, as determined by the Mayor, to confine the potentially dangerous dog;

"(5) The owner has paid an annual fee in an amount to be determined by the Mayor, in addition to regular dog licensing fees, to register the potentially dangerous dog;

"(6) The potentially dangerous dog has been spayed or neutered;

"(7) The potentially dangerous dog has been implanted with a microchip containing owner identification information; and

"(8) The owner has written permission of the property owner, if the dog owner is

not the property owner, and from a homeowner's association, if appropriate, to house the dog on the premises where the dog will be kept.

"(b) The Mayor shall issue a certificate of registration to the owner of a dangerous dog if the owner, in addition to satisfying the requirements for registration of a potentially dangerous dog pursuant to subsection (a) of this section, establishes to the satisfaction of the Mayor that the owner of the dangerous dog has posted on the premises a clearly visible, printed warning sign, in type that is readable from not less than 50 feet, that there is a dangerous dog on the property, and that includes a conspicuous warning symbol that informs children of the presence of a dangerous dog.".

(e) Section 6 (D.C. Official Code § 8-1905) is amended to read as follows: **Amend § 8-1905**

"Sec. 6. Dangerous dog and potentially dangerous dog owner responsibilities.

"It shall be unlawful to:

"(1) Keep a potentially dangerous or dangerous dog without a valid certificate of registration issued under section 5;

"(2) Permit a potentially dangerous dog to be outside a proper enclosure unless the potentially dangerous dog is under the control of a responsible person and restrained by a chain or leash, not exceeding 4 feet in length;

"(3) Fail to maintain a dangerous dog exclusively on the owner's property except for medical treatment or examination. When removed from the owner's property for medical treatment or examination, the dangerous dog shall be caged or under the control of a responsible person and muzzled and restrained with a chain or leash, not exceeding 4 feet in length. The muzzle shall be made in a manner that will not cause injury to the dangerous dog or interfere with its vision or respiration, but shall prevent it from biting any human being or animal;

"(4) Fail to notify the Mayor within 24 hours if a potentially dangerous or dangerous dog is on the loose, is unconfined, has attacked another domestic animal, has attacked a human being, has died, has been sold, or has been given away. If the potentially dangerous or dangerous dog has been sold or given away, the owner shall also provide the Mayor with the name, address, and telephone number of the new owner of the potentially dangerous or dangerous dog;

"(5) Fail to surrender a potentially dangerous or dangerous dog to the Mayor for safe confinement pending disposition of the case when there is a reason to believe that the potentially dangerous or dangerous dog poses a threat to public safety;

"(6) Fail to comply with any special security or care requirements for a potentially dangerous or dangerous dog the Mayor may establish pursuant to section 4; or

"(7) Remove a dangerous dog from the District without written permission from the Mayor.".

(f) Section 7 (D.C. Official Code § 8-1906) is amended as follows: **Amend § 8-1906**

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

"(a) An owner of a dangerous or potentially dangerous dog who violates the provisions

of sections 5 or 6 shall, upon conviction, be guilty of a misdemeanor and be subject to a fine not to exceed $500, imprisonment not to exceed 90 days, or both for a first offense, and a fine not to exceed $1,000, imprisonment not to exceed 90 days, or both for a second or subsequent offense. Prosecutions for violations of sections 5 or 6 pursuant to this subsection shall be brought in the name of the District of Columbia in the Superior Court of the District of Columbia by the Office of the Attorney General for the District of Columbia.".

(2) Subsection (b) is amended by striking the phrase "dangerous dog" and inserting the phrase "potentially dangerous or dangerous dog" in its place.

Sec. 106. Section 2 of the Regulation of the Horse-Drawn Carriage Trade Act of 1990, effective March 7, 1991 (D.C. Law 8-224; D.C. Official Code § 8-2001 *et seq.*), is amended by striking the phrase "Animal Control Agency" wherever it appears and inserting the phrase "Animal Care and Control Agency" in its place.

Sec. 107. Chapter 10 of Title 16 of the District of Columbia Official Code is amended as follows:

(a) Section 16-1001 is amended as follows: **Amend § 16-1001**

(1) Designate existing paragraphs (1) through (6) as paragraphs (2) through (7).

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

"(1) The term "animal cruelty" means cruelty to an animal as defined in § 22-1001(a)).

(b) Section 16-1005(c) is amended as follows: **Amend § 16-1005**

(1) The lead-in language is amended by striking the phrase "intrafamily offense," and inserting the phrase "intrafamily offense, or animal cruelty," in its place.

(2) Paragraph (10) is amended by striking the word "or" at the end.

(3) A new paragraph (10A) is added to read as follows:

"(10A) Directing the care, custody, or control of a domestic animal in the household; or".

Sec. 108. Chapter 106 of the Acts of the Legislative Assembly, approved August 23, 1871 (D.C. Official Code § 22-1001 *et seq.*), is amended as follows:

(a) Section 1(a) (D.C. Official Code § 22-1001(a)) is amended as follows: **Amend § 22-1001**

(1) Designate the existing text as paragraph (1).

(2) New paragraphs (2) and (3) are added to read as follows:

"(2) The court may order a person convicted of cruelty to animals:

"(A) To obtain psychological counseling, psychiatric or psychological evaluation, or to participate in an animal cruelty prevention or education program, and may impose the costs of the program or counseling on the person convicted;

"(B) To forfeit any rights in the animal or animals subjected to cruelty;

"(C) To repay the reasonable costs incurred prior to judgment by any

agency caring for the animal or animals subjected to cruelty; and

"(D) Not to own or possess an animal for a specified period of time.

"(3) The court may order a child adjudicated delinquent for cruelty to animals to undergo psychiatric or psychological evaluation, or to participate in appropriate treatment programs or counseling, and may impose the costs of the program or counseling on the person adjudicated delinquent.".

(b) A new section 2a is added to read as follows:

"Sec. 2a. Reporting requirements.

"(a)(1) Any law enforcement or child or protective services employee who knows of or has reasonable cause to suspect an animal has been the victim of cruelty, abandonment, or neglect, or observes an animal at the home of a person reasonably suspected of child, adult, or animal abuse, shall provide a report within 2 business days to the Mayor. If the health and welfare of the animal is in immediate danger, the report shall be made within 6 hours.

"(2) The report shall include:

"(A) The name, title, and contact information of the individual making the report;

"(B) The name and contact information, if known, of the owner or custodian of the animal;

"(C) The location, along with a description, of where the animal was observed; and

"(D) The basis for any suspicion of animal cruelty, abandonment, or neglect, including the date, time, and a description of the observation or incident which led the individual to make the report.

"(b) When 2 or more law enforcement or child or protective services employees jointly suspect an animal has been the victim of cruelty, abandonment, or neglect, or jointly observe an animal at the home of a person reasonably suspected of child, adult, or animal abuse, a report may be made by one person by mutual agreement.

"(c) No individual who in good faith reports a reasonable suspicion of abuse shall be liable in any civil or criminal action.

"(d) Upon receipt of a report, any agency charged with the enforcement of animal cruelty laws shall make reasonable attempts to verify the welfare of the animal.

"(e) For the purposes of this section, the terms "reasonable cause to suspect", "suspect", "reasonably suspected", and "reasonable suspicion" mean a basis for reporting facts leading a person of ordinary care and prudence to believe and entertain a reasonable suspicion that criminal activity is occurring or has occurred.".

(c) Section 4 (D.C. Official Code § 22-1004) is amended by adding a new subsection (c) to read as follows: **Amend § 22-1004**

"(c)(1) The Mayor shall establish by rulemaking a notice and hearing process for the owner of the animal to contest the seizure, detention, and terms of release and treatment of the animal, the allegation of cruelty, abandonment, or neglect, and the imposition of the lien and costs assessed for caring and providing for the animal.

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"(2) Within 30 days of the effective date of the Animal Protection Amendment Act of 2008, passed on 2nd reading on July 15, 2008 (Enrolled version of Bill 17-89), the proposed rules shall be submitted to the Council for a 45-day period of review, excluding weekends, legal holidays, and days of Council recess. If the Council does not approve or disapprove of the proposed rules, by resolution, within the 45-day review period, the rules shall be deemed approved.".

Amend § 22-1015

Sec. 109. Section 6a of An act to prevent cruelty to children or animals in the District of Columbia, and for other purposes, effective June 8, 2001 (D.C. Law 13-303; D.C. Official Code § 22-1015), is amended as follows:

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

(A) Strike the phrase "any animal; or (5)" and insert the phrase "any animal; (5)" in its place.

(B) Strike the phrase "that act, is guilty of a felony, punishable by a fine of not more than $25,000 or by imprisonment not to exceed 5 years, or both." and insert the phrase "that act; or (6) any person who is knowingly present as a spectator at any such exhibition, is guilty of a felony, punishable by a fine of not more than $25,000, imprisonment not to exceed 5 years, or both. The court may also impose any penalties listed in section 1(a) of Chapter 106 of the Acts of the Legislative Assembly, approved August 23, 1871 (D.C. Official Code § 22-1001(a))." in its place.

(2) Subsection (b) is repealed.

TITLE II - LICENSING REQUIREMENTS

Sec. 201. Commercial animal breeder license.

(a) Within 180 days of the effective date of this act, the Mayor shall establish licensure requirements for commercial animal breeders in the District of Columbia, which shall include:

(1) Licensing fees;

(2) Standards for the care and management of animals; and

(3) Facility inspection requirements.

(b) For the purposes of this section, the term "commercial animal breeder" means any person, firm, organization, or corporation engaged in the operation of breeding and raising more than 25 animals per year for sale or in return for consideration.

Sec. 202. Commercial pet care facilities; rulemaking.

(a) No person shall operate a commercial pet care facility without first obtaining a basic business license with an Inspected Sales and Services license endorsement pursuant to Title 47 of the District of Columbia Official Code. The Mayor shall issue rules to establish the standards for the care and management of animals in a commercial pet care facility.

(b) For the purposes of this section, the term "commercial pet care facility" means a facility that provides day or overnight boarding, or provides pet-related services, including feeding, exercise, training, bathing, or grooming, but does not include an animal facility as

defined in section 3(2) of the Veterinary Practice Act of 1982, effective March 9, 1983 (D.C. Law 4-171; D.C. Official Code § 3-502), or a licensed pet shop.

TITLE III. RELEASE OF ANIMALS.

Sec. 301. Release of animals.

(a) No person shall release an animal from the custody or control of any entity charged with animal protection for any purpose except adoption or to improve the opportunity for adoption, redemption by the owner of the animal, or other suitable placement in the best interest of the animal. No animals shall be knowingly released from any entity charged with animal protection for the purposes of research, experimentation, testing, or medical instruction or demonstration.

(b) A person who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 180 days, a fine of not more than $1,000, or both.

TITLE IV. COMMERCIAL GUARD DOGS.

Sec. 401. Definitions.

For the purposes of this title, the term "commercial guard dog" means any dog trained to guard, protect, patrol, or defend any commercial premises.

Sec. 402. License; immunizations.

(a) All commercial guard dogs shall have a valid commercial guard dog license issued pursuant to District law. Upon issuance of a license, the Mayor shall issue a fluorescent guard dog identification tag, or such other tag as the Mayor determines appropriate, to be affixed to the collar or harness of the commercial guard dog to indicate the dog is a commercial guard dog

(b) All commercial guard dogs shall be immunized against rabies and distemper pursuant to District law, and a current and valid certificate of these immunizations shall be retained on file by the owner of the commercial guard dog.

Sec. 403. Health.

(a) All commercial guard dogs shall undergo an annual examination by a licensed veterinarian for the purpose of determining whether or not the animal is healthy and fit to work as a commercial guard dog. Upon a determination by a licensed veterinarian that a commercial guard dog is unfit to work, the dog shall not be used to guard, protect, patrol, or defend any commercial premises until the dog is re-examined by the veterinarian. Upon a determination by a licensed veterinarian that a commercial guard dog is permanently unfit to work, the dog shall be immediately retired.

(b) It shall be unlawful for any individual, business, or entity to cause, allow, use, or train commercial guard dogs that have undergone the surgical procedure of ventricular cordectomy.

Sec. 404. Insurance requirements.

An individual, business, or entity that utilizes a commercial guard dog shall maintain a general liability insurance policy for bodily injury, personal injury, and property damage of not less than $50,000 to insure against liability resulting from acts of the animal performed while on guard duty.

Sec. 405. Notification requirements.

An individual, business, or entity that utilizes a commercial guard dog shall notify the Mayor, in writing, as to the presence of the animal and shall provide contact information for the entity responsible for the animal and a 24-hour emergency telephone number.

Sec. 406. Signage.

An individual, business, or entity that utilizes a commercial guard dog shall post a sign in plain view alerting the public to the presence of a commercial guard dog and shall include the name of the entity responsible for the animal and a 24-hour emergency telephone.

Sec. 407. Care of animal.

A commercial guard dog shall not be maintained on any premises unless the dog is provided:

(1) Full access to an enclosed shelter sufficient to protect the dog from wind, rain, excessive heat or cold, and disease; and

(2) Continuous access to sufficient food and water.

Sec. 408. Violation and penalty.

Any person found guilty of violating this title shall be subject to a penalty of $500 for the first offense and $1,000 for each subsequent offense.

Sec. 409. Rules.

The Mayor shall issue rules to implement the provisions of this section.

TITLE V. CLASSROOM ANIMALS.

Sec. 501. Animals kept in schools.

Only animals of appropriate size and temperament suitable to a classroom environment shall be introduced into the classroom. Use of such animals shall be for instructional purposes only.

Sec. 502. Care of classroom animals.

(a) Animals kept in schools shall be provided sufficient food and water, be cared for in a safe and humane manner, and remain in schools during holidays only if provided adequate care.

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(b) Animals no longer needed in the classroom should be adopted out to a suitable home or given to a local humane organization for adoption.

TITLE VI. EMERGENCY PREPAREDNESS

Sec. 601. Animal emergency preparedness plan.

Within 90 days of the effective date of this act, the Mayor shall establish an emergency preparedness plan for the protection, sheltering, and evacuation of domestic animals during and following a major disaster or emergency.

TITLE VII. RULEMAKING

Sec. 701. Rulemaking.

The Mayor, pursuant to Title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to implement the provisions of this act.

TITLE VIII. FISCAL IMPACT; EFFECTIVE DATE

Sec. 801. Fiscal impact statement.

The Council adopts the July 11, 2008 fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 802. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 60-day period of Congressional review, as provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
August 4, 2008

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Codification District of Columbia Official Code

2001 Edition

2008 Fall Supp.

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AN ACT

D.C. ACT 17-494

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

AUGUST 4, 2008

To amend the Rental Housing Conversion and Sale Act of 1980 to clarify that tenants who are or have been owners are not qualified to vote in a condominium or cooperative conversion election and that in addition to other qualified tenants, tenants who become owners only after the exercise of their rights under the Tenant Opportunity to Purchase Act of 1980 are qualified to vote in a condominium or cooperative conversion election.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Tenant-Owner Voting in Conversion Election Clarification Amendment Act of 2008".

Amend § 42-3402.03

Sec. 2. Section 203(d) of the Rental Housing Conversion and Sale Act of 1980, effective September 10, 1980 (D.C. Law 3-86; D.C. Official Code § 42-3402.03(d)), is amended to read as follows:

"(d) Qualified voter. (1) Except as provided in paragraph (2) of this subsection, a head of household residing in each rental unit of the housing accommodation is qualified to vote unless:

"(A) No member of the household has resided in the accommodation for at least 90 days before the election;

"(B) A member of the household is or has been an owner or an employee of the owner within 120 days prior to the date of application for eligibility; or

"(C) A member of the household's continued right to remain a tenant as guaranteed by this act is exercised.

"(2) A tenant who otherwise meets the requirements of this section and becomes an owner only after the exercise of his or her rights under title IV shall be qualified to vote.

"(3) The Mayor shall determine the eligibility of voters prior to the election and shall devise such forms and procedures as may be necessary to verify eligibility under this subsection.

"(4) An elderly or disabled tenant who delivers a waiver under section 208(a)(2)(D) to the Mayor shall be qualified to vote in an election under this section.".

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Sec. 3. Fiscal impact statement.

The Council adopts the July 2, 2008 fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 4. Effective date.

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

Vincent C. Gray

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
August 4, 2008

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AN ACT

D.C. ACT 17-495

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

AUGUST 4, 2008

Codification District of Columbia Official Code

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To amend the Department of Transportation Establishment Act of 2002 to authorize the Director of the District Department of Transportation to issue grants to achieve transportation goals, including safety objectives and to enter into agreements to support community-based transportation enhancement activities, to require the Mayor to submit an annual report to the Council on the grants issued, to include as a duty of the District Department of Transportation the management and construction of certain capital projects, to authorize the District Department of Transportation to review and revise the location of bus shelter locations, and to authorize the District Department of Transportation to develop and update the District's various transportation improvement plans.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Department of Transportation Establishment Amendment Act of 2008".

Sec. 2. The Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code § 50-921.01 *et seq.*), is amended as follows:

Amend § 50-921.02

(a) Section 3 (D.C. Official Code § 50-921.02) is amended by adding new subsections (c) and (d) to read as follows:

"(c)(1) The Director may issue grants not to exceed $1 million per grant to achieve the District's transportation goals, including safety objectives.

"(2) No later than December 31 of each year, the Mayor shall submit to the Council an annual report specifying for each grant awarded by the District Department of Transportation in the prior fiscal year the following information:

"(A) The name of the recipient;

"(B) The amount awarded;

"(C) The purpose for the grant awarded;

"(D) A description of outcomes to be achieved with the funds of the grant; and

"(E) An evaluation of whether the identified outcomes have been

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achieved with the grant.

"(d)(1) The Director may enter into agreements with community-based organizations to support community-based transportation enhancement activities that are funded and approved by the Federal Highway Administration.

"(2) An agreement made pursuant to this subsection shall constitute an agreement making or receiving grants-in-aid and shall be exempt from the District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-301.01 *et seq.*)("PPA"), in accordance with section 104(b) of the PPA.

"(3) The Director shall submit to the Council on an annual basis a report detailing such grants and agreements.".

(b) Section 5 (D.C. Official Code § 50-921.04) is amended as follows: **Amend § 50-921.04**

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

"(B) Manage and construct capital projects related to the design and installation of streets, alleys, curbs, gutters, bicycle lanes, sidewalks, streetscapes, and medians;".

(2) Paragraph (2) is amended as follows:

(A) Subparagraph (D) is amended by striking the phrase "historic district".

(B) Subparagraph (J) is amended by adding the phrase "review and revise the location of bus shelter locations," after the phrase "review and revise bus routes,".

(C) Subparagraph (K) is amended by striking the phrase "travel; and" and inserting the phrase "travel;" in its place.

(D) Subparagraph (L) is amended by striking the phrase "title III."and inserting the phrase "title III; and" in its place.

(E) A new subparagraph (M) is added to read as follows:

"(M) Develop and update the District's various transportation improvement plans, consistent with federal and local requirements.".

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved

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December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Vincent C. Gray

Chairman
Council of the District of Columbia

Adrian Fenty

Mayor
District of Columbia
APPROVED
August 4, 2008

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AN ACT

D.C. ACT 17-496

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

AUGUST 4, 2008

To amend Chapter 20 of Title 21 of the District of Columbia Official Code to clarify presumption of capacity, to add definitions of "best interests", "emergency care", "incapacitated individual for health-care decisions", and "substituted judgment", to amend the definition of "guardian", to permit the court to waive the appointment of a visitor and examiner in certain circumstances, to prohibit the appointment of a guardian with a conflict of interest, to require guardians to limit their caseloads, to require the court to appoint the type of guardian which is least restrictive to the individual, to clarify the powers and duties of a guardian, to explain the limits of the authority of a guardian, to clarify the reasons that the court may remove a guardian, and to clarify the situations in which the estate of a ward shall be deemed depleted; to amend Chapter 22 of Title 21 of the District of Columbia Official Code to define the term "Qualified Psychologist", to require one of the 2 physicians required to pronounce incapacity be a qualified psychologist or a physician, to authorize psychologists to certify incapacity to make a health-care decision, to provide that nothing in this chapter condones mercy-killing or conflicts with the Emergency Medical Treatment and Labor Act, to permit court-appointed mental retardation advocates to provide substituted consent for health-care decisions for incapacitated customers, and to authorize a health-care provider, the District of Columbia, or an interested person to file a petition for the appointment of a limited guardian if there is no individual who can act as a substitute health-care decision maker for an incapacitated customer; to amend the District of Columbia Mental Health Information Act of 1978 to provide that mental health information may be disclosed under a specified act; and to amend the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978 to add definitions of "advanced practice registered nurse", "behavioral plan", "best interests", "comprehensive evaluation", "human rights advisory committee", "psychotropic medication", and "substituted judgment", and to require initial and periodic evaluations of the decision-making capacity of and the availability of healthcare decision-making supports for Department on Disability Services customers, to require informed consent for services and to establish a process for informed consent for psychotropic medications, to require the Department on Disability Services to complete a comprehensive review of psychotropic medication use for all Department on Disability Services customers within 18 months, to establish an Department on Disability Services health-care decisions policy, and to require the

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Department on Disability Services Administrator to issue reports on those evaluations and the agency's health-care decision-making activities.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Health-Care Decisions for Persons with Developmental Disabilities Amendment Act of 2008".

Sec. 2. Chapter 20 of Title 21 of the District of Columbia Official Code is amended as follows:

(a) Section 21-2002 is amended by adding a new subsection (d) to read as follows: **Amend § 21-2002**

"(d) An individual shall be presumed competent and to have the capacity to make legal, health-care, and all other decisions for himself or herself, unless certified otherwise under section 21-2204 or deemed incapacitated or incompetent by a court. Incapacity shall not be inferred from the fact that an individual:

"(1) Has been voluntarily or involuntarily hospitalized for mental illness pursuant to Chapter 5 of Title 21; or

"(2) Has mental retardation or has been determined by a court to be incompetent to refuse commitment under Chapter 13 of Title 7.".

(b) Section 21-2011 is amended as follows: **Amend § 21-2011**

(1) Re-designate paragraph (1) as paragraph (1A).

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

"(1) "Best interests" means promoting personal well-being by assessing:

"(A) The reason for the proposed action, its risks and benefits, and any alternatives considered and rejected; and

"(B) The least intrusive, least restrictive, and most normalizing course of action possible to provide for the needs of the individual.".

(3) A new paragraph (5C) is added to read as follows:

"(5C) "Emergency care" means immediate treatment, including diagnostic treatment, provided in response to a sudden and acute medical crisis in order to avoid injury, extreme pain, impairment, or death.".

(4) Paragraph (8) is amended to read as follows:

"(8) "Guardian" means a person who has qualified as a guardian of an incapacitated individual pursuant to court appointment, not including a guardian ad litem, but including:

"(A) A temporary guardian appointed as described in section 21-2046 for a finite period of time to serve as:

"(i) An emergency guardian whose authority may not extend beyond 21 days and who may exercise any powers granted by court order and not prohibited by law;

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"(ii) A health-care guardian whose authority is granted for up to 90 days and may be extended for up to an additional 90 days to provide substituted consent in accordance with section 21-2210 for an individual certified as incapacitated for a health-care decision; or

"(iii) A provisional guardian whose authority is granted for a specified period not to exceed 6 months, upon the court's finding that any guardian is not effectively performing duties and that the welfare of the incapacitated individual requires immediate action;

"(B) A general guardian not limited by the court in scope as described in section 21-2044(c) or in time as described in section 21-2046; and

"(C) A limited guardian whose powers are limited by the court as described in section 21-2044(c) and who is appointed for a finite period of time as described in section 21-2046 or for an indeterminate period of time.".

(5) A new paragraph (11A) is added to read as follows:

"(11A) "Incapacitated individual for health-care decisions" means an adult individual who lacks sufficient mental capacity to:

"(A) Appreciate the nature and implications of a health-care decision;

"(B) Make a choice regarding the alternatives presented; or

"(C) Communicate that choice in an unambiguous manner.".

(6) A new paragraph (25A) is added to read as follows:

"(25A) "Substituted judgment" means making a decision that conforms as closely as possible with the decision that the individual would have made, based upon the knowledge of the beliefs, values, and preferences of the individual.".

(c) Section 21-2041 is amended as follows: **Amend § 21-2041**

(1) Subsection (a) is amended by striking the word "limited" and inserting the phrase "limited, temporary," in its place.

(2) Subsection (d) is amended by adding the following sentence at the end: "The court shall waive, absent good cause shown, the appointments of a visitor and examiner if the petition seeks appointment of an emergency guardian or a health-care guardian and the petition is supported by the certification of incapacity made pursuant to section 21-2204.".

(3) Subsection (f) is amended by striking the second and third sentences and inserting the following sentence in their place: "The court may waive the appointment of a visitor and, where a current individual habilitation plan prepared pursuant to section 7-1304.03 is submitted to the court, the court may waive the appointment of an examiner.".

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

(A) Strike the phrase "other individual" and insert the word "individual" in its place.

(B) Add the following sentence at the end: "For an individual alleged to be incapacitated for health-care decisions, the certification of incapacity made pursuant to section 21-2204 shall be presented as evidence to the court.".

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(d) Section 21-2043 is amended as follows: Amend § 21-2043

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

"(a-1) (1) Except as provided in paragraph (2) of this subsection, a person will be deemed by the court to have a conflict of interest and may not be appointed as a guardian if the person:

"(A) Provides substantial services other than serving as guardian to the incapacitated individual in a professional or business capacity;

"(B) Is a creditor of the incapacitated individual; or

"(C) Is employed by any person or entity that provides services other than serving as guardian to the incapacitated individual in a professional or business capacity.

"(2) Notwithstanding the provisions of paragraph (1) of this subsection, a person may be appointed as a guardian if:

"(A) The person is the incapacitated individual's spouse, domestic partner, adult child, parent, adult sibling, or relative with whom the incapacitated individual has resided for more than 6 months prior to the filing of the petition; and

"(B) The court determines that the potential conflict of interest is insubstantial and that the appointment would clearly be in the best interests of the incapacitated individual; provided, that the court may not appoint a guardian in any other circumstance in which a conflict of interest may occur.".

(2) Subsection (c) is amended by adding a new paragraph (3A) to read as follows:

"(3A) An adult sibling of the incapacitated individual or a person nominated by will of a deceased sibling or by other writing signed by an adult sibling and attested by at least 2 witnesses;".

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

"(e) A guardian shall limit his or her caseload to a size that allows the guardian:

"(1) To accurately and adequately support and protect each ward;

"(2) To maintain regular and reasonable contact with each ward, including a minimum of one visit per month, unless otherwise specified by the court based on the expressed preferences of the ward or the ward's best interests; and

"(3) To have regular contact with service providers.".

(e) Section 21-2044(a) is amended to read as follows: Amend § 21-2044

"(a) The court shall exercise the authority conferred in this subchapter so as to encourage the development of maximum self-reliance and independence of the incapacitated individual. The court, on appropriate findings, may appoint a limited guardian, a temporary guardian, or a general guardian. When the court appoints a guardian, it shall appoint the type of guardianship that is least restrictive to the incapacitated individual in duration and scope, taking into account the incapacitated individual's current mental and adaptive limitations or other conditions warranting the appointment.".

(f) Section 21-2046 is amended to read as follows:

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Amend § 21-2046

"§ 21-2046. Temporary guardians.

"(a) Temporary guardians are guardians appointed for a finite period of time. Temporary guardians include emergency guardians, health-care guardians, and provisional guardians. All provisions of this chapter apply to temporary guardians unless otherwise specified.

"(b)(1) The court, on appropriate petition, may appoint an emergency guardian, whose authority may not extend beyond 21 days, if:

"(A) An incapacitated individual has no guardian;

"(B) A life-threatening situation or situation involving emergency care exists; and

"(C) There is no other person with authority to act who is reasonably available, mentally capable, and willing to act.

"(2) An emergency guardian appointed pursuant to this subsection may exercise those powers granted in the order.

"(3) Immediately upon receipt of the petition, the court shall appoint counsel for the individual alleged to be incapacitated and provide notice to the individual alleged to be incapacitated and to interested persons, pursuant to section 21-2042.

"(4) The individual alleged to be incapacitated, counsel for that individual, or any other interested person may request a hearing at any time within the period of the emergency guardianship. The hearing shall be held no later than 48 hours after the request.

"(5) The court may extend the authority of an emergency guardian appointed pursuant to this subsection to authorize the emergency guardian to serve as a health-care guardian consistent with subsection (c) of this section.

"(c)(1) The court, on appropriate petition, may appoint a health-care guardian for the individual alleged to be incapacitated for a specified period of time of up to 90 days if:

"(A) An individual has been determined to be incapacitated under section 21-2204;

"(B) The individual has no guardian; and

"(C) There is no other person with authority to act who is reasonably available, mentally capable, and willing to act.

"(2) The health-care guardian shall have the powers and duties set forth at section 21-2047.02(b).

"(3) An appropriate petition shall include the certification of incapacity made pursuant to section 21-2204. Immediately upon receipt of the petition, counsel shall be appointed for the individual alleged to be incapacitated, and notice provided to the individual alleged to be incapacitated and to interested persons, pursuant to section 21-2042. The hearing shall be held within 7 days of receipt of the petition.

"(4) The court may extend the authority of a health-care guardian for one additional period of up to 90 days:

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"(A) Upon determination of continued incapacity and determination of a continued need for the provision of substituted consent for any health-care service, treatment, or procedure pursuant to section 21-2210; or

"(B) If a petition for a permanent limited guardian or general guardian, pursuant to section 21-2041, has been filed with the court prior to the expiration of the appointment of the temporary guardian.

"(d) If the court finds that any appointed guardian is not effectively performing duties and that the welfare of the ward requires immediate action, it may appoint a provisional guardian, with notice to interested parties within 14 days after the appointment. The provisional guardian shall have the powers set forth in the previous order of appointment for a specified period not to exceed 6 months. The authority of any permanent guardian previously appointed by the court is suspended as long as a provisional guardian has authority.".

Amend § 21-2047

(g) Section 21-2047 is amended as follows:

(1) The section heading is amended to read as follows:

"§ 21-2047. Powers and duties of general guardian and limited guardian.".

(2) The lead-in text is amended by striking the word "guardian" and inserting the phrase "a general guardian or a limited guardian" in its place.

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

(A) The lead-in text is amended by striking the word "guardian" and inserting the phrase "general guardian or limited guardian" in its place.

(B) Paragraph (4) is amended by striking the word "and" at the end.

(C) Paragraph (5) is amended by striking the phrase "as required by court rule, but at least semi-annually." and inserting the phrase "on any order of the court, but at least semiannually;" in its place.

(D) New paragraphs (6), (7), and (8) are added to read as follows:

"(6) Make decisions on behalf of the ward by conforming as closely as possible to a standard of substituted judgment or, if the ward's wishes are unknown and remain unknown after reasonable efforts to discern them, make the decision on the basis of the ward's best interests;

"(7) Include the ward in the decision-making process to the maximum extent of the ward's ability; and

"(8) Encourage the ward to act on his or her own behalf whenever he or she is able to do so, and to develop or regain capacity to make decisions in those areas in which he or she is in need of decision-making assistance, to the maximum extent possible.".

(4) The lead-in text of subsection (b) is amended by striking the word "guardian" and inserting the phrase "general guardian or limited guardian" in its place.

(5) Subsection (c) is repealed.

(h) New sections 21-2047.01 and 21-2047.02 are added to read as follows:

New § 21-2047.01

"§ 21-2047.01. Limitations on temporary, limited, and general guardians.

"A guardian shall not have the power:

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"(1) To consent to an abortion, sterilization, psycho-surgery, or removal of a bodily organ except to preserve the life or prevent the immediate serious impairment of the physical health of the incapacitated individual, unless the power to consent is expressly set forth in the order of appointment or after subsequent hearing and order of the court;

"(2) To consent to convulsive therapy, experimental treatment or research, or behavior modification programs involving aversive stimuli, unless the power to consent is expressly set forth in the order of appointment or after subsequent hearing and order of the court;

"(3) To consent to the withholding of non-emergency, life-saving, medical procedures unless it appears that the incapacitated person would have consented to the withholding of these procedures and the power to consent is expressly set forth in the order of appointment or after subsequent hearing and order of the court;

"(4) To consent to the involuntary or voluntary civil commitment of an incapacitated individual who is alleged to be mentally ill and dangerous under any provision or proceeding occurring under Chapter 5 of Title 21, except that a guardian may function as a petitioner for the commitment consistent with the requirements of Chapter 5 of Title 21 or Chapter 13 of Title 7;

"(5) To consent to the waiver of any substantive or procedural right of the incapacitated individual in any proceeding arising from an insanity acquittal; or

"(6) To prohibit the marriage or divorce, or consent to the termination of parental rights, unless the power is expressly set forth in the order of appointment or after subsequent hearing and order of the court.

"§ 21-2047.02. Powers and duties of emergency and health-care guardians. New § 21-2047.02

"(a) Except as limited by sections 21-2046 and 21-2047.01, an emergency guardian or health-care guardian is responsible for providing substituted consent for an incapacitated individual and for any other duties authorized by the court, but is not personally liable to third persons by reason of that responsibility or acts of the incapacitated individual.

"(b) An emergency or health-care guardian shall:

"(1) Become or remain personally acquainted with the ward and maintain sufficient contact with the ward to know of his or her capacities, limitations, needs, opportunities, and physical and mental health;

"(2) Make decisions on behalf of the ward by conforming as closely as possible to a standard of substituted judgment or, if the ward's wishes are unknown and remain unknown after reasonable efforts to discern them, make the decision on the basis of the ward's best interests;

"(3) Include the ward in the decision-making process to the maximum extent of the ward's ability.

"(4) Encourage the individual to act on his or her own behalf whenever he or she is able to do so, and to develop or regain capacity to make decisions in those areas in which he or she is in need of decision-making assistance, to the maximum extent possible; and

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"(5) Make any report the court requires.

"(c) An emergency or health-care guardian may:

"(1) Grant, refuse, or withdraw consent to medical examination and health-care treatment for an individual who has been deemed incapacitated pursuant to section 21-2204;

"(2) Obtain medical records for the purpose of providing substituted consent pursuant to section 21-2210; and

"(3) Have the status of a legal representative under Chapter 12 of Title 7.".

(i) Section 21-2049(a) is amended to read as follows: Amend § 21-2049

"(a)(1) On petition of the guardian, the court, after a hearing, may accept a resignation of a guardian.

"(2) The court may remove a temporary guardian at any time.

"(3) On petition of the ward or any interested person, or on the court's own motion, the court, after a hearing, may remove a limited guardian or a general guardian for any of the following reasons:

"(A) Failure to discharge his or her duties, including failure to conform as closely as possible to a standard of substituted judgment or, if the ward's wishes are unknown and remain unknown after reasonable efforts to discern them, to make a decision on the basis of the ward's best interests, pursuant to section 21-2047(a)(6) or 21-2047.02(b)(2);

"(B) Abuse of his or her powers;

"(C) Failure to comply with any order of the court;

"(D) Failure to educate or provide for the ward as liberally as the ward's financial situation permits, if education and financial management fall within the scope of the guardianship;

"(E) Interference with the ward's progress or participation in programs in the community; or

"(F) For any other good cause.".

(j) Section 21-2060 is amended by adding a new subsection (a-1) to read as follows: Amend § 21-2060

"(a-1) The estate of a person or ward shall be presumed to be depleted for purposes of this chapter, and all compensation, expenses, and payouts made under this section shall be paid from a fund established by the District:

"(1) If the person or ward qualifies for federal Supplemental Security Income under Title XVI of the Social Security Act;

"(2) If the person or ward qualifies for Medicaid or Medicaid Expansion Programs as allowed by federal, state, or local requirements;

"(3) If the person or ward qualifies for other means-tested public assistance programs as allowed by federal, state, or local requirements including, Temporary Assistance for Needy Families, Interim Disability Assistance, Food Stamps, and D.C. Healthcare Alliance;

"(4) If the person or ward qualifies for federal disability benefits, including Old Age, Survivors, and Disability Insurance Benefits under Title II of the Social Security Act,

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Rehabilitation Services Administration Payments, Railroad Retirement Board, or Veterans benefits and such benefits constitute the person or ward's sole source of income;

"(5) If the person or ward has been found to be unable to pay for habilitation, care, or legal services by any branch of the Superior Court of the District of Columbia; or

"(6) If the circumstances listed in paragraphs (1), (2), (3), (4), and (5) of this subsection do not apply, the person or ward may establish, by affidavit or other proof satisfactory to the court, the inability to pay any costs without substantial financial hardship to himself or herself or his or her family.".

Sec. 3. Chapter 22 of Title 21 of the District of Columbia Official Code is amended as follows:

(a) Section 21-2202 is amended by adding a new paragraph (6A) to read as follows: **Amend § 21-2202**

"(6A) "Qualified psychologist" means a person who is licensed pursuant to § 3-1205.01 and has:

"(A) One year of formal training within a hospital setting; or

"(B) Two years of supervised clinical experience in an organized health-care setting, one year of which must be post-doctoral.".

(b) Section 21-2204(a) is amended as follows: **Amend § 21-2204**

(1) Strike the word "physicians" wherever it appears and insert the word "professionals" in its place.

(2) Strike the second sentence and insert the sentence "One of the 2 certifying professionals shall be a physician and one shall be a qualified psychologist or psychiatrist." in its place.

(c) Section 21-2210 is amended as follows: **Amend § 21-2210**

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

"(1A) A court-appointed intellectual' disability advocate of the patient, if the ability to grant, refuse, or withdraw consent is within the scope of the advocate's appointment under section 7-1304.13.".

(2) New subsections (h) and (i) are added to read as follows:

"(h) If no person listed in subsection (a) of this section is reasonably available, mentally capable, and willing to act, the health-care provider, or the District of Columbia, for those persons committed or admitted to receive habilitation or other services pursuant to Chapter 13 of Title 7, or any interested person may petition the Superior Court of the District of Columbia for appointment of a guardian pursuant to section 21-2044 or section 21-2046.

"(i) The health-care provider who is treating or providing services to the incapacitated patient at the time of the health-care decision shall accept the decision of the individual authorized under this section to grant, refuse, or withdraw consent on behalf of the patient as the decision of the principal.".

(d) Section 21-2212 is amended to read as follows: **Amend § 21-2212**

"§ 21-2212. Effect of chapter.

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"(a) Nothing in this chapter shall be construed to condone, authorize, or approve mercy-killing or to permit any affirmative or deliberate act to end a human life other than to permit the natural dying process.

"(b) Nothing in this chapter shall be construed to conflict with or supersede, the Emergency Medical Treatment and Labor Act, approved April 17, 1986 (100 Stat. 164; 42 U.S.C. § 1395dd).

"(c) Emergency health care may be provided without consent to a patient who is certified incapacitated under § 21-2204, if no authorized person is reasonably available or if, in the reasonable medical judgment of the attending physician, attempting to locate an authorized person would cause:

"(1) A substantial risk of death;

"(2) The health of the incapacitated individual to be placed in serious jeopardy;

"(3) Serious impairment to the incapacitated individual's bodily functions; or

"(4) Serious dysfunction of any bodily organ or part of the incapacitated individual.".

Sec. 4. Section 303 of the District of Columbia Mental Health Information Act of 1978, effective March 3, 1979 (D.C. Law 2-136; D.C. Official Code § 7-1203.03), is amended by adding a new subsection (c) to read as follows: **Amend § 7-1203.03**

"(c) Mental health information contained in a certification of incapacity, pursuant to D.C. Official Code § 21-2204, may be disclosed to initiate a proceeding pursuant to Chapter 20 of Title 21 of the District of Columbia Official Code.".

Sec. 5. The Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1301.02 *et seq.*), is amended as follows:

(a) Section 103 (D.C. Official Code § 7-1301.03) is amended as follows: **Amend § 7-1301.03**

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

"(1A) "Advanced practice registered nurse" includes a nurse-practitioner or clinical nurse specialist, licensed pursuant to section 204 of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1202.04), and Chapter 59 or Chapter 60 of Title 17 of the District of Columbia Municipal Regulations, who has been certified as a specialist in psychiatry and mental health.".

(2) Redesignate paragraph (2A) as paragraph (2C).

(3) New paragraphs (2A) and (2B) are added to read as follows:

"(2A) "Behavioral plan" means a written plan that, at a minimum:

"(A) Identifies challenging or problematic behavior;

"(B) States the working hypothesis about the cause of the customer's behavior and uses the working hypothesis as the basis for the selected intervention;

"(C) Identifies strategies to teach or encourage the cusomer to adopt adaptive behavior as an alternative to the challenging or problematic behavior;

"(D) Considers the potential for environmental or programmatic changes that could have a positive impact on challenging or problematic behaviors; and

"(E) Addresses the customer's need for additional technological or supervisory assistance to adapt or cope with day-to-day activities.

"(2B) "Best interests" means promoting personal well-being by assessing:

"(A) The reason for the proposed action, its risks and benefits, and any alternatives considered and rejected; and

"(B) The least intrusive, least restrictive, and most normalizing course of action possible to provide for the needs of the customer.".

(4) Paragraph (6) is amended to read as follows:

"(6) "Comprehensive evaluation" means an assessment of a person with mental retardation by persons with special training and experience in the diagnosis and habilitation of persons with mental retardation, which includes a documented sequence of observations and examinations intended to determine the person's strengths, developmental needs, and need for services. The initial comprehensive evaluation shall include documentation of:

"(A) A physical examination that includes the person's medical history;

"(B) An educational evaluation, vocational evaluation, or both;

"(C) A psychological evaluation, including an evaluation of cognitive and adaptive functioning levels;

"(D) A social evaluation;

"(E) A dental examination;

"(F) An evaluation by the interdisciplinary team of whether the person currently:

"(i) Has the capacity to grant, refuse, or withdraw consent to any ongoing medical treatment; and

"(ii) Has executed or could execute a durable power of attorney in accordance with D.C. Official Code § 21-2205; and

"(G) A determination of whether the person has an individual reasonably available, mentally capable, and willing to provide substituted consent pursuant to D.C. Official Code § 21-2210.".

(5) Redesignate paragraphs (14A) and (14B) as paragraphs (14B) and (14C), respectively.

(6) A new paragraph (14A) is added to read as follows:

"(14A) "Human Rights Advisory Committee" means the committee of the Department on Disability Services that provides guidance and oversight regarding matters pertaining to the human rights of individuals receiving services through the Department on Disability Services and reviews allegations of human rights violations.".

(7) A new paragraph (20A) is added to read as follows:

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"(20A) "Psychotropic medication" means a medication prescribed for the treatment of symptoms of mental or emotional disorders or to influence and modify behavior, cognition, or affective state. The term "psychotropic medication" includes the following categories of medications:

"(A) Antipsychotics or neuroleptics;

"(B) Antidepressants;

"(C) Agents for control of mania or depression;

"(D) Antianxiety agents;

"(E) Sedatives, hypnotics, or other sleep-promoting drugs; and

"(F) Psychomotor stimulants.".

(8) A new paragraph (24C) is added to read as follows:

"(24C) "Substituted judgment" means making a decision that conforms as closely as possible with the decision that the customer would have made, based upon knowledge of the beliefs, values, and preferences of the customer.".

Amend § 7-1304.13

(b) Section 413 (D.C. Official Code § 7-1304.13) is amended by adding a new subsection (n) to read as follows:

"(n) If so authorized by the Court, the mental retardation advocate shall be permitted to grant, refuse, or withdraw consent on behalf of his or her client with respect to the provision of any health-care service, treatment, or procedure, consistent with the provisions of Chapter 22 of Title 21 of the District of Columbia Official Code.".

Amend § 7-1305.04

(c) Section 504(a) (D.C. Official Code § 7-1305.04(a)) is amended to read as follows:

"(a) (1) Prior to each customer's commitment under this act, the customer shall receive, pursuant to section 403, a comprehensive evaluation or screening and an individual habilitation plan. Within 30 days of a customer's admission pursuant to section 302, the customer shall have a comprehensive evaluation or screening and an individual habilitation plan.

"(2) All individual habilitation plans shall include:

"(A) Current information on whether the customer has the capacity to grant, refuse, or withdraw consent to any ongoing medical treatment and:

"(i) Has executed or could execute a durable power of attorney in accordance with D.C. Official Code § 21-2205; or

"(ii) Has an individual reasonably available, mentally capable, and willing to provide substituted consent pursuant to D.C. Official Code § 21-2210; and

"(B) A current durable power of attorney or, in the absence of a durable power of attorney, documentation that the person has been offered an opportunity to execute a durable power of attorney pursuant to D.C. Official Code § 21-2205 and has declined.

"(3) Annual reevaluations or screenings of the customer shall be provided as determined by the customer's interdisciplinary team. Annual reevaluations and screenings shall include a review of and update to the individual habilitation plan on whether the customer:

"(A) Has the capacity to grant, refuse, or withdraw consent to any ongoing medical treatment;

"(B) Has executed or could execute a durable power of attorney in accordance with D.C. Official Code § 21-2205;

"(C) Has been offered an opportunity to execute a durable power of attorney pursuant to D.C. Official Code § 21-2205 and declined; or

"(D) Has an individual reasonably available, mentally capable, and willing to provide substituted consent pursuant to D.C. Official Code § 21-2210.

"(4) By April 15, 2009, the DDS shall establish written procedures for incorporating a review of all mental-health services, including psychotropic medications, behavioral plans, and any other psychiatric treatments, into the annual reevaluations and screenings conducted by the customer's interdisciplinary team.

"(5) Nothing in this subsection shall be construed as requiring any person to execute a durable power of attorney for health care.".

(d) New sections 506a, 506b, and 506c are added to read as follows:

"Sec. 506a. Informed consent.

"(a) Except in accordance with the procedures described in subsections (b) and (c) of this section, in D.C. Official Code § 21-2212, or as otherwise provided by law, no DDS customer shall be given services pursuant to this act absent the customer's informed consent. In seeking informed consent, the provider or DDS shall present the customer with available options and all material information necessary to make the decision, including information about the proposed service, potential benefits and risks of the proposed service, potential benefits and risks of no service, side effects, and information about feasible alternative services, if any.

"(b) If the provider or DDS reasonably believes that the customer lacks the capacity to provide informed consent for the proposed service, the provider or DDS promptly shall seek a determination of the customer's capacity in accordance with D.C. Official Code § 21-2204. If the customer is certified as incapacitated for health-care decisions in accordance with D.C. Official Code § 21-2204, DDS or the provider shall promptly seek the provision of substituted consent from the customer's attorney-in-fact pursuant to D.C. Official Code § 21-2206 or, if no attorney-in-fact has been authorized pursuant to D.C. Official Code § 21-2205 or is reasonably available, mentally capable, and willing to act, from an individual authorized to provide substituted consent pursuant to D.C. Official Code § 21-2210.

"(c) If the customer is certified as incapacitated and unable to consent to the proposed service in accordance with D.C. Official Code § 21-2204, and no attorney-in-fact or person listed in D.C. Official Code § 21-2210(a) is reasonably available, mentally capable, and willing to act:

"(1) For any proposed services except psychotropic medications, the District shall petition the Court for appointment of a guardian pursuant to Chapter 20 of Title 21. The District's petition shall request the form of guardianship which is least restrictive to the incapacitated customer in duration and scope, taking into account the incapacitated customer's current mental and adaptive limitations or other conditions warranting the procedure. This

subsection does not preclude any other party from petitioning the Court for appointment of a guardian.

"(2) For all proposed psychotropic medications, except as described under paragraph (3) of this subsection, the provider may administer medication only when the administration of medication is accompanied by a behavioral plan and only after receiving approval from an independent panel appointed by the DDS Administrator pursuant to section 506b.

"(3) In an emergency in which a customer is experiencing a mental health crisis and in which the immediate provision of mental health treatment, including medication, is, in the written opinion of the attending physician, necessary to prevent serious injury to the customer or others, the provider may administer medication without seeking the customer's prior informed consent only to the extent necessary to terminate the emergency.

"Sec. 506b. Review panel for administration of psychotropic medications.

"(a) The DDS Administrator shall establish an independent panel to review all proposals to administer psychotropic medications to customers made pursuant to section 506a(c)(2) and in accordance with the administrative procedures established by DDS in accordance with Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*). The administrative procedures established by DDS shall be consistent with the requirements of this section.

"(b) The panel shall be comprised of 3 members. The members of the panel and their employers shall be immune from suit for any claim arising from any good faith act or omission under this section. The members of the panel shall not be affiliated with the individual, the provider, or the physician seeking to administer the medication, but shall include:

"(1) A board-certified psychiatrist, subject to the availability of funds, or an advanced practice registered nurse;

"(2) A licensed professional; and

"(3) A customer, or, if unavailable, a mental retardation advocate or other customer advocate.

"(c) The administrative procedure established by DDS for the panel shall include, at a minimum:

"(1) A meeting by the panel no later than one week after DDS receives a request for consent;

"(2) Written and oral notice to the customer not less than 48 hours prior to when the panel will meet;

"(3) The right of the customer to be present when the panel meets and to have a representative present during any such meeting;

"(4) The opportunity, at the meeting of the panel, for the customer and his or her representative to present information and to discuss the wishes of the customer;

"(5) The issuance of a written decision by the panel no later than one week after the meeting of the panel, to be provided to the customer, the customer's representative, and the provider; and

"(6) The right of the customer to request that the DDS Human Rights Advisory Committee or its successor entity review the decision of the panel.

"(d) If the customer requests a review by the DDS Human Rights Advisory Committee or its successor entity before the decision of the panel has been implemented, the decision shall not be implemented until after the DDS Human Rights Advisory Committee or its successor entity responds to the requested review. The DDS Human Rights Advisory Committee or its successor entity shall conduct the review at its next meeting or no later than 30 days after the request, whichever is earlier, and shall issue a response promptly.

"(e) The panel shall issue a written decision which may grant, refuse, or withdraw consent to the prescription of the proposed psychotropic medication. The panel shall seek to conform as closely as possible to a standard of substituted judgment or, if the customer's wishes are unknown and remain unknown after reasonable efforts to discern them, make the decision on the basis of the customer's best interests. If the panel grants consent, the consent shall be granted for a limited period of time and shall last no longer than 9 consecutive months.

"(f) For customers for whom the panel has provided consent, DDS shall offer the customer the opportunity to execute a durable power of attorney in accordance with D.C. Official Code § 21-2205 and shall continue to seek to identify one or more individuals listed in D.C. Official Code § 21-2210(a) who may be reasonably available, mentally capable, and willing to act.

"(g) For customers for whom the panel has provided consent for 3 or more consecutive months, and for whom there is a reasonable likelihood that no decision-maker will become available and that the customer will not achieve capacity during the next 6 months to make decisions regarding psychotropic medications on his or her own behalf, the District shall petition the Court for appointment of a guardian pursuant to Chapter 20 of Title 21 of the District of Columbia Official Code. The District's petition shall request the type of guardianship which is least restrictive to the incapacitated customer in duration and scope, taking into account the incapacitated customer's current mental and adaptive limitations or other conditions warranting the procedure. This subsection does not preclude any other party from petitioning the Court for appointment of a guardian.

"(h) Refusal to consent to psychotropic medications shall not be used as evidence of a customer's incapacity.

"(i) Refusal to consent to services on the basis of a valid religious objection shall not be overridden absent a specific court order requiring the provision of services.

"Sec. 506c. Psychotropic medication review.

"(a) By April 15, 2009, the DDS shall complete a psychotropic medication review for all DDS customers.

"(b) By October 17, 2008, the DDS shall establish written procedures, which shall include timelines and shall identify responsible entities or individuals, for promptly implementing the recommendations for each customer identified by the psychotropic medication review.

"(c) The psychotropic medication review shall be conducted by a review team that includes professionals with expertise in the prescription, use, and side effects of psychotropic medications as therapy for customers who have been dually diagnosed with mental retardation and mental illness.

"(d) DDS shall establish in writing:

"(1) Procedures for an initial administrative review of psychotropic medication prescriptions for all DDS customers;

"(2) Procedures and criteria for determining which customers receive only an initial administrative review of psychotropic medications, and which customers also receive a more detailed clinical review of psychotropic medications; and

"(3) Criteria for screening and determining the clinical appropriateness of each psychotropic medication prescribed for each customer.

"(e) The review team shall complete the initial administrative review of psychotropic medications. The initial administrative review of psychotropic medications shall determine, at minimum, for each DDS customer:

"(1) All prescribed psychotropic medications;

"(2) The diagnosis justifying each prescription;

"(3) The provision of informed consent for each prescription;

"(4) The presence of an accompanying behavioral plan; and

"(5) Any other mental health services being provided to the customer.

"(f) The review team shall conduct a clinical review of psychotropic medications when the initial administrative review meets the review team's criteria indicating that a detailed clinical review of the customer's psychotropic medication is warranted. The clinical review shall seek to determine the clinical appropriateness of each prescribed psychotropic medication and the potential for alternative approaches. The clinical review shall include, at a minimum, interviews with the customer, the prescribing professional, and the customer's residential and day service providers, if any.

"(g) By no later than 30 days after completing a psychotropic medication review of a customer, the review team shall issue a written report, which shall include recommendations for:

"(1) Continued use, modification, or termination of psychotropic medication;

"(2) Potential use of alternative approaches, including therapies, behavioral plans, skill development, and environmental modifications;

"(3) Informed consent, if informed consent has not been provided; and

"(4) Development of a behavioral plan, if no behavioral plan is present.

"(h) A copy of the written report of the review team shall be appended to the customer's individual habilitation plan and shall be provided to:

"(1) The customer;

"(2) The customer's legal representative, if any;

"(3) The customer's mental retardation advocate, if any;

"(4) The customer's DDS case manager;

"(5) The individuals identified in the customer's individual habilitation plan as reasonably available, mentally capable, and willing to provide substituted consent pursuant to D.C. Official Code § 21-2210, if any;

"(6) The customer's residential service provider; and

"(7) The Quality Trust for Individuals with Disabilities, Inc.".

(e) Section 507 (D.C. Official Code § 7-1305.07) is repealed. **Repeal § 7-1305.07**

(f) A new section 507a is added to read as follows:

"Sec. 507a. Health-care decisions policy, annual plan, and quarterly reports.

"(a) It shall be the policy of the District government to ensure that all persons who become incapable of making or communicating health-care decisions for themselves have available health-care decision-makers. In addition, it shall be the policy of DDS to ensure that every DDS customer has the opportunity to execute a durable power of attorney pursuant to D.C. Official Code § 21-2205, and has one or more individuals identified as reasonably available, mentally capable, and willing to provide substituted consent pursuant to D.C. Official Code § 21-2210, if the customer were to become certified as incapacitated to make a health-care decision in accordance with D.C. Official Code § 21-2204.

"(b) The DDS Administrator shall issue by November 1 of each year an annual plan describing how DDS will comply with subsection (a) of this section during the current fiscal year. The plan shall include data from the prior fiscal year for assessing the current and potential health-care decision-making needs of all DDS customers. The plan shall include, at a minimum:

"(1) Aggregate statistics summarizing the numbers of DDS customers who:

"(A) Have a general guardian, a limited guardian, a health-care guardian, or an emergency guardian as of the end of the prior fiscal year;

"(B) At any time during the prior fiscal year, had an emergency guardian authorized to make health-care decisions or a health-care guardian;

"(C) Have executed a durable power of attorney in accordance with D.C. Official Code § 21-2205;

"(D) Have been offered an opportunity to execute a durable power of attorney pursuant to D.C. Official Code § 21-2205 and declined;

"(E) Have an individual identified as reasonably available, mentally capable, and willing to provide substituted consent pursuant to D.C. Official Code § 21-2210; or

"(F) Lack any available substitute health-care decision-maker;

"(2) Aggregate statistics describing the numbers of customers taking psychotropic medications as of the end of the previous fiscal year, and an assessment of the degree to which health-care decision-making support for the prescription of psychotropic medication may be required for these customers;

"(3) Aggregate statistics describing the requests for consent reviewed during the prior fiscal year by the independent psychotropic medication panel authorized in section 506b, analyzing outcomes, monthly and yearly trends, and requests for review by the DDS Human Rights Committee;

"(4) Aggregate statistics describing for the prior fiscal year:

"(A) The number of substitute decisions which required intervention by DDS to identify an individual to provide substituted consent pursuant to D.C. Official Code § 21-2210;

"(B) The nature of the health-care needs and medical treatments; and

"(C) The average time elapsed between a request for a substituted decision and the provision of substituted consent; and

"(5) An analysis of the statistics described in this subsection, identification of yearly and multiyear trends, and a plan for remedial measures to be taken when the statistics identify process or service deficiencies.

"(c) The DDS Administrator shall produce a quarterly report on all substituted consent activities pursuant to subsection (a) of this section until October 2010. Quarterly reports shall be complete by the 15th day of October, January, April, and July and shall include:

"(1) Statistics describing:

"(A) The number of substitute decisions during the prior quarter which required intervention by DDS to identify an individual to provide substituted consent pursuant to D.C. Official Code § 21-2210;

"(B) The nature of the health-care needs and medical treatments for each substituted decision;

"(C) The time elapsed between each request for a substituted decision and the provision of substituted consent; and

"(D) If the process for identifying an individual to provide substituted consent pursuant to D. C. Official Code § 21-2210 is not complete, a summary of the specific barriers currently identified and the specific action needed; and

"(2) An analysis of the statistics described in this subsection, and a plan for remedial measures to be taken, when the statistics identify process delays.

"(d)(1) The DDS Administrator shall submit the annual plan described in subsection (b) of this section and the quarterly report described in subsection (c) of this section to:

"(A) The Committee of the Council under whose purview DDS falls;

"(B) The Mayor; and

"(C) The designated state protection and advocacy agency for the District of Columbia established pursuant to the Protection and Advocacy for Mentally Ill

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Individuals Act of 1986, approved May 23, 1986 (100 Stat. 478; 42 U.S.C. § 10801 *et seq.*), and section 509 of the Rehabilitation Act of 1973, approved October 29, 1992 (106 Stat. 4430; 29 U.S.C. § 794e).

"(2) The DDS Administrator shall make copies of the annual plan and quarterly reports described in this section available to members of the public upon request.

"(e) Nothing in this section shall be construed as requiring any person to execute a durable power of attorney for health care.".

Sec. 6. Fiscal impact statement.

The Council adopts the June 30, 2008, fiscal impact statement of the Chief Financial Officer for the Health-Care Decisions for Persons with Developmental Disabilities Amendment Act of 2008, passed on 2nd reading on July 15, 2008 (Enrolled version of Bill 17-432), as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 7. Effective date.

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

Vincent C. Gray

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
August 4, 2008

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Codification District of Columbia Official Code

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AN ACT

D.C. ACT 17-497

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

AUGUST 4, 2008

To establish authority to contract with a private company to be known as a Sustainable Energy Utility to administer sustainable energy programs in the District of Columbia; to establish an advisory board for the Sustainable Energy Utility; to define the responsibilities of the Sustainable Energy Utility Advisory Board; to define the role of the Sustainable Energy Utility; to lay out the structure of the Sustainable Energy Utility contract; to require the Mayor to design and implement a brand for sustainable energy services in the District of Columbia; to require the Commission to rule on a portion of Formal Case 945; to require the incumbent distribution utilities to share certain customer energy use data with the Sustainable Energy Utility; to establish a renewable energy incentive program in the District of Columbia; to establish the Sustainable Energy Trust Fund and associated assessment; to establish the Energy Assistance Trust Fund and associated assessment; to amend the Retail Competition and Consumer Protection Act of 1999 to eliminate the Reliable Energy Trust Fund and associated charge; to amend the Omnibus Utility Amendment Act of 2004 to eliminate the Natural Gas Trust Fund and associated charge; to amend the Renewable Portfolio Standard Act of 2004 to increase the renewable requirement, allow solar thermal to count as a Tier 1 solar resource, and increase the alternative compliance payment; to amend the Green Building Act of 2006 to establish benchmarking requirements for all qualified public and private buildings; to amend An Act Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes to amend the responsibilities of the Public Service Commission; to amend AN ACT To provide a People's Counsel for the Public Service Commission in the District of Columbia, and for other purposes to amend the responsibilities of the Office of the People's Counsel; to require the Mayor to commission a study of the feasibility of District investment or involvement in the construction of a renewable energy generating facility; and to require lessors of nonresidential buildings to measure and bill each rental unit for energy costs.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Clean and Affordable Energy Act of 2008".

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TITLE I. DEFINITIONS.

Sec. 101. Definitions.

For the purposes of this act, the term:

(1) "Commission" means the Public Service Commission.

(2) "District Department of the Environment," "DDOE," or "Energy Office" means the District Department of the Environment Energy Office.

(3) "Electric company" shall have the same meaning as in the fifteenth unnumbered paragraph, beginning "The term "electric company"", of section 8(1) of An Act Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes, approved March 4, 1913 (37 Stat. 974; D.C. Official Code § 34-209).

(4) "Energy Assistance Trust Fund" or "EATF" means the Energy Assistance Trust Fund established under section 211.

(5) "Existing electricity programs" means those programs operated by the District Department of the Environment under the names "Weatherization Plus," "Low Income Appliance Replacement Program," and "Weatherization and Rehabilitation."

(6) "Existing low-income programs" means those programs operated by the District Department of the Environment under the names "LIHEAP Expansion and Energy Education," "RAD Expansion," "RAD Arrearages Retirement and Education Program," and "Residential Essential Service Expansion and Awareness Program."

(7) "Existing natural gas programs" means those programs proposed or operated by the District Department of the Environment under the names "Heating System Repair, Replacement, and Tune-Up Program," "Residential Weatherization and Efficiency Program," "Energy Awareness Program," and "Saving Energy in D.C. Schools."

(8) "Fiscal Agent" means the Office of the Chief Financial Officer.

(9) "Gas company" shall have the same meaning as in the thirteenth unnumbered paragraph, beginning "The term "gas company"", of section 8(1) of An Act Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes, approved March 4, 1913 (37 Stat. 974; D.C. Official Code § 34-209).

(10) "Green collar jobs" means jobs in the environmental sector of the economy which jobs may involve the implementation of environmentally-conscious design, policy, or technology.

(11) "OIML" means the International Association of Legal Metrology.

(12) "Request for Proposals" or "RFP" means the request for proposals prepared by the District Department of the Environment for the SEU.

(13) "Residential Aid Discount" means the utility discount program offered by the electric company to low-income electricity customers in the District of Columbia.

(14) "Residential Essential Service" means the utility discount program offered by the gas company to low-income natural gas customers in the District of Columbia.

(15) "Solar thermal systems" means systems which utilize the sun's radiation to efficiently heat fluids or air.

(16) "SRCC" means the Solar Rating and Certification Corporation.

(17) "Substantial improvement" has the same meaning as in section 202 of Title 12J of the District of Columbia Municipal Regulations (12J DCMR § 202).

(18) "Sustainable Energy Trust Fund" or "SETF" means the Sustainable Energy Trust Fund established under section 210.

(19) "Sustainable Energy Utility" or "SEU" means the private contractor selected to develop, coordinate, and provide programs for the purpose of promoting the sustainable use of energy in the District of Columbia.

(20) "Sustainable Energy Utility Advisory Board", "Advisory Board", or "Board" means the board established under section 203 that advises the DDOE on the procurement of the contract with the SEU and monitors the progress of the SEU under its contract.

(21) "Temporary electricity programs" means those programs operated by the District Department of the Environment under the names "Affordable Housing Energy Efficient Rebate Program", "Weatherization Rehabilitation Asset Partnership", and "Home Energy Rating System".

(21) "Utility or energy company" means a company distributing, supplying, or transmitting electricity or natural gas in the District of Columbia.

TITLE II. MANAGEMENT OF SUSTAINABLE ENERGY PROGRAMS.

Sec. 201. Contract with a Sustainable Energy Utility.

(a) The Mayor, by, and through DDOE, shall contract with a SEU to conduct sustainable energy programs on behalf of the District of Columbia.

(b) The SEU shall be a private entity.

(c) The SEU shall conduct the sustainable energy programs under a brand name to be determined by the District Department of the Environment.

(d) The SEU contract shall provide that the SEU shall, at a minimum, achieve the following:

(1) Reduce per-capita energy consumption in the District of Columbia;

(2) Increase renewable energy generating capacity in the District of Columbia;

(3) Reduce the growth of peak electricity demand in the District of Columbia;

(4) Improve the energy efficiency of low-income housing in the District of Columbia;

(5) Reduce the growth of the energy demand of the District of Columbia's largest energy users; and

(6) Increase the number of green-collar jobs in the District of Columbia.

(e) The SEU contract shall be funded by the SETF. The SEU contract may also be funded by any other source of funding available to the Mayor, including:

(1) Federal funds;
(2) Private funds, subject to DDOE approval; and
(3) Other District funds.

(f) All funds used to support the SEU contract shall be managed by the Fiscal Agent.

(g) The SEU contract shall permit coordination with any similar private entity operating in an adjacent or nearby jurisdiction.

(h) The use of private grant money by the SEU shall be subject to DDOE approval.

(i) Notwithstanding the provisions of the District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-301.01 *et seq.*), the SEU contract shall be awarded pursuant to the procedure set forth under this title.

Sec. 202. Structure of the SEU contract.

(a) The initial SEU contract shall be for a period of not less than 5 years.

(b) The SEU contract shall be funded as provided in section 201(e).

(c) The SEU contract shall be performance-based and shall provide financial incentives for the SEU to surpass the performance benchmarks set forth in the SEU contract. The SEU contract shall also provide financial penalties to be applied to the SEU if the SEU fails to meet the required performance benchmarks.

(d) The SEU contract shall require that the SEU program shall, when taken as a whole, meet the societal benefit test on an annual and contract-term basis.

(e) Each bid shall detail how the contractor proposes to nearly meet, meet, or exceed each performance benchmark. The performance benchmarks shall be set forth in the bid.

(f) The SEU contract shall permit the programs, benchmarks, and level of funding to be changed at any time with the approval of both the SEU and the DDOE. No change to the funding shall allow the Mayor to exceed the SETF funding limits set forth in section 210.

(g) The SEU contract shall be revocable if the SEU fails to meet the performance benchmarks of the contract.

(h) The SEU contract shall provide that the annual expenditure on natural gas-related programs shall be no less than 75%, and no greater than 125%, of the amount provided in the contract from the assessment on the natural gas company.

(i) The SEU contract shall provide that the expenditure on electricity-related programs shall be no less than 75%, and no greater than 125%, of the amount provided in the contract from the assessment on the electricity company.

(j) Subsections (h) and (i) shall not apply to funds from a source other than an assessment on the gas company or the electric company.

(k) The SEU contract shall provide that the SEU shall submit, to the DDOE and Board, a quarterly report detailing expenditures under the contract and performance of SEU programs.

Sec. 203. Establishment of a Sustainable Energy Utility Advisory Board.

(a) There is established a Sustainable Energy Utility Advisory Board whose purpose shall be to:

(1) Provide advice, comments, and recommendations to the DDOE and Council regarding the procurement and administration of the SEU contract described in sections 201 and 202.

(2) Advise the DDOE on the performance of the SEU under the SEU contract; and

(3) Monitor the performance of the SEU under the SEU contract.

(b) The Board shall be comprised of:

(1) The Mayor, or his or her designee, who shall chair the Advisory Board;

(2) The People's Counsel or his or her designee;

(3) The Chair of the Public Service Commission or his or her designee;

(4) One member appointed by the Chairman of the Council committee with oversight of the Energy Office;

(5) One member appointed by the Chairman of the Council;

(6) One member, appointed by the Mayor, representing the renewable energy industry;

(7) One member, appointed by the Mayor, representing an environmental group;

(8) One member, appointed by the Mayor, representing the low-income community;

(9) One member, appointed by the Mayor, representing the building construction industry;

(10) One member, appointed by the Mayor, representing the building management industry;

(11) One member, appointed by the Mayor, representing the economic development community with particular expertise in the generation of green-collar jobs;

(12) One member, appointed by the Mayor, representing the electric company; and

(13) One member, appointed by the Mayor, representing the gas company.

(c) Each member of the Advisory Board appointed by the Mayor or Council shall have demonstrable expertise in energy efficiency or renewable energy.

(d) Board members shall be entitled to reimbursement for expenses, including transportation, parking, mileage expenses, and conference admission fees incurred in the performance of official duties of the Board. The reimbursement shall be limited to $2,000 per board member per year.

(e) Each member of the Board shall serve a 3-year term.

(f) The Mayor, Council Chairman, or Chairman of the Council committee with oversight of the Energy Office may replace any appointee at any time, but shall not replace the appointee to any individual position more than 2 times per calendar year.

(g) Any Board member who is an employee of the District government, or who serves on the Board as the representative of a particular organization, group, business, or other entity, including an elected official, shall be removed from the Board upon leaving the employment of the District government, elected office, or other entity, as applicable.

Sec. 204. Operations of the Sustainable Energy Utility Advisory Board.

(a) Within 45 days after the effective date of this act, the Mayor, Council Chairman, and Chairman of the Council committee with oversight of the Energy Office shall appoint the respective members of the Board.

(b) Within 120 days after the effective date of this act, the Board shall adopt rules and procedures governing its meetings and decisionmaking processes. The procedures shall include a formal means for members of the Board to submit their dissent from the recommendations of the Board with the comments of the Board provided to the DDOE.

(c) Within 210 days after the effective date of this act, the Board shall recommend to the Mayor performance benchmarks for the SEU contract based on the requirements set forth in section 201.

(d) Within 60 days after the submission of a draft RFP to the Board by the DDOE, pursuant to section 205(b), the Board shall submit to the DDOE and Council comments on the draft RFP.

(e) Within 60 days of the final submission of bids for the contract for the SEU, the Board shall submit to the DDOE and Council comments on the bids submitted for the SEU contract.

(f) During the term of a SEU contract, the Board shall meet quarterly with representatives from the SEU to monitor the performance of the SEU and programs operated by the SEU.

(g) The Board shall present a report on the progress of the SEU to the Council annually, with the 1st report being due 30 days after the conclusion of the 1st year of the SEU contract. The DDOE shall make this document available to the public on its website within 10 days of its submission to the Council.

(h) The Board may convene any subcommittees and working groups it considers appropriate without any limitation as to the membership of such groups.

(i) All Board meetings shall be subject to the open meeting provisions contained in section 742 of the District of Columbia Home Rule Act, effective December 24, 1973 (87 Stat. 831; D.C. Official Code §1-207.42).

(j) The DDOE shall provide staff resources to the Board and coordinate the involvement of staff from the Public Service Commission, Office of the People's Counsel, and any other appropriate agency or organization as necessary for the Board to fulfill its mandate.

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Sec. 205. Implementation of the Sustainable Energy Utility contract.

(a) The District Department of the Environment shall be responsible for the procurement and monitoring of the contract for the SEU, including:

(1) Drafting and revising the RFP for the SEU;

(2) Staffing the Advisory Board;

(3) Accepting the bids for the SEU contract;

(4) Reviewing bids for the SEU contract; and

(5) All other responsibilities not otherwise expressly delegated to another entity for purposes of operation under this act.

(b) Within 180 days of the Board's recommendation of performance benchmarks for the SEU contract, pursuant to section 204(c), the DDOE shall prepare a draft RFP and submit the RFP to the Board for comments. In preparing the RFP, the DDOE shall consult with at least one person or organization that has had experience in the drafting of a RFP for the state-wide provision of end-user energy efficiency services, and shall hold an industry day to solicit the advice and input of private entities that may bid on the contract.

(c) Within 60 days of the receipt of the Board's comments on the RFP pursuant to section 204(d), the DDOE shall revise the RFP to the extent it considers necessary and shall issue the RFP for bids for such period as it considers appropriate.

(d) Within 30 days of the completion of the bidding period, the DDOE shall submit the bids to the Board. The Board shall have 30 days to recommend a bidder or, failing the submission of a bid considered adequate by the Board, recommend the modification of the RFP.

(e) If the DDOE determines that there is not a sufficient bid, DDOE shall modify the RFP, if necessary, and solicit additional bids.

(f) The DDOE shall maintain the brand name adopted pursuant to section 206.

(g) The DDOE shall administer the transition from one SEU to another.

(h) Prior to the execution of the contract with the SEU, $1 million shall be allocated annually for the purposes of:

(1) Preparing the RFP;

(2) Staffing the Board;

(3) Maintaining the brand name adopted pursuant to section 206; and

(4) Operating the renewable energy rebate program established by section 209.

(i) After the execution of the contract with the SEU, 10% of the annual cost of the SEU contract shall be allocated to DDOE for administrative costs.

(j) The DDOE shall submit to the Council, within 30 days following the end of each fiscal year, a report detailing the expenditures of money from the SETF and EATF during the previous fiscal year. The DDOE shall make this document available to the public on its website within 10 days of its receipt.

(k) The DDOE shall commission, on an annual basis, an independent review of the performance and expenditures of the SEU and shall provide the results of this review to the Board and Council within 6 months of the conclusion of each year of the SEU contract.

Sec. 206. Sustainable energy branding.

(a) Within 90 days after the effective date of this act, the DDOE shall determine a brand name for the provision of energy efficiency and renewable energy services in the District of Columbia.

(b) Within 90 days after the effective date of this act, the DDOE shall establish and maintain a website for the brand, with a web address of the brand name bracketed by www. and .org, .com, or .gov. The purpose of this website shall be to serve as a portal that will provide information about every energy efficiency and renewable energy program available to District residents and businesses, including those offered by:

(1) The DDOE;

(2) The SEU;

(3) The electricity or natural gas companies;

(4) The federal government;

(5) Nonprofit entities; and

(6) Any contractors or subcontractors for any of the entities set forth in paragraphs (1) through (5) of this subsection.

(c) The DDOE shall provide a phone number that shall serve as a hotline for the brand during normal business hours.

(d) The DDOE shall be responsible for working with providers of energy efficiency and renewable energy services to ensure that all information is accurate and up-to-date.

Sec. 207. Electric company.

(a) Within 90 days of the completion of the record on Formal Case 945, the Commission shall issue an order regarding the demand-side management programs proposed by the electric company.

(b) In considering Formal Case 945, the Commission shall seek to approve those programs that:

(1) Can be implemented most quickly;

(2) Take advantage of the electric company's frequent contact with customers; and

(3) Do not replicate the efforts of sustainable energy programs operated by the DDOE.

(c) The programs that the Commission approves may be funded by the SETF under section 210.

(d)(1) Within 30 days after the execution of a contract with the SEU, the electric company shall disclose, or allow access to, the aggregate energy use data for every rate class for electric company customers in the District of Columbia. Customer-specific information, including the customer's name, account number, service address, phone number, and energy use data, shall not be provided without the customer's express written consent.

(2) The electric company shall ensure the privacy of any and all customer information, including the electric company customer's name, account number, service address, billing address, phone number, and energy use data, in making the disclosure. The SEU shall not sell or otherwise disclose any customer or billing information to any third party without express written authorization from the customer.

(3) The electric company shall not be liable for any damages resulting from its provision of customer energy use data to the SEU absent gross negligence. The SEU shall be liable for damages to the customer for any unauthorized use of customer information or data, including the electric company customer's name, account number, service address, billing address, phone number, and energy use data.

(e) Within one year after the effective date of this act, all energy efficiency and renewable energy programs administered by the electric company and funded by the SETF shall be operated in coordination with the brand managed by the DDOE. To effectuate this mandate, the electric company shall:

(1) Prominently display the name and logo of the brand name on all advertisements of the programs;

(2) Include the website and phone number for the DDOE brand on all advertisements of the programs;

(3) Post a link to the brand website on all company webpages related to energy efficiency and renewable energy; and

(4) Provide timely, accurate, and comprehensive information regarding its programs to the DDOE to permit DDOE to include such information in material provided to the public.

Sec. 208. Natural gas company.

(a)Within 30 days after the execution of a contract with the SEU, the gas company shall disclose, or allow access to, the aggregate energy use data for every rate class for gas company customers in the District of Columbia. Customer-specific information, including the customer's name, account number, service address, phone number, and energy use data, shall not be provided without the customer's express written consent.

(b) The gas company shall ensure the privacy of any and all customer information, including the gas company customer's name, account number, service address, billing address, phone number, and energy use data, in making the disclosure. The SEU shall not sell or otherwise disclose any customer or billing information to any third party without express written authorization from the customer.

(c) The gas company shall not be liable for any damages resulting from its provision of customer energy use data to the SEU absent gross negligence. The SEU shall be liable for damages to the customer for any unauthorized use of customer information or data, including the gas company customer's name, account number, service address, billing address, phone number, and energy use data.

Sec. 209. Renewable energy incentive program.

(a) There is established a rebate program that shall provide funding to the owners of the following new renewable energy generation systems in the District of Columbia:

(1) Solar photovoltaic;

(2) Solar thermal;

(3) Geothermal;

(4) Wind;

(5) Biomass; and

(6) Methane or waste-gas capture.

(b) The program shall provide funding in the following amounts:

(1) The amount of $3 for each of the first 3,000 installed watts or watt-equivalents of capacity;

(2) The amount of $2 for each of the next 7,000 installed watts or watt-equivalents of capacity; and

(3) The amount of $1 for each of the next 10,000 installed watts or watt-equivalents of capacity.

(c) The program shall be administered by DDOE and shall operate until the end of fiscal year 2012.

(d) The program shall receive funding from the SETF as set forth in section 210.

(e) DDOE shall allocate ½ of the funds available annually every 6 months.

(f) DDOE shall only fund systems installed in the District of Columbia.

(g) Applications shall be considered and approved or rejected in the order in which they are received. Rebate payments shall be awarded immediately upon receipt by DDOE of the invoice for the purchase of the renewable energy generating equipment.

(h)(1) An owner shall have 6 months from the date of the approval of its rebate application to complete the installation.

(2) DDOE shall visit each project site to verify the completion of each project upon the earlier of 14 days of notification by the owner of the completion of the project or 6 months after DDOE approves the project for funding. If the project has not been completed, the DDOE may, in its discretion, allow the owner up to an additional 6 months to complete the installation. If the owner fails to complete the installation within the period allowed under paragraph (1) of this subsection, it shall return the amount of the rebate within 30 days after the expiration of such period. If the owner fails to return the rebate money within 30 days after the expiration of such period, this subsection shall constitute a lien on all of the property, real or personal, of the owner to secure repayment of the rebate.

(i) Within 90 days after the effective date of this act, the DDOE shall post, and update monthly, on the website required by section 206, information about the rebate program, including:

(1) The date that funds shall be made available;

(2) A printable copy of the rebate application determined by DDOE;

(3) The amount of rebate funds remaining to be awarded; and

(4) The amount of rebate funds awarded.

(j) The application form for the rebate shall be substantially the same as the application for the analogous program in use in Maryland as of the date of the program.

(k) Within 90 days after the effective date of this act, the DDOE shall define a method for converting the heating and cooling capacity of solar thermal and geothermal systems to kilowatt equivalents to permit such systems to qualify for rebates under this program.

(l) The Mayor, pursuant to Title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules to modify the incentive program as market conditions dictate.

(m) DDOE may pay for the installation of monitoring and communications systems, for collecting generation data from renewable energy systems funded by the rebate program and transmitting it to a designated web site; provided, that the system owner shall permit the DDOE to make the data publicly accessible on the DDOE website.

Sec. 210. Sustainable Energy Trust Fund.

(a)(1) There is established as a nonlapsing fund the Sustainable Energy Trust Fund, which shall be used solely for the purposes stated in subsection (c) of this section. The Sustainable Energy Trust Fund shall be funded by an assessment on the natural gas and electric companies under subsection (b) of this section and from the sale of credits associated with the Regional Greenhouse Gas Initiative or any successor program. All funds collected from these sources shall be deposited into the SETF and shall be disbursed by the Fiscal Agent.

(2) All funds deposited into the Sustainable Energy Trust Fund, and any interest earned on the funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (a) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(b)(1) There is imposed upon the natural gas company an assessment calculated on sales on a per-therm basis as follows:

(A) The amount of $.011 in fiscal year 2009;

(B) The amount of $.012 in fiscal year 2010;

(C) The amount of $.014 in fiscal year 2011 and each year thereafter.

(2) There is imposed upon the electric company an assessment calculated on sales on a per-kilowatt hour basis as follows:

(A) The amount of $.0011 in fiscal year 2009;

(B) The amount of $.0013 in fiscal year 2010;

(C) The amount of $.0015 in fiscal year 2011 and each year thereafter.

(3) The assessments shall be paid to the Fiscal Agent before the 21st day of each month, beginning in November, 2008, or the 1st full month following the effective date of this act, whichever is later, for sales for the preceding billing period.

(4) The assessment shall be applied to the sale of every kilowatt hour and therm in the District, except to those sold to residents participating in the Residential Essential Service or Residential Aid Discount programs operated by DDOE.

(5) Nothing in this title shall be construed to prohibit the electric company or natural gas company from recovering the assessment imposed under paragraphs (1) and (2) of this section, respectively, in its rates as a surcharge on customers' bills.

(c) The funds in the Sustainable Energy Trust Fund shall be used solely to fund:

(1) The SEU contract in the following amounts:

(A) The amount of $7.5 million in the 1st year of the contract;

(B) The amount of $15 million in the 2nd year of the contract;

(C) The amount of $17.5 million in the 3rd year of the contract; and

(D) The amount of $20 million in the 4th and each subsequent year of the initial contract, and for each year of any subsequent contract;

(2) The administration of the SEU contract by DDOE, on an annual basis, equal to 10% of the payments under the contract in that fiscal year;

(3) An independent review of the performance of the SEU under section 205(l) in the amount of $100,000 annually;

(4) The activities of the SEU Advisory Board under section 203 in the amount of $26,000 annually;

(5) Existing electricity programs in the amount of $3.545 million annually for fiscal years 2009 through 2011;

(6) Temporary electricity programs in the amount of $916,000 for fiscal year 2009;

(7) Existing natural gas programs in the amount of $3 million annually for fiscal years 2009 through 2011;

(8) Renewable energy incentive program under section 209 in the amount of $2 million annually for fiscal years 2009 through 2012, of which up to $20,000 annually may be used to pay for the installation of monitoring and communications systems; and

(9) Energy efficiency programs administered by the electric company under section 207 in the amount of $6 million annually for fiscal years 2009 through 2011.

(d) If, at the beginning of a fiscal year, the fund balance of the SETF exceeds the projected annual cost of all programs pursuant to subsection (c) of this section in that fiscal year by at least $10 million, the Fiscal Agent shall suspend payment and the collection of the SETF assessment, until such excess is estimated by the Fiscal Agent to be $5 million.

(e) The DDOE shall submit to the Council a quarterly report detailing:

(1) Expenditures from the SETF; and

(2) The performance of SETF programs operated by the DDOE.