ENROLLED ORIGINAL

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AN ACT

D.C. ACT 18-236

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

NOVEMBER 30, 2009

To amend, on an emergency basis, the District of Columbia Election Code of 1955 to expand the franchise to persons that are 17 but will be 18 at the time of the general election, to establish Board member qualifications and restrictions on Board Member activities, to impose an open meetings requirement, to expand the pool of eligible polling place workers, to establish training and certification of polling place workers and to require performance management of polling place workers, to establish reporting requirements following elections, to allow for pre-registration of persons 16 years older, to establish a polling place worker check-off on voter registration forms, to add the Department of Corrections and the Department of Youth Rehabilitative Services to agencies covered under the National Voter Registration Act, to permit same-day registration, to require the Board to submit an automatic-voter-registration feasibility study, to allow for no-fault absentee voting, to require the use of early voting centers, to allow out-of-precinct voters to cast special ballots for federal and District-wide elections, to allow the Board to provide blank ballots to uniformed and overseas voters in federal elections, to require the Board to establish regulations allowing elections observers uniform and nondiscriminatory access to the election process, to extend the time for retention of voter-verifiable records, to require the posting of summary counts of votes at the precincts, to require summary logs for voter-verifiable record accounting and reconciliation, to require a voting system with a voter-verifiable voter record, to require a competitive contracting process for new voting systems, to establish post-election audit procedures, to authorize the Board to extend voting hours in emergencies, to provide for the assessment of costs for manual recounts, and to clarify the timing in the recall process; and to amend the District of Columbia Administrative Procedure Act to clarify that vote data are public records.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Omnibus Election Reform Emergency Amendment Act of 2009".

Sec. 2. The District of Columbia Election Code of 1955, approved August 12, 1955 (69 Stat. 699; D.C. Official Code § 1-1001.01 *et seq.*), is amended as follows:

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(a) Section 2 (D.C. Official Code § 1-1001.02) is amended as follows: Note, § 1-1001.02

(1) Paragraph (2) is amended to read as follows:

"(2) The term "qualified elector" means a person who:

"(A) Is at least 17 years of age and who will be 18 years of age on or before the next general election;

"(B) Is a citizen of the United States;

"(C) Has maintained a residence in the District for at least 30 days preceding the next election and does not claim voting residence or right to vote in any state or territory;

"(D) Is not incarcerated for a crime that is a felony in the District; and

"(E) Has not been found by a court of law to be legally incompetent to vote.".

(2) Paragraph (7) is amended to read as follows:

"(7) The term "felony" includes any crime committed in the District of Columbia referred to in section 14, section 507 of the District of Columbia Campaign Finance Reform and Conflict of Interest Act, approved August 14, 1974 (88 Stat. 464; D.C. Official Code § 1-1105.07), or section 701 of the District of Columbia Campaign and Finance Reform and Conflict of Interest Act, approved August 14, 1974 (88 Stat. 470; D.C. Official Code § 1-1107.01).".

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

"(25) "Election observers" means persons who witness the administration of elections, including individuals representing nonpartisan domestic and international organizations, including voting rights organizations, civil rights organizations, and civic organizations.".

(b) Section 4 (D.C. Official Code § 1-1001.04) is amended as follows: Note, § 1-1001.04

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

"(a) When appointing a member of the Board, the Mayor and Council shall consider whether the individual possesses demonstrated integrity, independence, and public credibility and whether the individual has particular knowledge, training, or experience in government ethics or in elections law and procedure. A person shall not be a member of the Board unless he or she:

"(1) Is a duly registered voter;

"(2) Has resided in the District continuously since the beginning of the 3-year period ending on the day he or she is appointed; and

"(3) Holds no other paid office or employment in the District government and no active office, position, or employment in the federal government.".

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

"(3A) Be an officer or a director of an organization receiving District funds, or an employee of an organization receiving District funds, who has managerial or discretionary responsibilities with respect to those funds;".

(c) Section 5 (D.C. Official Code § 1-1001.05) is amended as follows: Note, § 1-1001.05

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

"(a-1)(1) The Board shall hold regular monthly meetings in accordance with a schedule to be established by the Board. Additional meetings may be called as needed by the Board. Except in the case of an emergency, the Board shall provide at least 48 hours notice of any additional meeting.

"(2) The Board shall make available for public inspection and post on its website a proposed agenda for each Board meeting as soon as practicable, but in any event at least 24 hours before a meeting. Copies of the agenda shall be available to the public at the meeting. The Board, according to its rules, may amend the agenda at the meeting.

"(3) All meetings of the Board shall be open to the public, unless the members vote to enter into executive session. The Board shall not vote, make resolutions or rulings, or take any actions of any kind during executive session, except those that:

"(A) Relate solely to the internal personnel rules or practices of the Board;

"(B) Would result in the disclosure of matters specifically exempted from disclosure by statute; provided, that the statute:

"(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

"(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

"(C) Would result in the disclosure of trade secrets and commercial or financial information obtained from a person and privileged or confidential;

"(D) Involve accusing any person of a crime or formally censuring any person;

"(E) Would result in the disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

"(F) Would result in the disclosure of investigatory records compiled for law enforcement purposes or information which, if written, would be contained in the records, but only to the extent that the production of the records or information would:

"(i) Interfere with enforcement proceedings;

"(ii) Deprive a person of a right to a fair trial or an impartial adjudication;

"(iii) Constitute an unwarranted invasion of personal privacy; or

"(iv) Disclose investigative techniques and procedures; or

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"(G) Specifically concern the Board's issuance of a subpoena, the Board's participation in a civil action or proceeding, or disposition by the Board of a particular matter involving a determination on the record after opportunity for a hearing.

"(4) The Board shall keep the minutes of each meeting of the Board and shall make the minutes of each meeting available to the public for inspection and distribution, and shall post the minutes on the Board's website, as soon as practicable, but in all cases before the next regularly scheduled meeting.".

(2) Subsection (e)(4) is amended to read as follows:

"(4)(A) The Board shall select, appoint, and fix the compensation of temporary election workers to operate the polling places, including precinct captains who shall oversee the operations of polling places in accordance with rules prescribed by the Board, and polling place workers who shall assist the precinct captains. Precinct captains shall be qualified registered electors in the District. Polling place workers shall be qualified registered electors in the District; provided, that the Board may also appoint as polling place workers individuals who are at least 16 years of age on the day that they are working in this capacity, who reside in the District of Columbia, and who are enrolled in or have graduated from a public or private secondary school or an institution of higher education. Any polling place worker shall be required to:

"(i) Complete at least 4 hours of training;

"(ii) Receive certification as a polling place worker under standards that the Board shall promulgate; and

"(iii) Take and sign an oath of office to honestly, faithfully, and promptly perform the duties of office.

"(B) The Board shall establish standards to measure the performance of polling place workers, including the past performance of a polling place worker, and shall consider the polling place worker's past performance before appointing him or her to work as a polling place worker in a subsequent election.".

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

"(k) Within 90 days following a general election, the Board shall publish on its website an after-action report. The report shall include the following information:

"(1) The total number of votes cast, broken down by type of ballot, and including the number of spoiled ballots and special ballots that were not counted;

"(2) The number of persons registered:

"(A) More than 30 days preceding the election;

"(B) Between 30 days preceding the election and the date of the election; and

"(C) On the date of the election;

"(3) The number of polling place workers, by precinct;

"(4) Copies of any unofficial summary reports generated by the Board on election night;

"(5) A synopsis of any issues identified in precinct captain or area representative logs;

"(6) Performance measurement data of polling place workers;

"(7) A description of any irregularities experienced on election day; and

"(8) Any other information considered relevant by the Board.".

(d) Section 6a is amended as follows:

(1) Subsection (a) is amended by striking the phrase "and shall be used solely to implement election reform initiatives to be enacted by the Council" and inserting the phrase "and shall be used for the purpose of implementing the Omnibus Election Reform Amendment Act of 2009, passed on 2nd reading on November 3, 2009 (Enrolled version of Bill 18-345)".

(2) Subsection (c) is repealed.

(e) Section 7 (D.C. Official Code § 1-1001.07) is amended as follows: Note, § 1-1001.07

(1) Subsection (a-2) is amended as follows:

(A) Strike the phrase "17th" and insert the phrase "16th" in its place.

(B) Strike the phrase "may vote in any election occurring on or after that person's 18th birthday, but under no circumstances before the person's 18th birthday" and insert the phrase "may vote in any election occurring on or after that person's 17th birthday; provided, that the person is at least 18 years of age on or before the next general election" in its place.

(2) Subsection (b)(4) is amended to read as follows:

"(4) The Board shall provide a field on voter registration forms to allow an applicant to indicate his or her interest in working as a polling place worker during the next election.".

(3) Subsection (d)(1)(B) is amended by striking the phrase "the Senior Citizens Branch of the Department of Recreation and Parks and the Office of Aging" and inserting the phrase "the Department of Parks and Recreation, the Department of Corrections, the Department of Youth and Rehabilitative Services, and the Office of Aging" in its place.

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

"(g)(1) At any time except during the 30-day period preceding any regularly scheduled election, a qualified elector or any individual who will be a qualified elector at the time of the next election may register to vote in the precinct in which the voter maintains residence by completing a voter registration application and submitting it in person at the Board's office or by mail. A registration that is received no later than 5:00 p.m. on the 31st day preceding any election shall be accepted.

"(2) The Board shall process:

"(A) Mailed voter registration applications and registration update notifications received postmarked by not later than the 30th day preceding any election; and

"(B) Timely completed non-postmarked voter registration applications and registration update notifications mailed and received not later than the 23rd day preceding any election.

"(3) The Board shall process faxed postcard applications from persons eligible to vote absentee in federal elections in the District of Columbia pursuant to the Uniformed and Overseas Citizens Absentee Voting Act, approved August 28, 1966 (100 Stat. 924; 42 U.S.C. § 1973ff *et seq.*), which are faxed not later than the 30th day preceding any election.

"(4) After the 30th day preceding an election, a qualified elector may register to vote in the precinct in which the voter maintains residence by completing a voter registration application and submitting it in person at the Board's office. A qualified elector shall not change his or her party affiliation after the 30th day preceding an election.

"(5) A qualified elector may register on election day by appearing in person at the polling place for the precinct in which the individual maintains residence by completing a voter registration application, making an oath in the form prescribed by the Board, and providing proof of residence. An individual may prove residence for purposes of registering by presenting such identification as required under federal law; provided, that, for each election occurring before December 31, 2010, the individual shall cast a special ballot, subject to the Board's verification of residence; provided further, that for each election occurring after December 31, 2010, if the individual does not present a government-issued and valid photo identification card showing the individual's address, the individual shall cast a special ballot, subject to the Board's verification of residence. A qualified elector shall not change his or her party affiliation on election day.

"(6) The precinct captain shall keep a record of individuals who attempt to register on election day and shall indicate the form of proof of residency provided by the person. The record shall be forwarded to the Board with the election returns for that precinct.

"(7)(A) The Board shall maintain a list, including the name and addresses, of all individuals who either:

"(i) Attempted to register but could not provide proof of residence; or

"(ii) Successfully registered and voted.

"(B) The Board shall make the list available to public inspection upon request.".

(5) A new subsection (l) is added to read as follows:

"(l) Before May 1, 2010, the Board shall submit to the Council a report indicating the feasibility of implementing automatic voter registration in the District.".

(f) Section 9 (D.C. Official Code § 1-1001.09) is amended as follows: Note, § 1-1001.09

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

(A) Paragraph (1) is amended by striking the phrase "in paragraph (2)" and inserting the phrase "in paragraphs (2) and (3)" in its place.

(B) Paragraph (2) is amended to read as follows:

"(2) The Board shall permit any duly registered voter to vote by absentee ballot, for any reason, under such rules as the Board may issue.".

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

"(3) If a person who is a registered qualified elector of the District casts a vote in a voting precinct that does not serve his or her current residence address by special ballot, the Board shall count that vote for federal election contests and for any District-wide election contests.".

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

"(b-1)(1) For each primary and general election, the Board shall designate no fewer than 4 early voting centers, equitably distributed geographically throughout the District.

"(2) At each early voting center, the Board shall allow persons to vote in person for at least 7 days before election day.

"(3) The Office of Property Management shall assist the Board in identifying appropriate locations for use as early voting centers.

"(4) The Chief Technology Officer shall assist the Board in ensuring that each early voting center maintains a secure network environment with the Board's office.

"(5) Before January 31, 2011, the Board shall submit a report to the Council on the effectiveness of using early voting centers, including information about:

"(A) The effect of early voting centers on turnout rates;

"(B) Whether the expanded use of early voting centers could permit for consolidation of precincts; or

"(C) Other information about cost savings opportunities for the use of polling places.

"(6) The Board shall issue rules implementing this subsection.".

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

"(b-2) The Board may provide blank ballots by fax, e-mail, or other electronic means to absent uniformed services voters and overseas voters in federal elections.".

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

"(c-1) The Board shall issue rules for granting access to the electoral process, including access to polling places, ballot-tabulation centers, and other similar locations, to election observers. The rules shall take into account the need to avoid disruption and crowding in polling places and ballot-tabulation centers and the need to ensure that all questions posed by observers should be answered as fully, accurately, and cooperatively as possible. Election observers shall be allowed uniform and nondiscriminatory access to all stages of the election process, including the certification of election technologies, early and absentee voting, and vote tabulation. The Board shall issue a public notice with respect to any denial of a request by any election observer for access to any polling place for purposes of observing an election. The notice shall be issued not later than 24 hours after the denial.".

(5) Subsection (j) is amended by striking the phrase "12 months" wherever it appears and inserting the phrase "22 months" in its place.

(6) New subsections (j-1) and (j-2) are added to read as follows:

"(j-1) Upon the conclusion of voting at any precinct, the Board shall post a summary count of votes cast at the precinct. The summary shall be posted in a conspicuous place that can be seen from the outside of the precinct immediately upon completion of voting.

"(j-2) Precinct captains shall prepare a summary log that indicates the number of:

"(1) Votes cast in a polling place;

"(2) Persons who have signed in;

"(3) Voter-verifiable records that arrived at the polling place before the polls opened;

"(4) Used voter-verifiable records; and

"(5) Unused voter-verifiable records.".

(7) Subsection (k) is amended to read as follows:

"(k)(1) Each voting system used in an election in the District occurring after January 1, 2012, shall:

"(A) Meet or exceed the voting system standards set forth in the Help America Vote Act of 2002, approved October 29, 2002 (116 Stat. 1666; 42 U.S.C. § 15301 *et seq.*), or be federally certified;

"(B) Create a voter-verifiable record of all votes cast;

"(C) Be capable without further modification of creating, storing, and exporting an anonymous separate machine record of each voter-verifiable record, showing each choice made by the voter; and

"(D) Meet any additional standards established by the Board; provided, that the standards shall not conflict with those set forth in the Help America Vote Act of 2002, approved October 29, 2002 (116 Stat. 1666; 42 U.S.C. § 15301 *et seq.*).

"(2) The voter-verifiable record shall be permanent and capable of being inspected for the purpose of audits and recounts. A voter-verifiable record need not be a paper ballot. A satisfactory voter-verifiable record shall include:

"(A) A paper ballot prepared by the voter for the purpose of being read by a precinct–based optical scanner;

"(B) A paper ballot prepared by the voter to be mailed, whether mailed from a domestic or an overseas location; and

"(C) A paper ballot created through the use of a ballot marking device.

"(3) The Board shall adopt voting system standards and review the standards on a biennial basis.".

(8) A new subsection (l) is added to read as follows:

"(l) The Board, through the Office of Contracting and Procurement, shall purchase voting system equipment under a competitive-bidding procedure that includes the following conditions:

"(1) A provision to place a copy of the software source code for the voting system, and related documents, in escrow with an independent third-party evaluator selected by the vendor and the Board;

"(2) A warranty provision that requires that the vendor:

"(A) Promptly and fully disclose any flaw, defect, or vulnerability in the voting system of which the vendor is aware or becomes aware; and

"(B)(i) Remedy any flaw, defect, or vulnerability in the voting system identified in subparagraph (A) of this paragraph at no cost to the District; or

"(ii) If the flaw, defect, or vulnerability in the voting system cannot be remedied:

"(I) Replace the voting system or the affected part of the voting system or provide an equivalent voting system at no cost to the District; or

"(II) Reimburse the District for the full purchase price of the voting system or for the value of the affected part of the voting system, plus any costs incurred by the District as a result of the flaw, defect, or vulnerability;

"(3) A most-favored customer provision that ensures that the District receive pricing terms that are at least as favorable as those received by any other customer, except for the federal government, during the term of the contract and during any extensions or renewals of the contract; and

"(4) A provision that incorporates the requirements of section 9a(k).".

(g) A new section 9a is added to read as follows:

"Sec. 9a. Post-election audits.

"(a) For the purposes of this section, the term:

"(1) "Error rate" means the greatest change in difference between any 2 candidates' vote totals in an audit sample, comparing the machine result and the tally from the manual audit for a contest, divided by the number of votes (including overvotes and undervotes) audited in that contest in that sample.

"(2) "Margin of victory" means the difference between the contest-wide vote totals for the apparent winning candidate with the fewest votes and the apparent losing candidate with the most votes in the machine result, divided by the number of votes cast in the entire contest (including undervotes and overvotes).

"(b) After each primary, general, and special election, the Board shall conduct a public manual audit of the voter-verifiable records tabulated by the Board.

"(c)(1) The Board shall manually audit:

"(A) At least 5% of the precincts with precinct-level, vote-tabulation machines during the election; and

"(B) At least 5% of the voter-verifiable records that are tabulated centrally, including absentee ballots and special ballots.

"(2) Of those voter-verifiable records audited, the Board shall examine no fewer than 3 contests, of which:

"(A) At least one shall be a District-wide contest; and

"(B) At least 2 shall be a ward-wide race.

"(3) The Board may, in its discretion, whether or not by request of a losing candidate, audit additional precincts, voter-verifiable records, or contests; provided, that the Board shall select at least one additional contest not selected pursuant to paragraph (2) of this subsection. The Board shall issue rules describing the criteria that it will use and the procedure for considering requests for additional audits. The Board may also collect fees, set forth by rule, for additional audits conducted under this paragraph.

"(d) The precincts audited shall be selected on an entirely random basis; provided, that, within each ward, each precinct in the election shall have an equal chance of being selected. The voter-verifiable records that are tabulated centrally shall also be selected on an entirely random basis. The contests audited shall be selected on an entirely random basis; provided, that, within each category, each contest in the election shall have an equal chance of being selected. The Board shall publicly announce the method by which it intends to randomly select precincts, voter-verifiable records tabulated centrally, and contests, and shall conduct the random selection in such a way as to allow the public to observe and ensure that the selection is random. The selection shall be followed by the audit as soon as is practicable.

"(e) The date of the audit shall be announced no later than 3 business days after tabulation has been completed, but no fewer than 24 hours in advance of the audit.

"(f) The audit shall be conducted in public view so that members of the public are able to verify that votes are correctly classified and tallied, but are unable to touch ballots and other official materials or to interfere in any way with the manual audit process.

"(g) Individuals performing the manual audit shall:

"(1) Not be assigned to tally the results from a precinct in which that individual served as a polling place worker;

"(2) Not at any time before or during the manual audit be informed of the corresponding machine tally results;

"(3) Follow the Board's procedures for hand counting voter-verifiable records, tallying results, noting discrepancies and any missing or damaged voter-verifiable records, and interpreting ambiguous votes where the voter intent may not be clear; and

"(4) Make a record of each ambiguous vote, including the nature of the marking error causing the ambiguity and how the vote was interpreted.

"(h)(1) If an audit initially reveals a discrepancy between the machine result and the tally from the manual audit that yields an error rate greater than 0.25% or 20% of the margin of victory, whichever is less, and the discrepancy is not attributed to marking errors, a 2nd count shall be conducted.

"(2) If the 2nd count confirms the discrepancy described in paragraph (1) of this subsection, the Board shall also audit another precinct in each ward in which the contest appeared on the ballot, selected at random using the same method previously used to select the precincts, and an additional 5% of all centrally tabulated ballots.

"(3) If the additional audit sample described in paragraph (2) of this subsection also reveals a discrepancy between the machine result and the tally from the manual audit that

yields an error rate greater than 0.25% or 20% of the margin of victory, whichever is less, the Board shall audit all precincts and centrally tabulated ballots in which the contest was held.

"(i) The results derived from the manual audits shall be deemed the true and correct results of the election contests at issue with respect to the votes audited and shall be used in lieu of further counting in any automatic recounts.

"(j) The Board shall publish on its website and make available for public inspection a report of results of the manual audit before certification of the official election results. The report shall:

"(1) Identify and, when possible, explain any discrepancies between the initial count and the manual tally; and

"(2) Describe further investigations to be undertaken or actions to be taken based on the observed discrepancies.

"(k)(1) A vendor providing a voting system for use in the District elections shall furnish a bond in the amount of $10,000 to the District.

"(2) A comparison of the results compiled by the voting system with the post-election audit described in this section shall show that the results of the electronic voting system differed by no more than 0.25% from the manual count reviewed, not including discrepancies associated with missing or damaged voter-verifiable records and with ambiguous votes.

"(3) If a voting system is found to have failed to record votes accurately and in the manner set forth in paragraph (2) of this section, and that the failure is attributable to either the voting system's design or actions of the vendor, the vendor shall forfeit the bond required by paragraph (1) and pay any costs incurred by the Board directly attributable to the failure.

"(4) The vendor shall reimburse the District for the costs of any post-election audit required under subsection (h)(2) and (3) of this section, not including any costs associated for salaried election officials. If the vendor does not reimburse the District for these costs, the vendor shall forfeit the bond required by paragraph (1) of this subsection and shall be liable for the additional costs.".

Note, § 1-1001.10

(h) Section 10(b)(1) (D.C. Official Code § 1-1001.10(b)(1)) is amended by striking the phrase "or any other order." and inserting the phrase "or any other order. The Board may, upon request of the precinct captain or upon its own initiative, if an emergency exists by reason of mechanical failure of a voting machine, an unanticipated shortage of ballots, excessive wait times, bomb threats, or similar unforeseen event warrants it, extend the polling hours for that precinct until the emergency situation has been resolved." in its place.

Note, § 1-1001.11

(i) Section 11(a)(1) (D.C. Official Code § 1-1001.11(a)(1)) is amended to read as follows:

"(a)(1) The Board shall recount the votes cast in one or more voting precincts, if, within 7 days after the Board certifies the results of an election for an office, a candidate for that office petitions the Board in writing and specifies the precincts in which the recount shall be conducted. Before beginning the recount, the Board shall prepare an estimate of the costs and inform the petitioner of the anticipated number of hours needed to complete the recount and the

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cost per hour. The costs of the recount shall not include any payments associated for salaried election officials. If the petitioner chooses to proceed with the recount, the petitioner shall deposit the amount of $50 per precinct included in the recount. If the result of the election is changed as a result of the recount, the deposit shall be refunded. If the result is not changed, the Board shall determine the actual cost of the recount. The petitioner shall be liable for the actual cost of the recount and the Board may collect that cost from the deposit made with the petition.".

(j) Section 17(g) (D.C. Official Code § 1-1001.17(g)) is amended to read as follows: Note, § 1-1001.17

"(g) The proposer of a recall shall have 180 days or, in the case of a proposed recall of an Advisory Neighborhood Commissioner, 60 days, beginning on the date when the proponent of the recall formally adopts the original petition form as his or her own form pursuant to subsection (e) of this section, to circulate the recall petition and file the petition with the Board.".

Sec. 3. Section 3(18) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-502(18)), is amended by striking the phrase "tapes, recordings," and inserting the phrase "tapes, recordings, vote data (including ballot-definition material, raw data, and ballot images)," in its place. Note, § 2-502

Sec. 4. Applicability.

(a) Section 2(b)(1) shall not apply to any individual who is a member of the Board of Elections and Ethics on the effective date of this act. Note, § 1-1001.04

(b) For any election after December 31, 2010, section 2(f)(1)(B) and (3) shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan. Note, § 1-1001.09

Sec. 5. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report for the Omnibus Election Reform Amendment Act of 2009, passed on 2nd reading on November 3, 2009 . (Enrolled version of Bill 18-345), 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. 6. 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), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section

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412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
November 30, 2009

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AN ACT

D.C. ACT 18-237

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

NOVEMBER 30, 2009

To approve, on an emergency basis, Modification No. 28 to Contract No. DCJA-2006-D-SC01 with the Community Partnership for the Prevention of Homelessness, Inc., to provide continued oversight and management of service providers that provide services to homeless residents in the District and to authorize payment for the services received and to be received under the contract.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Contract No. DCJA-2006-D-SC01 Modification Approval and Payment Authorization Emergency Act of 2009".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 105a of the District of Columbia Procurement Practices Act of 1985, effective March 8, 1991 (D.C. Law 8-257; D.C. Official Code § 2-301.05a), the Council approves Modification No. 28 to Contract No. DCJA-2006-D-SC01 to provide continued oversight and management of service providers that provide services to homeless residents in the District and authorizes payment to the Community Partnership for the Prevention of Homelessness in the amount of $50,446,394 for services received and to be received under this contract in option year 3.

Sec. 3. Fiscal impact statement.

The Council adopts the 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), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section

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412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
November 30, 2009

ENROLLED ORIGINAL

AN ACT

D.C. ACT 18-238

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

NOVEMBER 30, 2009

Codification District of Columbia Official Code

2001 Edition

2010 Winter Supp.

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To amend the District of Columbia Election Code of 1955 to expand the franchise to persons that are 17 but will be 18 at the time of the general election, to establish Board member qualifications and restrictions on Board Member activities, to impose an open meetings requirement, to expand the pool of eligible polling place workers, to establish training and certification of polling place workers and to require performance management of polling place workers, to establish reporting requirements following elections, to allow for pre-registration of persons 16 years older, to establish a polling place worker check-off on voter registration forms, to add the Department of Corrections and the Department of Youth Rehabilitative Services to agencies covered under the National Voter Registration Act, to permit same-day registration, to require the Board to submit an automatic-voter-registration feasibility study, to allow for no-fault absentee voting, to require the use of early voting centers, to allow out-of-precinct voters to cast special ballots for federal and District-wide elections, to allow the Board to provide blank ballots to uniformed and overseas voters in federal elections, to require the Board to establish regulations allowing elections observers uniform and nondiscriminatory access to the election process, to extend the time for retention of voter-verifiable records, to require the posting of summary counts of votes at the precincts, to require summary logs for voter-verifiable record accounting and reconciliation, to require a voting system with a voter-verifiable voter record, to require a competitive contracting process for new voting systems, to establish post-election audit procedures, to authorize the Board to extend voting hours in emergencies, to provide for the assessment of costs for manual recounts, and to clarify the timing in the recall process; and to amend the District of Columbia Administrative Procedure Act to clarify that vote data are public records.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Omnibus Election Reform Amendment Act of 2009".

Sec. 2. The District of Columbia Election Code of 1955, approved August 12, 1955 (69 Stat. 699; D.C. Official Code § 1-1001.01 *et seq.*), is amended as follows:

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(a) Section 2 (D.C. Official Code § 1-1001.02) is amended as follows: Note, § 1-1001.02

(1) Paragraph (2) is amended to read as follows:

"(2) The term "qualified elector" means a person who:

"(A) Is at least 17 years of age and who will be 18 years of age on or before the next general election;

"(B) Is a citizen of the United States;

"(C) Has maintained a residence in the District for at least 30 days preceding the next election and does not claim voting residence or right to vote in any state or territory;

"(D) Is not incarcerated for a crime that is a felony in the District; and

"(E) Has not been found by a court of law to be legally incompetent to vote.".

(2) Paragraph (7) is amended to read as follows:

"(7) The term "felony" includes any crime committed in the District of Columbia referred to in section 14, section 507 of the District of Columbia Campaign Finance Reform and Conflict of Interest Act, approved August 14, 1974 (88 Stat. 464; D.C. Official Code § 1-1105.07), or section 701 of the District of Columbia Campaign and Finance Reform and Conflict of Interest Act, approved August 14, 1974 (88 Stat. 470; D.C. Official Code § 1-1107.01).".

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

"(25) "Election observers" means persons who witness the administration of elections, including individuals representing nonpartisan domestic and international organizations, including voting rights organizations, civil rights organizations, and civic organizations.".

(b) Section 4 (D.C. Official Code § 1-1001.04) is amended as follows: Note, § 1-1001.04

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

"(a) When appointing a member of the Board, the Mayor and Council shall consider whether the individual possesses demonstrated integrity, independence, and public credibility and whether the individual has particular knowledge, training, or experience in government ethics or in elections law and procedure. A person shall not be a member of the Board unless he or she:

"(1) Is a duly registered voter;

"(2) Has resided in the District continuously since the beginning of the 3-year period ending on the day he or she is appointed; and

"(3) Holds no other paid office or employment in the District government and no active office, position, or employment in the federal government.".

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

"(3A) Be an officer or a director of an organization receiving District funds, or an employee of an organization receiving District funds, who has managerial or discretionary responsibilities with respect to those funds;".

(c) Section 5 (D.C. Official Code § 1-1001.05) is amended as follows: Note, § 1-1001.05

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

"(a-1)(1) The Board shall hold regular monthly meetings in accordance with a schedule to be established by the Board. Additional meetings may be called as needed by the Board. Except in the case of an emergency, the Board shall provide at least 48 hours notice of any additional meeting.

"(2) The Board shall make available for public inspection and post on its website a proposed agenda for each Board meeting as soon as practicable, but in any event at least 24 hours before a meeting. Copies of the agenda shall be available to the public at the meeting. The Board, according to its rules, may amend the agenda at the meeting.

"(3) All meetings of the Board shall be open to the public, unless the members vote to enter into executive session. The Board shall not vote, make resolutions or rulings, or take any actions of any kind during executive session, except those that:

"(A) Relate solely to the internal personnel rules or practices of the Board;

"(B) Would result in the disclosure of matters specifically exempted from disclosure by statute; provided, that the statute:

"(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

"(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

"(C) Would result in the disclosure of trade secrets and commercial or financial information obtained from a person and privileged or confidential;

"(D) Involve accusing any person of a crime or formally censuring any person;

"(E) Would result in the disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

"(F) Would result in the disclosure of investigatory records compiled for law enforcement purposes or information which, if written, would be contained in the records, but only to the extent that the production of the records or information would:

"(i) Interfere with enforcement proceedings;

"(ii) Deprive a person of a right to a fair trial or an impartial adjudication;

"(iii) Constitute an unwarranted invasion of personal privacy; or

"(iv) Disclose investigative techniques and procedures; or

"(G) Specifically concern the Board's issuance of a subpoena, the Board's participation in a civil action or proceeding, or disposition by the Board of a particular matter involving a determination on the record after opportunity for a hearing.

"(4) The Board shall keep the minutes of each meeting of the Board and shall make the minutes of each meeting available to the public for inspection and distribution, and shall post the minutes on the Board's website, as soon as practicable, but in all cases before the next regularly scheduled meeting.".

(2) Subsection (e)(4) is amended to read as follows:

"(4)(A) The Board shall select, appoint, and fix the compensation of temporary election workers to operate the polling places, including precinct captains who shall oversee the operations of polling places in accordance with rules prescribed by the Board, and polling place workers who shall assist the precinct captains. Precinct captains shall be qualified registered electors in the District. Polling place workers shall be qualified registered electors in the District; provided, that the Board may also appoint as polling place workers individuals who are at least 16 years of age on the day that they are working in this capacity, who reside in the District of Columbia, and who are enrolled in or have graduated from a public or private secondary school or an institution of higher education. Any polling place worker shall be required to:

"(i) Complete at least 4 hours of training;

"(ii) Receive certification as a polling place worker under standards that the Board shall promulgate; and

"(iii) Take and sign an oath of office to honestly, faithfully, and promptly perform the duties of office.

"(B) The Board shall establish standards to measure the performance of polling place workers, including the past performance of a polling place worker, and shall consider the polling place worker's past performance before appointing him or her to work as a polling place worker in a subsequent election.".

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

"(k) Within 90 days following a general election, the Board shall publish on its website an after-action report. The report shall include the following information:

"(1) The total number of votes cast, broken down by type of ballot, and including the number of spoiled ballots and special ballots that were not counted;

"(2) The number of persons registered:

"(A) More than 30 days preceding the election;

"(B) Between 30 days preceding the election and the date of the election; and

"(C) On the date of the election;

"(3) The number of polling place workers, by precinct;

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"(4) Copies of any unofficial summary reports generated by the Board on election night;

"(5) A synopsis of any issues identified in precinct captain or area representative logs;

"(6) Performance measurement data of polling place workers;

"(7) A description of any irregularities experienced on election day; and

"(8) Any other information considered relevant by the Board.".

(d) Section 6a is amended as follows:

(1) Subsection (a) is amended by striking the phrase "and shall be used solely to implement election reform initiatives to be enacted by the Council" and inserting the phrase "and shall be used for the purpose of implementing the Omnibus Election Reform Amendment Act of 2009, passed on 2nd reading on November 3, 2009 (Enrolled version of Bill 18-345)".

(2) Subsection (c) is repealed.

(e) Section 7 (D.C. Official Code § 1-1001.07) is amended as follows:

Note, § 1-1001.07

(1) Subsection (a-2) is amended as follows:

(A) Strike the phrase "17th" and insert the phrase "16th" in its place.

(B) Strike the phrase "may vote in any election occurring on or after that person's 18th birthday, but under no circumstances before the person's 18th birthday" and insert the phrase "may vote in any election occurring on or after that person's 17th birthday; provided, that the person is at least 18 years of age on or before the next general election" in its place.

(2) Subsection (b)(4) is amended to read as follows:

"(4) The Board shall provide a field on voter registration forms to allow an applicant to indicate his or her interest in working as a polling place worker during the next election.".

(3) Subsection (d)(1)(B) is amended by striking the phrase "the Senior Citizens Branch of the Department of Recreation and Parks and the Office of Aging" and inserting the phrase "the Department of Parks and Recreation, the Department of Corrections, the Department of Youth and Rehabilitative Services, and the Office of Aging" in its place.

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

"(g)(1) At any time except during the 30-day period preceding any regularly scheduled election, a qualified elector or any individual who will be a qualified elector at the time of the next election may register to vote in the precinct in which the voter maintains residence by completing a voter registration application and submitting it in person at the Board's office or by mail. A registration that is received no later than 5:00 p.m. on the 31st day preceding any election shall be accepted.

"(2) The Board shall process:

"(A) Mailed voter registration applications and registration update notifications received postmarked by not later than the 30th day preceding any election; and

"(B) Timely completed non-postmarked voter registration applications and registration update notifications mailed and received not later than the 23rd day preceding any election.

"(3) The Board shall process faxed postcard applications from persons eligible to vote absentee in federal elections in the District of Columbia pursuant to the Uniformed and Overseas Citizens Absentee Voting Act, approved August 28, 1966 (100 Stat. 924; 42 U.S.C. § 1973ff *et seq.*), which are faxed not later than the 30th day preceding any election.

"(4) After the 30th day preceding an election, a qualified elector may register to vote in the precinct in which the voter maintains residence by completing a voter registration application and submitting it in person at the Board's office. A qualified elector shall not change his or her party affiliation after the 30th day preceding an election.

"(5) A qualified elector may register on election day by appearing in person at the polling place for the precinct in which the individual maintains residence by completing a voter registration application, making an oath in the form prescribed by the Board, and providing proof of residence. An individual may prove residence for purposes of registering by presenting such identification as required under federal law; provided, that, for each election occurring before December 31, 2010, the individual shall cast a special ballot, subject to the Board's verification of residence; provided further, that for each election occurring after December 31, 2010, if the individual does not present a government-issued and valid photo identification card showing the individual's address, the individual shall cast a special ballot, subject to the Board's verification of residence. A qualified elector shall not change his or her party affiliation on election day.

"(6) The precinct captain shall keep a record of individuals who attempt to register on election day and shall indicate the form of proof of residency provided by the person. The record shall be forwarded to the Board with the election returns for that precinct.

"(7)(A) The Board shall maintain a list, including the name and addresses, of all individuals who either:

"(i) Attempted to register but could not provide proof of residence; or

"(ii) Successfully registered and voted.

"(B) The Board shall make the list available to public inspection upon request.".

(5) A new subsection (l) is added to read as follows:

"(l) Before May 1, 2010, the Board shall submit to the Council a report indicating the feasibility of implementing automatic voter registration in the District.".

(f) Section 9 (D.C. Official Code § 1-1001.09) is amended as follows:

Note, § 1-1001.09

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

(A) Paragraph (1) is amended by striking the phrase "in paragraph (2)" and inserting the phrase "in paragraphs (2) and (3)" in its place.

(B) Paragraph (2) is amended to read as follows:

"(2) The Board shall permit any duly registered voter to vote by absentee ballot, for any reason, under such rules as the Board may issue.".

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

"(3) If a person who is a registered qualified elector of the District casts a vote in a voting precinct that does not serve his or her current residence address by special ballot, the Board shall count that vote for federal election contests and for any District-wide election contests.".

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

"(b-1)(1) For each primary and general election, the Board shall designate no fewer than 4 early voting centers, equitably distributed geographically throughout the District.

"(2) At each early voting center, the Board shall allow persons to vote in person for at least 7 days before election day.

"(3) The Office of Property Management shall assist the Board in identifying appropriate locations for use as early voting centers.

"(4) The Chief Technology Officer shall assist the Board in ensuring that each early voting center maintains a secure network environment with the Board's office.

"(5) Before January 31, 2011, the Board shall submit a report to the Council on the effectiveness of using early voting centers, including information about:

"(A) The effect of early voting centers on turnout rates;

"(B) Whether the expanded use of early voting centers could permit for consolidation of precincts; or

"(C) Other information about cost savings opportunities for the use of polling places.

"(6) The Board shall issue rules implementing this subsection.

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

"(b-2) The Board may provide blank ballots by fax, e-mail, or other electronic means to absent uniformed services voters and overseas voters in federal elections.".

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

"(c-1) The Board shall issue rules for granting access to the electoral process, including access to polling places, ballot-tabulation centers, and other similar locations, to election observers. The rules shall take into account the need to avoid disruption and crowding in polling places and ballot-tabulation centers and the need to ensure that all questions posed by observers should be answered as fully, accurately, and cooperatively as possible. Election observers shall be allowed uniform and nondiscriminatory access to all stages of the election process, including the certification of election technologies, early and absentee voting, and vote tabulation. The Board shall issue a public notice with respect to any denial of a request by any election observer for access to any polling place for purposes of observing an election. The notice shall be issued not later than 24 hours after the denial.".

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(5) Subsection (j) is amended by striking the phrase "12 months" wherever it appears and inserting the phrase "22 months" in its place.

(6) New subsections (j-1) and (j-2) are added to read as follows:

"(j-1) Upon the conclusion of voting at any precinct, the Board shall post a summary count of votes cast at the precinct. The summary shall be posted in a conspicuous place that can be seen from the outside of the precinct immediately upon completion of voting.

"(j-2) Precinct captains shall prepare a summary log that indicates the number of:

"(1) Votes cast in a polling place;

"(2) Persons who have signed in;

"(3) Voter-verifiable records that arrived at the polling place before the polls opened;

"(4) Used voter-verifiable records; and

"(5) Unused voter-verifiable records.".

(7) Subsection (k) is amended to read as follows:

"(k)(1) Each voting system used in an election in the District occurring after January 1, 2012, shall:

"(A) Meet or exceed the voting system standards set forth in the Help America Vote Act of 2002, approved October 29, 2002 (116 Stat. 1666; 42 U.S.C. § 15301 *et seq.*), or be federally certified;

"(B) Create a voter-verifiable record of all votes cast;

"(C) Be capable without further modification of creating, storing, and exporting an anonymous separate machine record of each voter-verifiable record, showing each choice made by the voter; and

"(D) Meet any additional standards established by the Board; provided, that the standards shall not conflict with those set forth in the Help America Vote Act of 2002, approved October 29, 2002 (116 Stat. 1666; 42 U.S.C. § 15301 *et seq.*).

"(2) The voter-verifiable record shall be permanent and capable of being inspected for the purpose of audits and recounts. A voter-verifiable record need not be a paper ballot. A satisfactory voter-verifiable record shall include:

"(A) A paper ballot prepared by the voter for the purpose of being read by a precinct–based optical scanner;

"(B) A paper ballot prepared by the voter to be mailed, whether mailed from a domestic or an overseas location; and

"(C) A paper ballot created through the use of a ballot marking device.

"(3) The Board shall adopt voting system standards and review the standards on a biennial basis.".

(8) A new subsection (l) is added to read as follows:

"(l) The Board, through the Office of Contracting and Procurement, shall purchase voting system equipment under a competitive-bidding procedure that includes the following conditions:

"(1) A provision to place a copy of the software source code for the voting system, and related documents, in escrow with an independent third-party evaluator selected by the vendor and the Board;

"(2) A warranty provision that requires that the vendor:

"(A) Promptly and fully disclose any flaw, defect, or vulnerability in the voting system of which the vendor is aware or becomes aware; and

"(B)(i) Remedy any flaw, defect, or vulnerability in the voting system identified in subparagraph (A) of this paragraph at no cost to the District; or

"(ii) If the flaw, defect, or vulnerability in the voting system cannot be remedied:

"(I) Replace the voting system or the affected part of the voting system or provide an equivalent voting system at no cost to the District; or

"(II) Reimburse the District for the full purchase price of the voting system or for the value of the affected part of the voting system, plus any costs incurred by the District as a result of the flaw, defect, or vulnerability;

"(3) A most-favored customer provision that ensures that the District receive pricing terms that are at least as favorable as those received by any other customer, except for the federal government, during the term of the contract and during any extensions or renewals of the contract; and

"(4) A provision that incorporates the requirements of section 9a(k).".

(g) A new section 9a is added to read as follows:

"Sec. 9a. Post-election audits.

"(a) For the purposes of this section, the term:

"(1) "Error rate" means the greatest change in difference between any 2 candidates' vote totals in an audit sample, comparing the machine result and the tally from the manual audit for a contest, divided by the number of votes (including overvotes and undervotes) audited in that contest in that sample.

"(2) "Margin of victory" means the difference between the contest-wide vote totals for the apparent winning candidate with the fewest votes and the apparent losing candidate with the most votes in the machine result, divided by the number of votes cast in the entire contest (including undervotes and overvotes).

"(b) After each primary, general, and special election, the Board shall conduct a public manual audit of the voter-verifiable records tabulated by the Board.

"(c)(1) The Board shall manually audit:

"(A) At least 5% of the precincts with precinct-level vote-tabulation machines during the election; and

"(B) At least 5% of the voter-verifiable records that are tabulated centrally, including absentee ballots and special ballots.

"(2) Of those voter-verifiable records audited, the Board shall examine no fewer than 3 contests, of which:

"(A) At least one shall be a District-wide contest; and

"(B) At least 2 shall be a ward-wide race.

"(3) The Board may, in its discretion, whether or not by request of a losing candidate, audit additional precincts, voter-verifiable records, or contests; provided, that the Board shall select at least one additional contest not selected pursuant to paragraph (2) of this subsection. The Board shall issue rules describing the criteria that it will use and the procedure for considering requests for additional audits. The Board may also collect fees, set forth by rule, for additional audits conducted under this paragraph.

"(d) The precincts audited shall be selected on an entirely random basis; provided, that, within each ward, each precinct in the election shall have an equal chance of being selected. The voter-verifiable records that are tabulated centrally shall also be selected on an entirely random basis. The contests audited shall be selected on an entirely random basis; provided, that, within each category, each contest in the election shall have an equal chance of being selected. The Board shall publicly announce the method by which it intends to randomly select precincts, voter-verifiable records tabulated centrally, and contests, and shall conduct the random selection in such a way as to allow the public to observe and ensure that the selection is random. The selection shall be followed by the audit as soon as is practicable.

"(e) The date of the audit shall be announced no later than 3 business days after tabulation has been completed, but no fewer than 24 hours in advance of the audit.

"(f) The audit shall be conducted in public view so that members of the public are able to verify that votes are correctly classified and tallied, but are unable to touch ballots and other official materials or to interfere in any way with the manual audit process.

"(g) Individuals performing the manual audit shall:

"(1) Not be assigned to tally the results from a precinct in which that individual served as a polling place worker;

"(2) Not at any time before or during the manual audit be informed of the corresponding machine tally results;

"(3) Follow the Board's procedures for hand counting voter-verifiable records, tallying results, noting discrepancies and any missing or damaged voter-verifiable records, and interpreting ambiguous votes where the voter intent may not be clear; and

"(4) Make a record of each ambiguous vote, including the nature of the marking error causing the ambiguity and how the vote was interpreted.

"(h)(1) If an audit initially reveals a discrepancy between the machine result and the tally from the manual audit that yields an error rate greater than 0.25% or 20% of the margin of

victory, whichever is less, and the discrepancy is not attributed to marking errors, a 2nd count shall be conducted.

"(2) If the 2nd count confirms the discrepancy described in paragraph (1) of this subsection, the Board shall also audit another precinct in each ward in which the contest appeared on the ballot, selected at random using the same method previously used to select the precincts, and an additional 5% of all centrally tabulated ballots.

"(3) If the additional audit sample described in paragraph (2) of this subsection also reveals a discrepancy between the machine result and the tally from the manual audit that yields an error rate greater than 0.25% or 20% of the margin of victory, whichever is less, the Board shall audit all precincts and centrally tabulated ballots in which the contest was held.

"(i) The results derived from the manual audits shall be deemed the true and correct results of the election contests at issue with respect to the votes audited and shall be used in lieu of further counting in any automatic recounts.

"(j) The Board shall publish on its website and make available for public inspection a report of results of the manual audit before certification of the official election results. The report shall:

"(1) Identify and, when possible, explain any discrepancies between the initial count and the manual tally; and

"(2) Describe further investigations to be undertaken or actions to be taken based on the observed discrepancies.

"(k)(1) A vendor providing a voting system for use in the District elections shall furnish a bond in the amount of $10,000 to the District.

"(2) A comparison of the results compiled by the voting system with the post-election audit described in this section shall show that the results of the electronic voting system differed by no more than 0.25% from the manual count reviewed, not including discrepancies associated with missing or damaged voter-verifiable records and with ambiguous votes.

"(3) If a voting system is found to have failed to record votes accurately and in the manner set forth in paragraph (2) of this section, and that the failure is attributable to either the voting system's design or actions of the vendor, the vendor shall forfeit the bond required by paragraph (1) and pay any costs incurred by the Board directly attributable to the failure.

"(4) The vendor shall reimburse the District for the costs of any post-election audit required under subsection (h)(2) and (3) of this section, not including any costs associated for salaried election officials. If the vendor does not reimburse the District for these costs, the vendor shall forfeit the bond required by paragraph (1) of this subsection and shall be liable for the additional costs.".

(h) Section 10(b)(1) (D.C. Official Code § 1-1001.10(b)(1)) is amended by striking the phrase "or any other order." and inserting the phrase "or any other order. The Board may, upon request of the precinct captain or upon its own initiative, if an emergency exists by reason of mechanical failure of a voting machine, an unanticipated shortage of ballots, excessive wait

Note, § 1-1001.10

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times, bomb threats, or similar unforeseen event warrants it, extend the polling hours for that precinct until the emergency situation has been resolved." in its place.

(i) Section 11(a)(1) (D.C. Official Code § 1-1001.11(a)(1)) is amended to read as follows: Note, § 1-1001.11

"(a)(1) The Board shall recount the votes cast in one or more voting precincts, if, within 7 days after the Board certifies the results of an election for an office, a candidate for that office petitions the Board in writing and specifies the precincts in which the recount shall be conducted. Before beginning the recount, the Board shall prepare an estimate of the costs and inform the petitioner of the anticipated number of hours needed to complete the recount and the cost per hour. The costs of the recount shall not include any payments associated for salaried election officials. If the petitioner chooses to proceed with the recount, the petitioner shall deposit the amount of $50 per precinct included in the recount. If the result of the election is changed as a result of the recount, the deposit shall be refunded. If the result is not changed, the Board shall determine the actual cost of the recount. The petitioner shall be liable for the actual cost of the recount and the Board may collect that cost from the deposit made with the petition.".

(j) Section 17(g) (D.C. Official Code § 1-1001.17(g)) is amended to read as follows: Note, § 1-1001.17

"(g) The proposer of a recall shall have 180 days or, in the case of a proposed recall of an Advisory Neighborhood Commissioner, 60 days, beginning on the date when the proponent of the recall formally adopts the original petition form as his or her own form pursuant to subsection (e) of this section, to circulate the recall petition and file the petition with the Board.".

Sec. 3. Section 3(18) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-502(18)), is amended by striking the phrase "tapes, recordings," and inserting the phrase "tapes, recordings, vote data (including ballot-definition material, raw data, and ballot images)," in its place. Note, § 2-502

Sec. 4. Applicability.

(a) Section 2(b)(1) shall not apply to any individual who is a member of the Board of Elections and Ethics on the effective date of this act. Note, § 1-1001.04

(b) For any election after December 31, 2010, section 2(f)(1)(B) and (3) shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan. Note, § 1-1001.09

Sec. 5. 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)).

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Sec. 6. 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. Orange

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
November 30, 2009

ENROLLED ORIGINAL

AN ACT

D.C. ACT 18-239

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

NOVEMBER 30, 2009

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To amend the Hospital and Medical Services Corporation Regulatory Act of 1996 to define a public-private partnership, to authorize hospital and medical services corporations to enter into a public-private partnership, to provide that the Commissioner's review of the surplus of a hospital and medical services corporation that is attributable to the District shall occur at least once every 3 years, to authorize the Commissioner to certify an ongoing public-private partnership, to allow a public-private partnership and to substitute for the requirements of the open enrollment program; to amend the Healthy DC Act of 2008 to change eligibility requirements and premium limitations for the Healthy DC Program; to amend the Life Insurance Act, the Health Maintenance Organization Act of 1996, and section 47-2608 of the District of Columbia Official Code to make conforming amendments; and to repeal section 3 of the Medical Insurance Empowerment Surplus Review Temporary Amendment Act of 2009.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Hospital and Medical Services Corporation Regulatory Amendment Act of 2009".

Sec. 2. The Hospital and Medical Services Corporation Regulatory Act of 1996, effective April 9, 1997 (D.C. Law 11-245; D.C. Official Code § 31-3501 *et seq.*), is amended as follows:

Amend § 31-3501

(a) Section 2 (D.C. Official Code § 31-3501) is amended as follows:

(1) Designate paragraph (7A) as paragraph (7B).

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

""(7A) Public-private partnership" means a mutually acceptable written agreement between the Mayor and a hospital and medical services corporation that is certified by the Commissioner upon the execution and delivery of the agreement by the parties and which agreement:

"(A) Shall include the following provisions:

"(i) A $5 million annual payment to the Healthy DC Fund (or

appropriate successor fund) by the hospital and medical services corporation to be used for subsidies that expand health insurance coverage for low-income District residents;

"(ii) A targeted city-wide health care initiative aimed at improving nutrition and increasing physical fitness among the District's senior citizens, or another comparable health promotion program;

"(iii) A term not to exceed 5 years, subject to extension upon the mutual written agreement of the parties;

"(iv)(I)(aa) The maintenance and support of the existing District open enrollment program as it operated prior to the enactment of the Medical Insurance Empowerment Amendment Act of 2008, effective March 25, 2009 (D.C. Law 17-369; 56 DCR 1346)("open enrollment program"), which program has an estimated average premium of $357 per member per month, and the enhancement of the open enrollment program by offering a new health maintenance organization product that includes comprehensive benefits with an average initial premium currently estimated at about $300 per member per month, which average may vary based upon age and family status, and subject to other reasonable adjustments, but with no adjustments for gender or pre-existing conditions.

"(bb) The annual premium rate of the existing open enrollment program shall not exceed 125% of the comparable medically underwritten product and shall be determined once every 12 months. The benefit package shall include, at a minimum, primary care services, specialist services, temporomandibular joint problems chiropractic services, mental health and addiction treatment, organ transplantation, treatment for morbid obesity, open heart surgery, and pharmaceutical benefits.

"(cc) The medical loss ratio to be utilized in rate filings and determinations shall not exceed 150%;

"(II) Under the open enrollment program pursuant to sub-sub-subparagraph (I) of this sub-subparagraph:

"(aa) Current members shall be permitted to maintain the option to continue their current open enrollment program coverage or opt for the new health maintenance organization product;

"(bb) New open enrollment members shall only be offered the new health maintenance organization product; and

"(cc) Total enrollment under subparagraph (A)(iv)(I) of this paragraph shall be capped at 2,500;

"(v) Participation in the open enrollment program (including the health maintenance organization product) may be limited to District residents, which shall be subject to periodic confirmation; and

"(vi)(I) A corporation shall prominently advertise the availability of the new open enrollment health maintenance organization product continuously on the Internet and at least quarterly in a newspaper of general circulation throughout the District.

"(II) The content and format of the advertising shall be

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filed with the Commissioner no less than 30 days before its appearance in a newspaper or on the Internet;

"(B) May include the following provisions:

"(i) Authority for the Commissioner to grant a hospital and medical services corporation reasonable relief from the requirements of the agreement, such as if federal or state health care reforms make the requirements unnecessary or redundant or if the corporation does not meet a financial performance or similar test as specified in the agreement; provided, that any relief granted shall not affect the certification of the agreement by the Commissioner or the status of the agreement as a public-private partnership for all purposes under this act; and

"(ii) Reasonable expiration and termination provisions; and

"(C) Shall be effective upon the certification of the Commissioner.".

Amend § 31-3505

(b) Section 6(e) (D.C. Official Code § 31-3505(e)) is amended to read as follows:

"(e) The applicant has:

"(1) Made provision for compliance with the open enrollment requirements of section 15, including the providing of other public services in the District; or

"(2) Has entered into a public-private partnership.".

Amend § 31-3506

(c) Section 7 (D.C. Official Code § 31-3506) is amended as follows:

(1) Subsection (e) is amended by striking the first sentence and inserting the phrase "The Commissioner may, on an annual basis, and shall, on a basis no less frequently than every 3 years, review the portion of the surplus of the corporation that is attributable to the District and may issue a determination as to whether the surplus is excessive. Any such review shall be undertaken in coordination with the other jurisdictions in which the corporation conducts business." in its place.

(2) Subsection (f) is amended by striking the phrase "section 15" and inserting the phrase "section 15 and payments and expenditures pursuant to a public-private partnership" in its place.

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

"(j) The existence of a public-private partnership shall not preclude the Commissioner's surplus evaluation of the corporation or diminish the Commissioner's authority to issue directives to the corporation pursuant to the evaluation.".

Amend § 31-3506.01

(d) Section 7a(a) (D.C. Official Code § 31-3506.01(a)) is amended as follows:

(1) Strike the phrase "dedicate excess surplus" and insert the phrase "dedicate excess surplus or to verify that the corporation is participating in a public-private partnership." in its place.

(2) Strike the phrase "or the corporation's compliance with its plan," and insert the phrase "or the corporation's compliance with its plan, or when verifying the corporation's participation in a public-private partnership" in its place.

Amend § 31-3514

(e) Section 15 (D.C. Official Code § 31-3514) is amended by adding new subsections (p), (q), and (r) to read as follows:

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"(p) In lieu of the requirements of subsection (m) through (o) of this section, the corporation may enter into a public-private partnership.

"(q) The corporation shall submit an annual report to the Mayor regarding the open enrollment program. The Mayor shall determine the format and content of the report; provided, that the report shall include:

"(1) Membership distribution by:
"(A) Age
"(B) Gender;
"(C) Ward;
"(D) Zip code;
"(E) Race/ethnicity;
"(F) Income; and
"(F) The amount of time in the program;
"(2) The number of members by contract type;
"(3) Program expenditures for:
"(A) Inpatient services;
"(B) Outpatient services;
"(C) Behavioral health services; and
"(D Prescription drugs;
"(4) Average premium;
"(5) Premium levels by age; and
"(6) The number of members that have reached the:
"(A) Out-of-pocket maximum expenditure; and
"(B) Annual prescription drug benefit maximum.

"(r) The public-private partnership shall be certified by January 31, 2010.".

Sec. 3. The Healthy DC Act of 2008, effective August 16, 2008 (D.C. Law 17-219; D.C. Official Code § 4-631 *et seq.*), is amended as follows:

(a) Section 5043(a) (D.C. Official Code § 4-633(a)) is amended as follows: **Amend § 4-633**

(1) Paragraph (2) is amended by striking the phrase "between 200% and" and inserting the phrase "not exceeding" in its place.

(2) Paragraph (4)(C) is amended as follows:
(A) Strike the phrase "employer based".
(B) Strike the word "premium".

(b) Section 5044(b) (D.C. Official Code § 4-634(b)) is amended to read as follows: **Amend § 4-634**

"(b) The Program shall limit annual premium costs for program participants as follows:

"(1) For a program participant with a gross household income of 300% of the federal poverty guidelines or less, the annual premium shall not exceed 3% of the participant's gross household income; and

"(2) For a program participant with a gross household income that exceeds 300% of the federal poverty guidelines, the annual premium shall not exceed 5% of the participant's gross household income.".

(c) Section 5045(a) (D.C. Official Code § 4-635(a)) is amended by striking the phrase "July 1, 2009" and inserting the phrase "January 1, 2010" in its place. Amend § 4-635

Sec. 4. Conforming amendments

(a) Section 650(c) of the Life Insurance Act, approved March 3, 1901 (31 Stat. 1291; D.C. Official Code § 31-205(c)), is amended by striking the phrase "payment to the rate stabilization fund under section 15 of the Hospital and Medical Services Corporation Regulatory Act of 1996, effective April 9, 1997 (D.C. Law 11-245; D.C. Official Code § 31-3514)," and inserting the phrase "payment to the rate stabilization fund under section 15 of the Hospital and Medical Services Corporation Regulatory Act of 1996, effective April 9, 1997 (D.C. Law 11-245; D.C. Official Code § 31-3514), and payments and expenditures pursuant to a public-private partnership entered into in accordance with the Hospital and Medical Services Corporation Regulatory Act of 1996, effective April 9, 1997 (D.C. Law 11-245; D.C. Official Code § 31-3501 *et seq.*)," in its place. Amend § 31-205

(b) Section 4a of the Health Maintenance Organization Act of 1996, effective August 16, 2008 (D.C. Law 17-219; D.C. Official Code § 31-3403.01), is amended by striking the phrase "District Medicaid program," and inserting the phrase "District Medicaid program, the Healthy DC Program," in its place. Amend § 31-3403.01

(c) Section 47-2608(a-1) of the District of Columbia Official Code is amended by striking the phrase "payment to the rate stabilization fund under § 31-3514" and inserting the phrase "payment to the rate stabilization fund under § 31-3514 and payments and expenditures pursuant to a public-private partnership entered into in accordance with the provisions of Chapter 5 of Title 31" in its place. Amend § 47-2608

(d) Section 3 of the Medical Insurance Empowerment Surplus Review Temporary Amendment Act of 2009, signed by the Mayor on 2nd reading on October 9, 2009 (D.C. Act 18-204; 56 DCR 8148), is repealed.

Sec. 5. 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. 6. 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

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
November 30, 2009