

ENROLLED ORIGINAL

AN ACT

D.C. ACT 18-320

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MARCH 1, 2010Codification
District of
Columbia
Official Code

2001 Edition

2010 Summer
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Publisher

To amend the Health Occupations Revision Act of 1985 to create continuing education requirements for nursing home administrators, add a condition under which nursing home administration licensees may be sanctioned, and authorize a board to require sanctioned licensees to participate in continuing education and professional mentoring; to amend the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983 to require the Mayor to promulgate rules related to the provision of transportation services at health care facilities, nondiscrimination in services, and rights specific to nursing facility residents, to establish requirements for nursing facilities related to staffing, resident access to information, employee training, the provision of health services on-site, the development of written policies and procedures, resident and family groups, medical assessments, discharge assessments, and transfers to acute care facilities and to add a cross-reference in regard to the grant of a variance, and to allow the Department of Health to appoint a temporary manager or monitor to a facility that has been issued a restricted or provisional license; and to amend the Nursing Home and Community Residence Facility Residents' Protections Act of 1985 to add new requirements related to discharge notification and planning.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Health Care Facilities Improvement Amendment Act of 2010".

Sec. 2. The Health Occupations Revision Act of 1985, approved March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1205.01 *et seq.*), is amended as follows:

(a) Section 510(b) (D.C. Official Code § 3-1205:10(b)) is amended as follows:

- (1) Paragraph (1)(C) is amended by striking the word "and" at the end.
- (2) Paragraph (2) is amended by striking the phrase "section 745." and inserting the phrase "section 745; and" in its place.
- (3) A new paragraph (3) is added to read as follows:
 - "(3) Establish continuing education requirements for nursing home administrators that include instruction on one or more of the following topics:

"(A) Staff management;

Amend
§ 3-1205.10

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- “(B) Continuity in assigning the same nursing staff to the same residents as often as practicable;
- “(C) Creating a resident-centered environment;
- “(D) Activities of daily living and instrumental activities of daily living;
- “(E) Wound care;
- “(F) Pain management;
- “(G) Prevention and treatment of depression;
- “(H) Prevention of pressure ulcers;
- “(I) Urinary incontinence management;
- “(J) Discharge planning and community transitioning;
- “(K) Fall prevention;
- “(L) Geriatric social services and individual competency; and
- “(M) Behavior management.”.

(b) Section 514 (D.C. Official Code § 3-1205.14) is amended as follows:

Amend § 3-1205.14

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

- (A) Paragraph (44) is amended by striking the word “or” at the end.
- (B) Paragraph (45) is amended by striking the period at the end and inserting the phrase “; or” in its place.
- (C) A new paragraph (46) is added to read as follows:

“(46) Acts in a manner inconsistent with the health and safety of the residents of the nursing facility of which the licensee is the administrator.”.

(2) Subsection (c)(6) is amended as follows:

- (A) Subparagraph (B) is amended by striking the word “and” at the end.
- (B) Subparagraph (C) is amended by adding the word “and” at the end.
- (C) A new subparagraph (D) is added to read as follows:
- “(D) Require participation in continuing education and professional mentoring.”.

Sec. 3. The Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501 *et seq.*), is amended as follows:

(a) Section 5 (D.C. Official Code § 44-504) is amended as follows:

Amend § 44-504

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

- (A) Paragraph (3) is amended as follows:
 - (i) Strike the phrase “agency, including (where appropriate), but not limited to, standards governing the following:” and insert the phrase “agency, including standards governing:” in its place.
 - (ii) Strike the phrase “social, and other services;” and insert the phrase “social, emergency and non-emergency transportation, and other services;” in its place.
- (B) Paragraph (4) is amended to read as follows:

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“(4) A statement of patients, clients, and residents’ rights and responsibilities for each type of facility and agency, including the right to non-discrimination in treatment or access to services based on reasons prohibited by the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*)”.

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

“(e-1) For nursing facility residents, the statement required by subsection (a)(4) of this section shall include, at a minimum, the right to:

“(1) Be fully informed by the nursing facility of all resident rights and all facility rules governing resident conduct and responsibilities upon admission and annually thereafter;

“(2) Either manage one’s own personal finances, or be given a quarterly report of the resident’s finances if this responsibility has been delegated in writing to the nursing facility;

“(3) Be treated with respect and dignity and assured privacy during treatment and when receiving personal care;

“(4) Not be required to perform services for the nursing facility that are not for therapeutic purposes, as identified in the plan of care for the resident;

“(5) Associate and communicate privately with persons of the resident’s choice, unless medically contraindicated;

“(6) Send and receive personal mail, unopened by personnel at the nursing facility;

“(7) Participate in activities of social, religious, and community groups at the discretion of the resident, unless medically contraindicated;

“(8) Keep and use personal clothing and possessions, as space permits, unless to do so would infringe on other residents’ rights or is medically contraindicated;

“(9) Maintain, at the nursing facility, a private locker, chest, or chest drawer that is large enough to accommodate jewelry and small personal property and that can be locked by the resident;

“(10) Be provided with privacy for visits by the resident’s spouse or domestic partner, or, if spouses or domestic partners are both residents in the nursing facility, be permitted to share a room;

“(11) Be free from mental or physical abuse;

“(12) Be free from chemical and physical restraints except as authorized pursuant to federal or District law and regulation;

“(13) Be transferred or discharged only for the grounds set forth in section 301 of the Nursing Home and Community Residence Facility Residents’ Protection Act of 1985, effective April 18, 1986 (D.C. Law 6-108; D.C. Official Code § 44-1003.01); and

“(14) Be discharged from the nursing facility after:

“(A) Receiving a consultation from a physician of the medical consequences of discharge; and

“(B) Providing the administrator, physician, or a nurse of the nursing

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facility written notice of the desire to be discharged; provided, that if the resident is a minor or a guardian has been appointed for a resident, the written request for discharge shall be signed by the resident's guardian, unless there is a court order to the contrary."

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

"(h-1)(1) As part of the standards for nursing facilities required by subsection (a)(3) of this section, the Mayor shall require nursing facilities to:

"(A) Maintain an organizational and staffing structure that promotes assignment of the same caregivers to care for the same residents as often as practicable;

"(B) Except as provided in paragraph (2) of this subsection:

"(i) Beginning January 1, 2011, have either a physician, physician assistant, or an advanced practice registered nurse, excluding the medical director, available on-site for a minimum of 0.2 hours per week for each resident at the facility; and

"(ii) Beginning January 1, 2012, provide a minimum daily average of 4.1 hours of direct nursing care per resident per day, of which at least 0.6 hours shall be provided by an advanced practice registered nurse or registered nurse, which shall be in addition to any coverage required by sub-subparagraph (i) of this subparagraph;

"(C) Provide annual training to all nursing home employees on the appropriate use of emergency transport and 911 services;

"(D) Make each resident's attending physician's contact information readily available to facility staff as well as to each resident and his or her family or legal representative upon request;

"(E) Provide employee training that addresses the special health care needs of the elderly and that addresses the needs of specific populations, including those characterized by:

- (i) Race;
- (ii) Ethnicity;
- (iii) Religious affiliation;
- (iv) Sexual orientation;
- (v) Gender; and
- (vi) Gender identity;

"(F) Ensure that appropriate health care services are available on-site, as determined by the Department of Health, for the purpose of reducing the need to transport residents off-site for routine health services, including:

"(i) Podiatry;

"(ii) Rehabilitative services, such as physical therapy and occupational therapy;

"(iii) Wound care;

"(iv) Mental health;

"(v) Dialysis; and

"(vi) Substance-abuse treatment;

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“(G) Develop and maintain written policies and procedures governing the management and operation of the facility, which shall be required by the Department of Health as a component of licensure, reviewed by the Department of Health, and made available upon request, including policies and procedures governing:

- “(i) Nursing services;
- “(ii) Physician services;
- “(iii) Emergency care;
- “(iv) Dental services;
- “(v) Ventilator services;
- “(vi) Use of physical and chemical restraints;
- “(vii) Infection control;
- “(viii) Medication management;
- “(ix) Podiatry services;
- “(x) Dialysis services;
- “(xi) Recreational services;
- “(xii) Emergency water supply;
- “(xiii) Laundry and linen management;
- “(xiv) Fire and disaster preparedness; and
- “(xv) Resident emergency and non-emergency transportation.

“(H) Based on a resident’s right to participate in resident and family groups (Requirements For Long Term Care Facilities, 42 C.F.R. § 483.15(c)), make available to any resident or family group:

- “(i) Promotional and advertising assistance so that residents and residents’ family members are aware of their right to convene groups;
- “(ii) Adequate meeting space and logistical assistance;
- “(iii) Information regarding policies and procedures for nursing home care, resident rights and responsibilities, and laws and rules that apply to the facility and its residents;
- “(iv) Staff for the operation of each meeting, upon request; and
- “(v) Written feedback and responses to recommendations and grievances;

“(I) Ensure that a resident is seen by a physician within 72 hours of admission and has recorded in his or her medical record:

- “(i) An evaluation of the resident’s primary diagnoses;
- “(ii) The resident’s:
 - “(I) Height;
 - “(II) Weight;
 - “(III) Mental health status; and
 - “(IV) Personal care needs;
- “(iii) Whether it is medically contraindicated for the resident to

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participate in:

- “(I) Physical;
- “(II) Recreational; or
- “(III) Rehabilitative activities; and
- “(iv) An evaluation of any existing:
 - “(I) Medical care plan;
 - “(II) Treatment orders; and
 - “(III) Medications;

“(J) Obtain a medical order from the resident’s attending physician, the facility’s medical director, an on-staff physician, or advanced practice registered nurse if a resident requires medical treatment prior to calling 911; provided, that a prior medical order shall not be required if it is determined that there is a situation that requires an immediate transfer to a hospital; provided further, that if a nursing facility does not obtain a required medical order prior to calling 911, the facility shall document in the resident’s medical record why obtaining a medical order was not practicable; and

“(K) Conduct a discharge assessment within 14 days of admission, and biannually thereafter, that includes:

- “(i) A time frame for discharging the resident to return home or to another facility; and
- “(ii) If the resident is likely to be discharged within 6 months of the discharge assessment, a discharge plan.

“(2) The Department of Health shall have the authority to adjust the staffing requirements and formulas set forth in paragraph (1)(B)(i) and (ii) of this subsection based on the individual needs of a nursing facility; provided, that the staffing requirements set forth in paragraph (1)(B)(ii) of this subsection shall never be less than 3.5 hours of direct nursing care per resident per day.”.

(b) Section 6(e) (D.C. Official Code § 44-505(e)) is amended by striking the phrase “section 5(a)(3)” and inserting the phrase “section 5(a)(3) and (h-1)” in its place.

Amend § 44-505

(c) Section 7 (D.C. Official Code § 44-506) is amended by adding a new subsection (e) to read as follows:

Amend § 44-506

“(e) If a facility is issued a restricted or provisional license, the Department of Health may, if appropriate, appoint a temporary manager or monitor in accordance with a mutually agreed upon timetable or until the facility becomes compliant with § 44-504(a)(3) and (h-1).”.

Sec. 4. The Nursing Home and Community Residence Facility Residents’ Protections Act of 1985, effective April 18, 1986 (D.C. Law 6-108; D.C. Official Code § 44-1001.01 *et seq.*), is amended as follows:

(a) Section 202 (D.C. Official Code § 44-1002.02) is amended as follows:

Amend § 44-1002.02

- (1) Paragraph (5) is amended by striking the word “or” at the end.
- (2) Paragraph (6) is amended by striking the period and inserting the phrase “;

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or" in its place.

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

"(7) The facility has been issued a restricted or provisional license by the Department of Health."

(b) Section 301(a)(3) (D.C. Official Code § 44-1003.01(a)(3)) is amended by striking the phrase "maintenance," and inserting the phrase "maintenance, after reasonable and appropriate notice," in its place.

Amend
§ 44-1003.01

(c) Section 302 (D.C. Official Code § 44-1003.02) is amended as follows:

Amend
§ 44-1003.02

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

(A) Paragraph (5) is amended by striking the word "and" at the end.

(B) Paragraph (6) is amended by striking the period at the end and inserting the phrase "; and" in its place.

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

"(7) The location to which the resident will be transferred."

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

"(d-1) Upon oral and written notification of discharge, the nursing facility shall provide to the resident and his or her representative:

"(1) A current assessment of the resident's care needs and the kind of service the resident will need upon discharge;

"(2) Information about the resident's right to receive counseling that explains the resident's options of community-based care and care in the home, including the right to request that the facility arrange a visit to at least one alternative community-based care facility; and

"(3) A discharge plan that:

"(A) Links the resident with community resources, including the DC Aging and Disability Resource Center;

"(B) Explains the resident's options of community-based care and care in the home, including the right to request that the facility arrange a visit to at least one alternative community-based care facility; and

"(C) Sets forth an arrangement for the resident and an immediate family member or legal representative, if any, to visit at least one alternative community-based care facility, at the resident's request."

Sec. 5. Fiscal impact statement.

The Council adopts the February 1, 2010 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)).

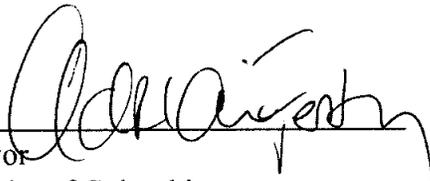
Sec. 6. Effective date.

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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 § 1-2067.02(c)(1)), and publication in the District of Columbia Register.



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
March 1, 2010

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AN ACT

D.C. ACT 18-321

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MARCH 1, 2010

*Codification
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To provide, on an emergency basis, that a parent may surrender a newborn infant to an authorized receiving facility without being charged with abuse, neglect, or abandonment of the newborn infant where there is no actual or suspected abuse or neglect, to require the Mayor to post signs for further information on the exterior of each authorized receiving facility, to require hospitals to accept a surrendered newborn infant, to provide for further placement with the Child and Family Services Agency, to provide for the relinquishment and restoration of parental rights, to provide immunity to a facility and personnel receiving a surrendered newborn infant, to require the Mayor to submit an annual status report, and to require the Mayor to issue rules to implement this act and to submit the proposed rules to the Council for approval; and to amend section 16-304 of the District of Columbia Official Code to provide for adoption under this act.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Newborn Safe Haven Emergency Act of 2010".

TITLE I. SAFE HAVEN

Sec. 101. Definitions.

For the purposes of this act, the term:

(1) "Authorized Receiving Facility" means a hospital, or other place authorized by the Mayor, by rule, to accept a newborn for surrender pursuant to this act.

(2) "CFSA" means the Child and Family Services Agency.

(3) "Newborn" means an infant whose parent refuses or is unable to assume the responsibility for the infant's care, control, and subsistence and who is surrendered by that parent and who a licensed physician or other person authorized to accept the surrender reasonably believes is 14 days old or less.

(4) "Surrender " means to bring a newborn to an Authorized Receiving Facility during its hours of operation and to leave the newborn with personnel of the Authorized Receiving Facility.

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Sec. 102. Surrender.

(a) Except when there is actual or suspected child abuse or neglect, a custodial parent who is a resident of the District of Columbia may surrender a newborn in accordance with this act and shall have the right to remain anonymous and to leave the place of surrender at any time and shall not be pursued by any person at the time of surrender or prosecuted for the surrender of the newborn.

(b) To surrender a newborn in accordance with this act, and rules promulgated pursuant to this act, shall not, by itself, constitute a basis for a finding of abuse, neglect, or abandonment.

(c) The Authorized Receiving Facility personnel receiving the surrendered newborn shall make a reasonable effort to obtain family and medical history from the surrendering parent, including personal information such as both of the parents' identities, and shall provide to the surrendering parent information on adoption and counseling services.

(d) The Authorized Receiving Facility personnel receiving the surrender of a newborn shall file a written statement with CFSA, on or before the time CFSA assumes physical custody of the newborn, that includes the:

- (1) Date of the surrender;
- (2) Time of the surrender;
- (3) Circumstances of the surrender; and
- (4) Personal information obtained, if any.

Sec. 103. Signage.

The Mayor shall develop and post uniform signage with a toll-free number to call for further information in a conspicuous place on the exterior of each Authorized Receiving Facility that states in plain terms that a newborn may be surrendered at the facility in accordance with this act.

Sec. 104. Placement.

(a) After the surrender of a newborn, an Authorized Receiving Facility that is not a hospital shall transport the newborn to the nearest hospital as soon as transportation can be arranged.

(b)(1) The act of surrender shall constitute implied consent for the hospital to which the newborn is surrendered or transported and the hospital's medical personnel to treat and provide care for the newborn and arrange for further placement with CFSA and, through CFSA, with a preadoptive home whenever possible.

(2) Hospital personnel shall immediately contact CFSA to report the surrender of the newborn and arrange for transport of the newborn to CFSA. The CFSA shall assume physical custody of the newborn within 23 hours of the surrender.

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Sec. 105. Parental rights.

(a) Notwithstanding section 6(b) of An Act To regulate the placing of children in family homes, and for other purposes, approved April 22, 1944 (58 Stat. 193; D.C. Official Code § 4-1406(b)) ("placement act"), there shall be no 72-hour waiting period prior to relinquishment of parental rights under this act. A relinquishment of parental rights shall take place upon surrender. Upon CFSA's receipt of the statement required by section 102(d) and assuming physical custody, CFSA shall take immediate care, custody, and control of the surrendered newborn.

(b) A relinquishment of parental rights under this act may be revoked and parental rights restored in accordance with section 6(c) and (d) of the placement act; provided, that:

(1) The parent agrees to genetic testing to establish maternity or paternity;

(2) The genetic test establishes that the surrendering parent is the biological parent of the newborn; and

(3) A risk assessment is conducted to determine if a further investigation is necessary or that the family needs to be referred for support services and is so referred.

(c)(1) A relinquishment of parental rights and any revocation of the relinquishment shall be recorded and filed by CFSA in a properly sealed file in the Family Court of the Superior Court for the District of Columbia, along with a copy of the statement required by section 102(d), within 20 days after the expiration of the 10-day revocation period in section 6(c) of the placement act.

(2) The seal of the relinquishment file shall not be broken except for good cause shown and upon the written order of a judge.

(d)(1) No later than 90 days after surrender, CFSA shall attempt to identify, locate, and notify the non-surrendering parent by performing a missing-child search and publishing notice of the surrender of the newborn in accordance with paragraph (2) of this subsection.

(2) The notice required by paragraph (1) of this subsection shall, at a minimum, include:

(A) In regard to the surrender, the:

- (i) Place;
- (ii) Date; and
- (iii) Time;

(B) In regard to the newborn, the:

- (i) Sex;
- (ii) Race;
- (iii) Approximate age;
- (iv) Any identifying marks; and
- (v) Any other identifying information CFSA considers necessary;

and

(C) A statement that the non-surrendering parent's failure to notify

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CFSA, or other contact as set forth in the notice, of the intent to exercise his or her parental rights and responsibilities within 20 days of publication of this notice shall be deemed to be the non-surrendering parent's irrevocable consent to the termination of all parental rights and his or her irrevocable waiver of any right to notice of, or opportunity to participate in, any termination of parental rights proceeding involving the surrendered newborn.

(3) The court may grant a petition for adoption without consent following relinquishment of parental rights and the termination of parental rights pursuant to this section and D.C. Official Code § 16-304(g).

Sec. 106. Immunity from liability.

(a) An Authorized Receiving Facility and the personnel of an Authorized Receiving Facility shall be immune from civil or criminal liability for the good-faith performance of the reporting and placement responsibilities under this act, including liability for the failure to file a report that might otherwise be incurred or imposed on a person required to report suspected incidents of child abuse or neglect under section 2 of An Act To provide for the mandatory reporting by physicians and institutions in the District of Columbia of certain physical abuse of children, approved November 5, 1966 (80 Stat. 1354; D.C. Official Code § 4-1321.02).

(b) In any civil or criminal proceeding brought under this act concerning the surrender of a newborn, good faith shall be presumed unless rebutted.

Sec. 107. Status report.

The Mayor shall submit a status report by January 1, 2011, and on January 1 of each year thereafter, to the Council, which shall include the:

- (1) Number of newborns surrendered;
- (2) Services provided to surrendered newborns;
- (3) Outcome of the care provided for each surrendered newborn; and
- (4) Number and disposition of cases of surrendered newborns.

Sec. 108. Rules.

The Mayor, pursuant to 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.*), shall issue rules to implement the provisions of this act. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding days of Council recess. If the Council does not approve or disapprove the proposed rules, by resolution, within the 45-day review period, the proposed rules shall be deemed approved.

TITLE II. CONFORMING AMENDMENT.

Sec. 201. Section 16-304 of the District of Columbia Official Code is amended as follows:

Note,
§ 16-304

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(a) The heading is amended to read as follows:

"§ 16-304. Consent; exceptions."

(b) A new subsection (g) is added to read as follows:

"(g) The court may grant a petition for adoption without consent when there has been a relinquishment of parental rights and the termination of parental rights pursuant to section 105 of the Newborn Safe Haven Emergency Act of 2010, passed on emergency basis on February 2, 2010 (Enrolled version of Bill 18-632)."

TITLE III. FISCAL IMPACT STATEMENT.

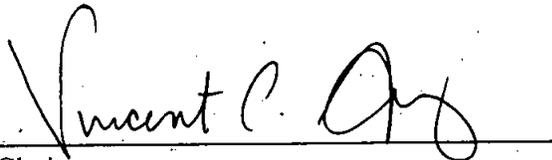
Sec. 301. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report for the Newborn Safe Haven Act of 2009, passed on 2nd reading on February 2, 2010 (Enrolled version of Bill 18-180), 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)).

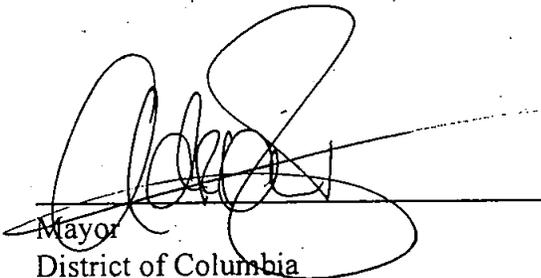
TITLE IV. EFFECTIVE DATE.

Sec. 401. 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 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

March 1, 2010
Codification District of Columbia Official Code, 2001 Edition

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D.C. ACT 18-322

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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To require, on an emergency basis, the Mayor to submit a budget gap-closing plan to the Council by February 10, 2010, and to require the Mayor to submit monthly reports to the Council on the progress in controlling overspending during fiscal year 2010.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Fiscal Year 2010 Balanced Budget and Spending Pressure Control Plan Emergency Act of 2010".

Sec. 2. The Mayor shall submit a budget gap-closing plan for the District government for the current fiscal year to the Council not later than February 10, 2010. The Mayor shall make the plan available to the public.

Sec. 3. The Mayor shall submit to the Council by the 10th of each month a report, which is certified by the Office of the Chief Financial Officer, on the progress for controlling overspending in fiscal year 2010. The Mayor shall make the reports available to the public.

Sec. 4. Fiscal impact statement.

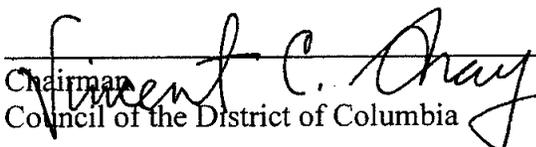
The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 5. 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

UNSIGNED

Mayor
District of Columbia
March 1, 2010

ENROLLED ORIGINAL

AN ACT

D.C. ACT 18-323

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MARCH 1, 2010

To amend, on an emergency basis, the Legalization of Marijuana for Medical Treatment Initiative of 1999 to delay the applicability of the initiative until the effective date of the Legalization of Marijuana for Medical Treatment Initiative Amendment Act of 2010.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Legalization of Marijuana for Medical Treatment Initiative Applicability Emergency Amendment Act of 2010".

Sec. 2. The Legalization of Marijuana for Medical Treatment Initiative of 1999, enacted on September 20, 1999 (D.C. Act 13-138), is amended by adding a new section 11a to read as follows:

"Sec. 11a. Applicability.

"This act shall apply upon the effective date of the Legalization of Marijuana for Medical Treatment Initiative Amendment Act of 2010, as introduced on January 19, 2010 (D.C. Bill 18-622)."

Sec. 3. Fiscal impact statement,

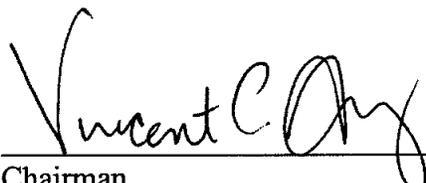
The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 4. Effective date.

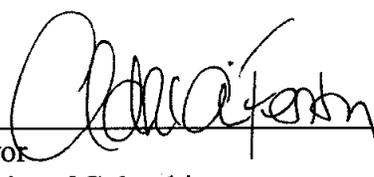
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section

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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
March 1, 2010

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AN ACT

D.C. ACT 18-324

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MARCH 1, 2010*Codification
District of
Columbia
Official Code*

2001 Edition

2010 Summer
Supp.West Group
Publisher

To authorize and provide, on an emergency basis, for the issuance, sale, and delivery of District of Columbia revenue bonds in one or more series, payable from special assessment revenues and issued pursuant to section 490 of the District of Columbia Home Rule Act; to authorize the Mayor to use the bond proceeds to provide funding for the initial installation of energy efficiency and renewable energy retrofits and improvements; and to amend Chapter 8 of Title 47 of the District of Columbia Official Code to impose a real property tax assessment on the real property owner who has entered into an energy efficiency financing agreement.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Energy Efficiency Financing Emergency Act of 2010".

TITLE I. BOND FINANCING

Sec. 101. Definitions.

For the purposes of this act, the term:

(1) "Authorized Delegate" means any one of the following:

- (A) The City Administrator;
- (B) The Chief Financial Officer;
- (C) The District of Columbia Treasurer;
- (D) The Deputy Mayor for Planning and Economic Development; or
- (E) Any officer or employee of the Executive Office of the Mayor to

whom the Mayor has delegated any of the Mayor's functions under this act pursuant to section 422(6) of the Home Rule Act and who has been designated as an Authorized Delegate for purposes of this act.

(2) "Bond Counsel" means a firm or firms of attorneys designated as bond counsel from time to time by the Mayor.

(3) "Bonds" means the District of Columbia revenue bonds, notes, or other obligations (including refunding bonds, notes, and other obligations), in one or more series, authorized to be issued pursuant to this act.

(4) "Chief Financial Officer" means the Chief Financial Officer of the District

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of Columbia.

(5) "Closing Documents" means all documents and agreements, other than Financing Documents, that may be necessary and appropriate to issue, sell, and deliver the bonds, and includes agreements, certificates, letters, opinions, forms, receipts, and other similar instruments.

(6) "Debt Service" means payment of principal, premium, if any, and interest on the bonds.

(7) "Financing Documents" means the documents, other than Closing Documents, that relate to the financing or refinancing of transactions to be effected through the issuance, sale, and delivery of the bonds, including any required collection agreement, offering document, and any required supplements to any such documents.

(8) "Home Rule Act" means the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 774; D.C. Official Code § 1-201.01 *et seq.*).

(9) "Indenture" means the trust indentures, including a master trust indenture and any supplemental trust indenture, pursuant to which one or more series of the bonds are issued.

(10) "Special Assessment" means the special assessment authorized by subchapter IX of Chapter 8 of Title 47 of the District of Columbia Official Code.

(11) "Trustee" means the trustee under the indenture.

Sec. 102. Creation of the Special Energy Assessment Fund.

(a)(1) There is established as a nonlapsing fund the Special Energy Assessment Fund. The Chief Financial Officer shall establish additional accounts in the Special Energy Assessment Fund, consisting of a Special Energy Assessment Bond Debt Service Account for each series of bonds and a single Special Energy Assessment Program Administrative Account. The Chief Financial Officer shall pay, or direct the payment of, all receipts of the principal and interest portion of each Special Assessment into the Special Energy Assessment Bond Debt Service Account applicable to the series of bonds secured by the payment of that Special Assessment, and the Chief Financial Officer shall pay, or direct the payment of, the receipt of the administrative costs portion of each Special Assessment into the Special Energy Assessment Program Administrative Account. The Mayor shall pledge and create a security interest in the Special Assessment revenues and all other funds deposited in each Special Energy Assessment Bonds Debt Service Account to pay the Debt Service on the applicable series of bonds without further action by the Council as permitted by section 490(f) of the Home Rule Act. The Chief Financial Officer shall pay from the Special Energy Assessment Program Administrative Account the annual costs of administering the collection and maintenance of the Special Assessment and the annual costs of administering the energy efficiency loan program authorized by Title II. Except for the Special Assessment revenues and any other amounts specifically authorized by the Council, all Debt Service and administrative costs shall be paid only from receipts from the Special Assessments and no other District funds shall be deposited

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in any fund or account created by this act or used for the purposes of such fund or account.

(2) Except as provided by subsection (c) of this section, all funds deposited into the Special Energy Assessment Fund, and any interest earned on those 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 this section without regard to fiscal year limitation, subject to authorization by Congress.

(b) Receipt of the principal and interest portion of the Special Assessment and all amounts deposited in each Special Energy Assessment Bond Debt Service Account, plus all investments or earnings on those amounts, shall be irrevocably dedicated and pledged to the payment of the principal of, and interest on, the applicable bonds as provided in this act. Any escrow or other agreement entered into by the District providing for holding funds for the benefit of the holders of the bonds shall be maintained as long as any of the bonds are outstanding under the applicable Financing Documents. The administrative costs portion of the Special Assessment deposited in the Special Energy Assessment Program Administrative Account, plus all investments or earnings on those amounts, shall be used only for the payment of the costs of administering the program authorized by Title II.

(c) If, at the end of any fiscal year of the District following the issuance of bonds, the value of cash and investments in a Special Energy Assessment Bond Debt Service Account exceeds the amount of all payments authorized by this act and the Financing Documents applicable to that series of bonds, including required deposits into reserve funds, amounts to be set aside for additional series of bonds, and any coverage requirements associated with the sale of the bonds, during the upcoming fiscal year, the excess shall be transferred to the General Fund of the District of Columbia, unless the District elects to use the excess to redeem that series of bonds prior to maturity. Amounts deposited in the Special Energy Assessment Program Administrative Account shall remain in, and shall be used for the purposes of, that account.

Sec. 103. Bond authorization.

(a) The Council approves and authorizes the issuance of one or more series of bonds in a total principal amount not to exceed \$250 million. The bonds, which may be issued at any time and from time to time, in one or more series, shall be tax-exempt or taxable as the Mayor shall determine and shall be payable and secured as provided in section 104.

(b) The Mayor is authorized to pay from the proceeds of the bonds the financing costs and expenses of issuing and delivering the bonds, including, but not limited to, underwriting, legal, accounting, and financial advisory fees; bond insurance or other credit enhancement; expenses for marketing and selling the bonds; printing costs and expenses; and the costs of funding capitalized interest and required reserves.

(c) The remaining proceeds of the bonds shall be paid into the National Capital Energy Fund created by section 202 and used to provide funds for the initial installation of energy

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efficiency and renewable energy improvements that are permanently attached to residential, commercial, industrial, or other real property as authorized under Title II.

Sec. 104. Payment and security.

(a) Except as may be otherwise provided in this act, Debt Service on each series of bonds shall be payable solely and only from proceeds received from the sale of that series of bonds, income realized from the temporary investment of those proceeds, Special Assessment revenues allocated to the applicable Special Energy Assessment Bond Debt Service Account, amounts received from prepayments of any loans made pursuant to this act, income realized from the temporary investment of those Special Assessment revenues prior to payment to the bond holders, and other moneys that, as provided in the Financing Documents, may be made available to the District for payment of the bonds from sources other than the District, all as provided for in the Financing Documents.

(b) Payment of the bonds shall be secured as provided in the Financing Documents and by an assignment by the District for the benefit of the bond holders of certain of its rights under the Financing Documents and Closing Documents to the trustee for the bonds pursuant to the Financing Documents.

(c) The trustee is authorized to deposit, invest, and disburse the proceeds received from the sale of the bonds pursuant to the Financing Documents.

Sec. 105. Bond details.

(a) The Mayor is authorized to take any action reasonably necessary or appropriate in accordance with this act in connection with the preparation, execution, issuance, sale, delivery, security for, and payment of the bonds of each series, including, but not limited to, determinations of:

- (1) The final form, content, designation, and terms of the bonds, including a determination that the bonds may be issued in certificated or book-entry form;
- (2) The principal amount of the bonds to be issued and denominations of the bonds;
- (3) The rate or rates of interest or the method for determining the rate or rates of interest on the bonds;
- (4) The date or dates of issuance, sale, and delivery of, and the payment of interest on, the bonds, and the maturity date or dates of the bonds;
- (5) The terms under which the bonds may be paid, optionally or mandatorily redeemed, accelerated, tendered, called, or put for redemption, repurchase, or remarketing before their respective stated maturities;
- (6) Provisions for the registration, transfer, and exchange of the bonds and the replacement of mutilated, lost, stolen, or destroyed bonds;
- (7) The creation of any reserve fund, sinking fund, or other fund with respect to the bonds;
- (8) The time and place of payment of the bonds;

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(9) Procedures for monitoring the use of the proceeds received from the sale of the bonds to ensure that the proceeds are properly applied and used to accomplish the purposes of the Home Rule Act and this act;

(10) Actions necessary to qualify the bonds under blue sky laws of any jurisdiction where the bonds are marketed; and

(11) The terms and types of credit enhancement under which the bonds may be secured.

(b) The bonds shall contain a legend, which shall provide that the bonds are special obligations of the District, are without recourse to the District, are not a pledge of, and do not involve, the faith and credit or the taxing power of the District (other than the Special Assessment), do not constitute a debt of the District, and do not constitute lending of the public credit for private undertakings as prohibited in section 602(a)(2) of the Home Rule Act.

(c) The bonds shall be executed in the name of the District and on its behalf by the manual or facsimile signature of the Mayor, and attested by the Secretary of the District of Columbia by the Secretary's manual or facsimile signature.

(d) The official seal of the District, or a facsimile of it, shall be impressed, printed, or otherwise reproduced on the bonds.

(e) The bonds of any series may be issued in accordance with the terms of an indenture to be entered into by the District and a trustee to be selected by the Mayor, and may be subject to the terms of one or more agreements entered into by the Mayor pursuant to section 490(a)(4) of the Home Rule Act.

(f) The bonds may be issued at any time or from time to time in one or more issues and in one or more series.

(g) The bonds are declared to be issued for essential public and governmental purposes. The bonds, the interest thereon, and the income therefrom, and all funds pledged or available to pay or secure the payment of the bonds, shall at all times be exempt from taxation by the District, except for estate, inheritance, and gift taxes.

(h) The District does pledge and covenant and agree with the holders of the bonds that, subject to the provisions of the Financing Documents, the District will not limit or alter the basis on which the revenues pledged to secure the bonds are collected or allocated, will not impair the contractual obligations of the District to fulfill the terms of any agreement made with the holders of the bonds, and will not in any way impair the rights or remedies of the holders of the bonds, until the bonds, together with interest thereon, and all costs and expenses in connection with any suit, action, or proceeding by or on behalf of the holders of the bonds, are fully met and discharged. This pledge and agreement for the District may be included as part of the contract with the holders of the bonds. This subsection constitutes a contract between the District and the holders of the bonds. To the extent that any acts or resolutions of the Council may be in conflict with this act, this act shall be controlling.

(i) Consistent with section 490(a)(4)(B) of the Home Rule Act and notwithstanding Chapter 9 of Title 28 of the District of Columbia Official Code:

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(1) A pledge made and security interest created in respect of the bonds or pursuant to any related Financing Document shall be valid, binding, and perfected from the time the security interest is created, with or without physical delivery of any funds or any property and with or without any further action;

(2) The lien of the pledge shall be valid, binding, and perfected as against all parties having any claim of any kind in tort, contract, or otherwise against the District, whether or not such party has notice; and

(3) The security interest shall be valid, binding, and perfected whether or not any statement, document, or instrument relating to the security interest is recorded or filed.

Sec. 106. Sale of the bonds.

(a) The bonds of any series may be sold at negotiated or competitive sale at, above, or below par, to one or more persons or entities, and upon terms that the Mayor considers to be in the best interests of the District.

(b) The Mayor or an Authorized Delegate may execute, in connection with each sale of the bonds, offering documents on behalf of the District, may deem final any such offering document on behalf of the District for purposes of compliance with federal laws and regulations governing such matters, and may authorize the distribution of the documents in connection with the sale of the bonds.

(c) The Mayor is authorized to deliver the executed and sealed bonds, on behalf of the District, for authentication, and, after the bonds have been authenticated, to deliver the bonds to the original purchasers of the bonds upon payment of the purchase price.

(d) The bonds shall not be issued until the Mayor receives an approving opinion from bond counsel as to the validity of the bonds of such series and, if the interest on the bonds is expected to be exempt from federal income taxation, the treatment of the interest on the bonds for purposes of federal income taxation.

(e) Subchapter III-A of Chapter 3 of Title 47 of the District of Columbia Official Code shall not apply to any contract the Mayor may from time to time enter into, or the Mayor may determine to be necessary or appropriate, for purposes of this act. 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.*), shall not apply to contracts the Mayor may from time to time enter into, or the Mayor may determine to be necessary or appropriate, for purposes of this act until 3 years after the effective date of this act.

Sec. 107. Financing and closing documents.

(a) The Mayor is authorized to prescribe the final form and content of all Financing Documents and all Closing Documents to which the District is a party that may be necessary or appropriate to issue, sell, and deliver the bonds.

(b) The Mayor is authorized to execute, in the name of the District and on its behalf, the Financing Documents and any Closing Documents to which the District is a party by the Mayor's

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manual or facsimile signature.

(c) If required, the official seal of the District, or a facsimile of it, shall be impressed, printed, or otherwise reproduced on the bonds, the other Financing Documents, and the Closing Documents to which the District is a party.

(d) The Mayor's execution and delivery of the Financing Documents and the Closing Documents to which the District is a party shall constitute conclusive evidence of the Mayor's approval, on behalf of the District, of the final form and content of the executed Financing Documents and the executed Closing Documents.

(e) The Mayor is authorized to deliver the executed and sealed Financing Documents and Closing Documents, on behalf of the District, prior to or simultaneously with the issuance, sale, and delivery of the bonds, and to ensure the due performance of the obligations of the District contained in the executed, sealed, and delivered Financing Documents and Closing Documents.

Sec. 108. Limited liability.

(a) The bonds shall be special obligations of the District payable solely and only from the amounts deposited in the respective Special Energy Assessment Bond Debt Service Accounts and Bond Proceeds Account of the National Capital Energy Fund created by section 202. The bonds shall be without recourse to the District. The bonds shall not be general obligations of the District, shall not be a pledge of, or involve, the faith and credit or the taxing power of the District (other than the Special Assessment), shall not constitute a debt of the District, and shall not constitute lending of the public credit for private undertakings as prohibited in section 602(a)(2) of the Home Rule Act.

(b) The bonds shall not give rise to any pecuniary liability of the District and the District shall have no obligation with respect to the purchase of the bonds.

(c) No person, including, but not limited to any bond holder, shall have any claims against the District or any of its elected or appointed officials, officers, employees, or agents for monetary damages suffered as a result of the failure of the District to perform any covenant, undertaking, or obligation under this act, the bonds, the Financing Documents, or the Closing Documents, or as a result of the incorrectness of any representation in or omission from the Financing Documents or the Closing Documents, unless the District or its elected or appointed officials, officers, employees, or agents have acted in a willful and fraudulent manner.

Sec. 109. District officials.

(a) Except as otherwise provided in section 108(c), the elected or appointed officials, officers, employees, or agents of the District shall not be liable personally for the payment of the bonds or be subject to any personal liability by reason of the issuance of the bonds, or for any representations, warranties, covenants, obligations, or agreements of the District contained in this act, the bonds, the Financing Documents, or the Closing Documents.

(b) The signature, countersignature, facsimile signature, or facsimile countersignature of any official appearing on the bonds, the Financing Documents, or the Closing Documents shall be

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valid and sufficient for all purposes notwithstanding the fact that the individual signatory ceases to hold that office before delivery of the bonds, the Financing Documents, or the Closing Documents.

Sec. 110. Information reporting.

Within 3 days after the Mayor's receipt of the transcript of proceedings relating to the issuance of the bonds, the Mayor shall transmit a copy of the transcript to the Secretary to the Council.

Sec. 111. Clarification regarding the debt cap.

The voluntary Special Assessments do not constitute revenues derived from taxes, fees, or other general revenues of the District, or its agencies or authorities, pursuant to the District's power to tax or impose fees within the definition of District Bonds in D.C. Official Code § 47-334(2).

TITLE II. CREATION OF THE ENERGY EFFICIENCY LOAN FUND

Sec. 201. Definitions.

For the purposes of this act, the term:

- (1) "Administrator" means the person retained pursuant to the authority granted in section 205 to administer the energy efficiency loan program authorized by this title.
- (2) "Certification Standard" means a certification or accreditation standard for building energy retrofit installation, such as those provided by the Building Performance Institution, RESNET, or other nationally-recognized program approved by U.S. Department of Energy or the Mayor.
- (3) "Energy efficiency audit" means a formal evaluation by a certified contractor of the energy consumption of a residential, commercial, or other building for the purpose of identifying methods of improving energy efficiency and reducing energy waste.
- (4) "Energy efficiency improvement" means an installation or modification that is designed to reduce energy consumption and result in savings, including energy and operational savings, in residential or commercial buildings and includes the following:
 - (A) Insulation in walls, roofs, floors, and foundations and in heating and cooling distribution systems;
 - (B) Storm windows and doors, multiglazed windows and doors, heat-absorbing or heat-reflecting glazed and coated window and door systems, additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption;
 - (C) Automatic energy control systems;
 - (D) Heating, ventilating, or air conditioning and distribution system modifications or replacement in buildings or central plants;
 - (E) Caulking or weather-stripping;
 - (F) Replacement or modifications of lighting fixtures to increase the energy efficiency of the system without increasing the overall illumination of a residential or commercial

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building unless such increase in illumination is necessary to conform to the applicable building code for the proposed lighting system;

(G) Energy recovery systems;

(H) Daylighting systems;

(I) Renewable energy improvements; and

(J) Any other modification, installation, retrofit, or remodeling approved as a energy cost-savings measure by the administrator.

(5) "Energy efficiency loan" means a loan to a property owner for the purpose of installing one of more energy efficiency improvements.

(6) "PACE bonds" means the property-assessed clean energy bonds issued pursuant to the authority granted in Title I.

(7) "Property owner" means an owner of real property in the District.

(8) "Qualified Apprenticeship Program" means an apprenticeship program registered with the District of Columbia Apprenticeship Council.

(9) "Quality Assurance Program" means a program that establishes the energy benchmarks, monitors and verifies the quality of the energy retrofits and renewable energy installations, and measures actual energy savings for the National Capital Energy Fund.

Sec. 202. Creation of the National Capital Energy Fund.

(a) There is established as a nonlapsing fund the National Capital Energy Fund. The Chief Financial Officer shall create 2 accounts within the National Capital Energy Fund: the Bond Proceeds Account and the Federal Grant Account. The Chief Financial Officer shall deposit the proceeds from each sale of the PACE bonds into the Bond Proceeds Account and shall deposit all Energy Efficiency Conservation Block Grant Retrofit Ramp-Up funds received from the United States government as Energy Efficiency and Conservation Block Grants into the Federal Grant Account.

(b) All funds deposited into the National Capital Energy Fund, and any interest earned on those 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 this section without regard to fiscal year limitation, subject to authorization by Congress.

(c) The Mayor may use the funds in the National Capital Energy Fund to make energy efficiency loans to property owners for the initial costs of the installation of energy efficiency improvements. Each energy efficiency loan shall be repaid by the revenues generated by the Special Assessment. Each energy efficiency loan shall be evidenced by a loan, or other, agreement that obligated the property owner and all successor property owners to pay the Special Assessment and includes such other terms and conditions as the Mayor shall determine to be necessary or appropriate to carry out the provisions of this act.

(d) Prior to the 1st issuance of PACE bonds, each energy efficiency loan funded from grant proceeds shall bear interest at a rate equal to the interest rate on 10-year United States Treasury

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Notes on the date of the execution of the loan or other agreement evidencing an energy efficiency loan of the 1st series of energy efficiency loans to be issued, plus 250 basis points. Upon the 1st issuance of PACE bonds, the interest rate on the outstanding energy efficiency loans used to secure payment of that issue of PACE bonds shall convert automatically, and without action by either the District or the property owner, to the interest rate on the 1st series of PACE bonds, plus an amount determined by the Mayor to be sufficient to pay all administrative costs specified in section 102. Thereafter, until the interest rate is converted as described in the prior sentence, all energy efficiency loans shall bear interest at the rate of interest on the series of PACE bonds issued immediately preceding the date of execution of the energy efficiency loan, plus an amount determined by the Mayor to be sufficient to pay all administrative costs specified in section 102. In all cases, the principal, interest, and administrative costs shall be separately stated to permit the allocation thereof as provided in this act.

(e) If the 1st source of funds deposited in the National Capital Energy Fund is not a grant but an obligation which requires the District to repay principal and interest thereon, the energy efficiency loan, or other, agreement shall be structured to repay such funding source plus administrative costs. Special Assessment payments shall be deposited in the same manner specified in section 102.

(f) A Special Assessment payment received prior to the issue of bonds secured by the Special Assessment payments may be used to provide a debt service reserve fund for the bonds.

Sec. 203. Qualification for loans.

(a) To qualify for a loan from the National Capital Energy Fund, the property owner shall file with the administrator a loan application containing the following:

- (1) The amount of loan requested;
- (2) The agreement of the property owner to pay the full amount of the Special Assessment;
- (3) A description of the energy efficiency improvement that the property owner proposes to install and an estimate of the cost of the installation;
- (4) An energy efficiency audit from an auditor approved by the administrator stating the amount of energy used by the subject property and the amount of the energy to be saved by the installation of the energy efficiency improvement;
- (5) A statement establishing that the value of the energy saved by the installation of the energy efficiency improvement exceeds the amount of the principal of, and interest on, the energy efficiency loan;
- (6) Credit information and information regarding the subject property as determined by the administrator; and
- (7) Property owner certification that the Special Assessment will not violate any agreements with any other lender or provision of applicable lender consents.

(b) The property owner shall pay a fee at the time of filing the application in an amount to be determined by the administrator to be sufficient to cover the cost of processing the application

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and making the energy efficiency loan.

Sec. 204. Approval of application.

The administrator shall review the property owner's application and, if it finds that the application satisfies all requirements, shall enter into a loan, or other, agreement with the property owner.

Sec. 205. Duties of administrator.

The administrator shall provide general management, oversight, and coordination of the energy efficiency loan program and its related services, including performing the following duties:

- (1) Outreach and marketing to eligible property owners to inform them of the existence and benefits of the energy efficiency loan program in conjunction with the brand established pursuant to section 206 of the Clean and Affordable Energy Act of 2008, effective October 22, 2008 (D.C. Law 17-250; D.C. Official Code § 8-1774.06);
- (2) Establishing loan and credit standards and processes;
- (3) Underwriting and servicing all energy efficiency loan applications;
- (4) Identifying market opportunities and funding leverage opportunities;
- (5) Collecting appropriate documents and recording the tax liens;
- (6) Sending sufficient information to the Office of Tax and Revenue to enable the Office of Tax and Revenue to collect the Special Assessments, including the allocations of Debt Service and administrative costs;
- (7) Evaluating, retaining, and overseeing firms to perform energy audits, (including providing a list of approved auditors for use by property owners), energy benchmarking, and energy savings verification;
- (8) Oversee the Quality Assurance Program and energy audits and verify the quality of the outcome;
- (9) Certify and pre-qualify all contractors performing work within the loan program and authorized to provide energy conservation and retrofit services financed under this act; and
- (10) Maintain a list of pre-qualified contractors authorized to provide energy conservation services under this act.

Sec. 206. Authority to retain administrator.

(a) The Mayor may contract with an administrator to administer the energy efficiency loan program created by this title.

(b) 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.*), shall not apply to the contract authorized by subsection (a) of this section until 3 years after the effective date of this act.

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Sec. 207. Establishment of a Quality Assurance Program.

The Mayor shall establish a Quality Assurance Program to promote transparency, competence of contractors and employees performing retrofits, and analysis of the underlying energy savings, to achieve the following goals:

(1) Establish and publish the Certification Standards required of contractors and subcontractors for such businesses to be eligible to receive a contract funded from the National Capital Energy Fund, which, at a minimum, shall require contractors to comply with:

(A) All applicable business licensing, insurance, tax, and bonding laws and regulations of the District of Columbia; and

(B) All applicable federal and District wage and hour, employment, workplace health and safety, and equal employment opportunity laws, and other standards of labor law, including proper classification of workers;

(2) Provide private investors, lenders, and property owners with the Certification Standards and performance metrics required of auditors, inspectors, contractors, subcontractors, maintenance companies, and others who provide construction, repairs, and maintenance of energy retrofit services as a result of an energy efficiency loan;

(3) Conduct quality control inspections of services rendered by contractors and subcontractors to ensure proper auditing, installation, and other standards; and

(4) Verify and analyze the energy savings achieved post-retrofit.

Sec. 208. Workforce development and employment plan; Qualified Apprenticeship Programs.

In an effort to maximize employment opportunities to District residents, the Mayor shall:

(1) Establish a workforce development and employment plan, which shall incorporate the District's first source agreement hiring requirement, with priority given to employment of:

(A) Residents of economically distressed neighborhoods;

(B) Low-income individuals; and

(C) Unemployed and underemployed residents; and

(2) Leverage Qualified Apprenticeship Programs to train individuals for advancement to living wage career path employment.

Sec. 209. Rules.

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 implement the provisions of this act.

TITLE III. SPECIAL ASSESSMENT

Sec. 301. Chapter 8 of Title 47 of the District of Columbia Official Code is amended as follows:

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(a) The table of contents is amended by adding a new subchapter IX to read as follows:

"Subchapter IX. Special Energy Assessment.

"47-895.31. Definitions.

"47-895.32. Establishment of special assessment district.

"47-895.33. Levy of Special Assessment.

"47-895.34. Notices; collection; penalties.

"47-895.35. Termination of Special Assessment.

"47-895.36. Application of assessment."

(b) A new subchapter IX is added to read as follows:

"Subchapter IX. Special Energy Assessment.

"§ 47-895.31. Definitions.

"For the purposes of this subchapter, the term:

"(1) "Bonds" means the bonds, notes, or other obligations issued by the District pursuant to the Energy Efficiency Financing Act.

"(2) "Chief Financial Officer" means the Chief Financial Officer of the District of Columbia.

"(3) "Debt Service" means the principal and interest on the energy efficiency loan.

"(4) "Energy Efficiency Financing Act" means the Energy Efficiency Financing Emergency Act of 2010, passed on emergency basis on February 16, 2010 (Enrolled version of Bill 18-665).

"(5) "Energy efficiency loan" means an energy efficiency loan to a property owner under the Energy Efficiency Financing Act.

"(6) "Indenture of Trust" means the indenture relating to the bonds, as modified, amended, or supplemented from time to time.

"(7) "Lot" means real property as defined in § 47-802(1).

"(8) "Tax year" has the same meaning as provided in § 47-802(7).

"(9) "Special Assessment" means the special assessment levied by the District each fiscal year to fund the amount necessary to pay the Debt Service on the energy efficiency loan.

"(10) "Special Energy Assessment Fund" means the nonlapsing fund created by section 102 of the Energy Efficiency Financing Act.

"§ 47-895.32. Establishment of special assessment district.

"(a) There is established within the District a special assessment district to consist of those lots the property owners of which have entered into a voluntary agreement to pay the Special Assessment. A property owner shall not be obligated to pay the Special Assessment unless the property owner has consented to the Special Assessment by entering into an energy efficiency loan, or other, agreement with the District.

"(b) The property owners of lots will derive a special benefit from the savings produced by the energy efficiency improvements financed by the energy efficiency loans and the amount of this benefit is equal to or greater than the Special Assessment levied on the lots. This benefit shall

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include any acknowledged value set forth in the energy efficiency loan, or other, agreement.

“§ 47-395.33. Levy of Special Assessment.

“(a) A Special Assessment is levied and shall be collected with respect to each lot owned by a property owner who has entered into an energy efficiency loan, or other, agreement with the District pursuant to which the District has made an energy efficiency loan to the property owner. The Special Assessment shall begin at the commencement of the half tax year immediately following the date on which the energy efficiency loan, or other, agreement is entered into and continuing until the end of the half tax year in which the energy efficiency loan is fully repaid pursuant to the energy efficiency loan, or other, agreement. At the time the energy efficiency loan, or other, agreement is executed, a memorandum of the Special Assessment shall be recorded in the land records of the District. The memoranda of the Special Assessment shall be exempt from the recordation tax levied pursuant to § 42-1103 and the transfer tax levied pursuant to § 47-903.

“(b) The annual amount of the Special Assessment on each lot shall be an amount equal to the annual principal, interest, and administrative costs on the energy efficiency loan applicable to that lot as described in section 202 of the Energy Efficiency Financing Act. The Special Assessment to be collected from any lot shall not be increased as a result of a default in the payment of the Special Assessment levied on any other lot.

“(c) If a property owner agrees to a Special Assessment to reduce energy costs and increases rents to tenants in that property to pay the costs of the Special Assessment, the property owner shall pass through the energy savings to the tenants so charged.

“§ 47-394.34. Notices; collection; penalties.

“(a) The energy efficiency loan, or other, agreement shall require the property owner to consent to the levy of the Special Assessment on the lot, following which consent, all actions by any owner of the lot to challenge the levy of the Special Assessment shall be forever barred. The property owner who enters into an energy efficiency loan, or other, agreement and each subsequent owner of the lot shall provide notice to the buyer of the lot of the levy of the Special Assessment and any contract for the sale of any such lot may be voided without penalty by the buyer prior to purchase of the lot if the buyer does not receive notice of the Special Assessment from the seller of the lot; provided, that the notice shall not apply to lots sold under Chapter 13A.

“(b) Special Assessments shall be collected in the same manner and at the same time as real property taxes are collected; provided, that the Special Assessments may be collected at a different time and in a different manner as determined by the Chief Financial Officer.

“(c)(1) Except as provided in paragraph (2) of this subsection, an unpaid Special Assessment shall be subject to the same penalty and interest provisions as a delinquent real property tax under this chapter. A lien for an unpaid Special Assessment, including penalty and interest, shall attach to the real property in the same manner as, and with a priority immediately junior to, a lien for delinquent real property tax under Chapter 13A and senior to all other liens. Real property sold at a tax sale for the failure to pay real property taxes shall remain subject to the obligation to pay Special Assessments in subsequent years as provided in this subchapter. The unpaid Special Assessment shall be collected in the same manner and under the same conditions

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and subject to the same penalties as for unpaid real property taxes.

“(2) If an interest in or use of a lot is subject to the Special Assessment because it is subject to taxation under § 47-1005.01, an unpaid Special Assessment on such an interest or use shall be subject to the same penalty and interest provisions as a delinquent tax imposed under § 47-1005.01, and the unpaid Special Assessment shall be collected in the same manner and under the same conditions and subject to the same penalty as for an unpaid tax imposed under § 47-1005.01.

“§ 47-395.35. Termination of Special Assessment.

“(a) The levy of Special Assessments under this subchapter shall terminate on the day after all the bonds secured by that Special Assessment and issued pursuant to the authority granted in Title I of the Energy Efficiency Financing Act are paid for and are no longer outstanding pursuant to their terms. Notwithstanding the preceding sentence, any delinquent Special Assessments and related penalties and interest shall remain due as provided herein until fully paid.

“(b) If a property owner elects to pay in full, prior to maturity, all principal and outstanding interest on the energy efficiency loan, or other, agreement, the repayment amount shall be deposited into the applicable Special Energy Assessment Bond Debt Service Account of the Special Energy Assessment Fund.

“§ 47-395.36. Application of assessment.

“The Chief Financial Officer shall deposit the Special Assessment revenues collected under this subchapter in the Special Energy Assessment Fund.”

TITLE IV. FISCAL IMPACT STATEMENT; EFFECTIVE DATE

Sec. 401. Fiscal impact statement.

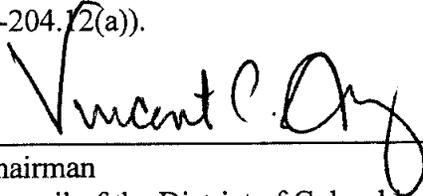
The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 402. Effective date.

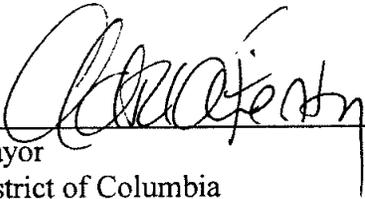
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a)

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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
March 1, 2010