

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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Columbia
Official Code*

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To establish a District Department of the Environment to improve the District's environment and quality of human life by consolidating the administration and oversight of programs to protect the environment and conserve the natural resources of the District of Columbia into a single executive agency.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "District Department of the Environment Establishment Act of 2005".

Title I. General.

Sec. 101. Definitions.

For the purposes of this act, the term:

- (1) "DDOE" means the District Department of the Environment.
- (2) "Director" means the Director of the District Department of the

Environment.

- (3) "Environment" means the physical conditions and natural resources of the District, including the land, air, water, minerals, flora, and fauna in the District, and the waters adjacent to the District.

- (4) "Primacy" means the grant or delegation of authority under certain federal environmental laws that allows states and the District of Columbia to assume primary authority to enforce and implement the environmental laws and promulgate regulations pursuant to those laws.

- (5) "SDWA" means the Safe Drinking Water Act, approved December 16, 1974 (88 Stat. 1660; 42 U.S.C. §§ 300f *et seq.*).

Sec. 102. Purpose.

The purpose of this act is to establish a single executive agency to protect human health and the environment in accordance with District and federal law and regulation, improve the urban quality of life, streamline the administration of District environmental law and programs, including those relating to environmental health, to improve public notification of environmental issues, and to enable the District to seek primacy.

Sec. 103. District Department of the Environment; establishment; transfers.

(a) Pursuant to section 404(b) of the District of Columbia Home Rule Act, approved

December 24, 1973 (87 Stat. 787; D.C. Official Code §1-204.04(b)), the Council establishes the District Department of the Environment as an agency within the executive branch of the District of Columbia government to consolidate the administration and oversight of environmental laws, regulations, and programs into a single agency.

(b)(1) Within 180 days of the effective date of this act, the Mayor shall:

(A) Submit to the Council a proposed organizational plan, including an organizational chart, of the DDOE;

(B) Transfer to DDOE, as feasible:

(i) Existing staff and funding, including any available grant funds and other necessary unexpended funds, from other agencies currently performing duties related to the environment;

(ii) Existing agencies, programs, departments, administrations, boards, or commissions implementing, administering, or enforcing federal or District laws relating to the environment, whether involving public or private property, including:

(I) All of the policy functions of the Tree Management Administration within the District Department of Transportation;

(II) Management of Underground Storage Tank, Toxic Substance, U.S. Environmental Protection Agency funded lead-based paint abatement and control activities, Hazardous Waste of Materials, and Toxic Substances divisions within the Department of Health;

(III) Management of the Air Quality, Fisheries and Wildlife, Watershed Protection, and Water Quality divisions of Environmental Quality within the Department of Health;

(IV) Policy authority for Vector Control within the Department of Health; and

(V) Those policy setting duties and functions of the Director of the Department of Public Works related to recycling policy, including:

(aa) Researching the technology available for solid waste utilization;

(bb) Identifying potential markets for recyclable materials and obtaining statements of interest for recovered materials;

(cc) Identifying the amount and characteristics of the solid waste stream in the District;

(dd) Providing an assessment of the potential impact of alternative methods of solid waste management, including the public health, physical, social, economic, fiscal, environmental, and aesthetic implications;

(ee) Conducting and evaluating the results of public forums or surveys of local citizen opinion on solid waste management practices in conjunction with the Environmental Planning Commission; and

(ff) Coordinating efforts to stimulate markets for recycled materials, including District government purchasing policies; and

(iii) Interpretative authority of all District laws, rules, regulations, and standards relating to the environment;

(C) Designate DDOE the lead agency, as that term is defined in section 3 of the District of Columbia Environmental Policy Act of 1989, effective October 18, 1989 (D.C. 8-36; D.C. Official Code § 8-109.02) and give DDOE primary responsibility for preparing any Environmental Impact Statement required by that act;

(D) If the Mayor determines primacy may be of benefit to the District, have conducted an analysis of the feasibility of assuming primacy, in accordance with subpart B 40 C.F.R. 142 for SDWA; and

(E) Have conducted an analysis of the feasibility and benefit of restructuring the Storm Water Management Administration, including recommendations on how a restructured Storm Water Management will employ progressive and innovative initiatives, including those not yet recognized by the U.S. Environmental Protection Agency, to meet the environmental problems and challenges in the District.

(2) Within one year of the effective date of this act, the Mayor shall transfer those duties and functions of the General Manager of the Water and Sewer Authority related to stormwater administration, including the monitoring and coordinating the activities of all District agencies that are required to maintain compliance with the storm water permit, receiving and expending funds from the Storm Water Permit Compliance Enterprise Fund, and establishing a Storm Water Advisory Panel.

(3) Pending the transfer of functions and duties of an affected agency to DDOE, nothing in this act shall be construed to impair the performance by that agency of its functions and duties.

Sec. 104. Director; appointment, compensation.

(a) The DDOE shall be headed by a Director who shall:

(1) Be appointed by the Mayor with the advice and consent of the Council, pursuant to section 2(a) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(a));

(2) Be a person qualified by training and experience to perform the duties of the office; and

(3) Serve at the pleasure of the Mayor.

(b) The Mayor shall fix the compensation of the Director pursuant to the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective June 10, 1998 (D.C. Law 12-124; D.C. Official Code § 1-610.51 *et seq.*).

Sec. 105. Delegation of authority.

The Director of DDOE is the successor to all environment related authority attached to transferred functions and is authorized to act, either personally or through a designee, as a member of any committee, commission, board, or other body which his or her predecessor was a member.

Sec. 106. Organization.

The Director is authorized to establish administrative divisions within DDOE as the Director considers necessary to increase effectiveness and further the purposes of this act, which such divisions may include:

(1) An Energy Management and Air Quality Control Division, including the Office of Energy, to implement and administer clean air programs and initiatives, to administer programs to assist nonprofit, residential, commercial, industrial, and governmental consumers in becoming more energy efficient, and to be responsible for identifying and analyzing energy issues facing the District and its residents;

(2) A Natural Resources and Water Quality Division to set policy, develop, implement, and oversee initiatives and activities to protect, restore, and enhance natural

resources, such as initiatives for greening neighborhoods through community education and provision of materials, to operate and set policy for public grounds and tree management, the management of hazardous materials and toxic substances, underground storage tanks, and lead-based paint abatement and control, to set policy for vector control, to coordinate research, outreach, and rehabilitation efforts pertaining to the environment, to establish policies and programs to prevent and control water pollution, to increase the efficiency of wastewater and stormwater system regulation and soil resource management, and to conserve and enhance water quality in the District's groundwater systems and in the waters adjacent to the District;

(3) A Recycling and Solid Waste Management Division to establish policies and programs to support the District's recycling initiative and to increase the efficiency of solid and hazardous waste management;

(4) A Brownfields Redevelopment Division to identify, evaluate, remediate, and provide support to the appropriate District agencies or instrumentalities to rehabilitate sites where development is complicated by real or perceived environmental contamination;

(5) A Government Relations and Policy Division to analyze existing environmental legislation and policy and provide strategic direction for new policy initiatives, to liaison with the Mayor's Office, other District agencies, and federal agencies to advise on environmental issues and their impact on the District, to monitor federal environmental legislation and regulations, advance inter-governmental or intra-governmental agreements, where appropriate, to create general environmental policy positions for the District of Columbia, and to provide a centralized point of contact for all of the DDOE divisions to ensure the coherent development and advancement of policy and legislation; and

(6) A Community Programming and Education Outreach Division to increase public awareness of DDOE's ongoing environmental, educational, and outreach initiatives by informing District residents about the programs DDOE offers and the importance of everyone's contribution to protecting and enhancing the environment, to ensure knowledge and accessibility of DDOE programs to the diversity of the District's residents through presentations and use of printed resources and materials.

Sec. 107. Authority of the Director.

The Director shall administer and have authority over DDOE, its functions and personnel, including the authority to:

(1) Re-delegate to employees authority as, in the judgment of the Director, is warranted in the interest of efficiency and sound administration;

(2) Establish general policy and standards to promote and guide the development of environmental services in the District;

(3) Take the steps necessary, pursuant to this act and federal requirements, to achieve primacy to enable the District to administer and enforce federal environmental laws, rules, regulations, standards, and programs, where it is determined that it will benefit the District;

(4) Promulgate rules, regulations, standards, and programs to preserve, protect, and enhance the environment that are at least as stringent as corresponding federal rules, regulations, and standards;

(5) Delegate duties, powers, and functions to other DDOE officials authorized to administer or enforce environmental laws or regulations;

(6) Establish liaisons with other agencies to effect the purposes of this act;

(7) Recruit, train, and accept without regard to District Service classification laws, rules, or regulations the services of individuals without compensation as volunteers for or in aid of activities related to areas administered by the Director; except that the Director shall not use volunteers to displace any District employee, in accordance with section 2 of the Volunteers Services Act of 1977, effective June 28, 1977 (D.C. Law 2-12; D.C. Official Code § 1-319.01);

(8) Apply for and receive federal grants, the funds of which shall be used solely for the purposes specified under the terms of the grants and appropriations involved and may not be obligated or expended for any other purpose;

(9) Establish a grant office to ensure that all potentially available federal grants are properly and timely sought;

(10) Make awards and develop incentive programs to encourage businesses to voluntarily reduce energy, emissions, or take other action to improve the environment;

(11) Execute and enforce the provisions of this act and the rules and regulations adopted pursuant to this act; and

(12) Delegate to other employees of DDOE any of the Director's duties and powers.

Sec. 108. Duties of the Director.

The Director shall oversee each administrative division within DDOE that he or she may establish and, in conjunction with the appropriate division, plan, program, operate, manage, control, and maintain systems, processes, and programs that impact on or relate to the environment of the District and shall:

(1) Prepare and submit to the Mayor and the Council, within one year of the effective date of this act, a comprehensive natural resource management and protection plan for the District of Columbia, including any recommendations for the repeal or amendment of existing District law or for proposed legislation that he or she considers necessary to give full force and effect to this act;

(2) Serve as the primary agency regarding environmental and natural resources policy and make legislative recommendations for consideration by the Mayor and the Council;

(3) Make available to the public, through seminars, publications, training programs, or other means, educational information on protecting the District's natural resources;

(4) Initiate activities that encourage local business and industry and private citizens to conserve and protect natural resources in the District of Columbia;

(5) Assist and cooperate with private, local, regional, and federal agencies and officials to protect the environment and to promote environmental awareness;

(6) Obtain, maintain, and make available to the public accurate, up-to-date information regarding the environment, including compliance data, pursuant to sections 202 and 205 of the Freedom of Information Act, effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code §§ 2-532 and 2-536); and

(7) Within one year of the effective date of this act, and every 2 years thereafter, submit a comprehensive State of the Environment report to the Council assessing the state of the environment in the District, including the activities and accomplishments of the DDOE.

Sec. 109. Grants office; establishment.

There shall be established within DDOE a grants office that shall have a grants development staff that will support DDOE grant writing efforts by:

- (1) Identifying potential grant opportunities;
- (2) Writing grant applications;
- (3) Assisting DDOE programs in grant writing, including providing letters of support to community organizations seeking grants upon request;
- (4) Reviewing draft proposals; and
- (5) Following approval by the Director, or his designee, pursuant to section 107(9) timely submit grant applications and proposals.

Sec.110. Rulemaking.

(a) Within 180 days of the effective date of this act, the Mayor shall promulgate rules and regulations to implement the provisions of this act, including the establishment of:

- (1) Fines;
- (2) Fees;
- (3) Penalties;
- (4) Environmental definitions, or adoption of federal definitions as set forth in the U.S. Environmental Protection Agency publication entitled "Terms of Environment."
- (5) Requirements for the maintenance, retention, and submission of records relating to the environment to the DDOE; and
- (6) Enforcement, inspections, and hearing procedures.

(b) Proposed rules and regulations promulgated pursuant to subsection (a) of this section shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day period, the proposed rules shall be deemed to be disapproved.

Sec. 111. Continuity; rules and regulations.

Regulations and rules of any agency, department, administration, board, or commission, the functions of which are transferred by this act to DDOE and any Mayor's order or administrative order relating to a transferred function not in conflict with this act shall continue in force until such time as the Mayor, or his designee, issues new rules and regulations or orders governing the subject.

Sec. 112. Achieving primacy; procedure.

(a) Prior to applying for primacy to the U.S. Environmental Protection Agency for any environmental law, the Mayor shall, in consultation with the Director of DDOE and the Chief Financial Officer of the District of Columbia, conduct a cost/benefit analysis, which shall include an economic impact analysis, performance analysis, and fiscal impact analysis, including the identification of a revenue stream to effectively assume primacy.

(b) The Mayor shall not recommend applying for primacy unless the conclusion of the cost/benefit analysis required by subsection (a) of this section is that the costs of achieving primacy would be commensurate with the benefits.

(c) If the Mayor recommends, in accordance with subsection (b) of this section, that the District apply for primacy, the Mayor shall transmit the cost/benefit analysis to the Council with a proposed resolution for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed resolution within this 45-day review period, the application for primacy shall be

deemed disapproved.

(d) For the purpose of this section, "performance analysis" means the ability of the District to effectively enforce primacy, including in terms of the number of District employees needed and available, the level of specialized expertise needed and available, the number of additional employees or equipment, if any, that will be needed, and the impact of assigning existing employees or equipment to the enforcement or administration of the law for which primacy has been achieved.

Sec. 113. District Department of the Environment Fund.

There is established a District Department of the Environment fund as a segregated account within the General Fund of the District, the funds of which shall not lapse or revert to the fund balance of the General Fund but shall be continually available to effect the purposes of this act into which shall be deposited any fines, fees, or monetary awards received pursuant to or for a violation of this act, subject to authorization by Congressional act.

Sec. 114. Compilation of laws, regulations, and rules.

(a) Within one year after the effective date of this act, the Mayor shall have compiled, indexed, and published in the District of Columbia Register all laws and regulations of the District of Columbia relating to the environment and rules adopted by the Mayor or by an agency in effect at the time of the compilation. The compilation shall be supplemented or revised periodically as necessary.

(b) The compilation, including any supplements or revisions, shall be made available to the public at a price fixed by the Mayor.

Sec. 115. Applicability.

Notwithstanding any other provision of this act, the provisions of this act shall not be implemented until appropriated funds are available to pay the cost of implementation.

Title II. Conforming Amendments, Fiscal Impact, and Effective Date

Sec. 201. Water and Sewer Authority Board of Directors amendment.

Section 204(a)(2) of the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996 (D. C. Law 11-111; D.C. Official Code § 34-2202.04(a)(2)), is amended to read as follows:

"(2)(A) Six Board members shall be District residents, appointed by the Mayor with the advice and consent of the Council, of whom:

"(i) No more than 4 may be District employees or officials; and

"(ii) One shall be the Director of the District Department of the Environment or a cabinet-level officer, as determined by the Mayor.

"(B) The nomination of a Board member shall be submitted to the Council for a 90-day period of review, excluding days of Council recess. If the Council does not approve the nomination by resolution within this 90-day review period, the nomination shall be deemed disapproved."

Sec. 202. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the

Amend
§ 34-2202.04

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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. 203. 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.

Chairman
Council of the District of Columbia

Mayor
District of Columbia