



# ENROLLEMENT(S)

COUNCIL OF THE DISTRICT OF COLUMBIA


NOTICE

D.C. LAW 8-127

"Office of Employee Appeals Amendment Act of 1990".

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P. L. 93-198, "the Act", the Council of the District of Columbia adopted Bill No. 8-482 on first and second readings, February 13, 1990, and February 27, 1990, respectively. Following the signature of the Mayor on March 15, 1990, this legislation was assigned Act No. 8-180, published in the March 30, 1990, edition of the D.C. Register, (Vol. 37 page 2093) and transmitted to Congress on March 22, 1990 for a 30-day review, in accordance with Section 602(c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 8-127, effective May 15, 1990.

  
DAVID A. CLARKE  
Chairman of the Council

Dates Counted During the 30-day Congressional Review Period:

March 22,23,26,27,28,29,30

April 2,3,4,5,18,19,20,23,24,25,26,27,30

May 1,2,3,4,7,8,9,10,11,14

MAY 15 1990

Codification,  
District of Columbia Code  
(1991 Supplement)

AN ACT

D.C. ACT 8 - 180

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAR 15 1990

To amend the District of Columbia Government Comprehensive Merit Personnel Act of 1978 to establish the number of members of the Office of Employee Appeals, to provide for final decisions by the Hearing Examiners, to grant enforcement power to the Office of Employee Appeals, to provide for arbitration, settlement, and attorney fees, and to create the positions of Executive Director and General Counsel for the Office of Employee Appeals.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Office of Employee Appeals Amendment Act of 1990".

Sec. 2. The District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Code, sec. 1-601.1 et seq.) ("Merit Personnel Act"), is amended as follows:

(a) Section 406 (D.C. Code, sec. 1-604.6) is amended as follows:

Section  
1-604.6

(1) Subsection (b)(7) is amended as follows:

(A) By striking the phrase "Chief Hearing Examiner" wherever it appears and inserting the phrase "Executive Director" in its place; and

(B) By inserting the phrase "and the General Counsel of the Office of Employee Appeals" before the phrase "created by subchapter VI of this chapter".

(b) Section 601 (D.C. Code, sec. 1-606.1) is amended as follows:

Section  
1-606.1

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

(A) By striking the phrase "and administrative officer"; and

(B) By adding the following at the end:  
"The Mayor shall from time to time designate 1 member as Vice Chairperson of the Office. During the absence or disability of the Chairperson, the Vice Chairperson shall perform the duties of the Chairperson."

(2) Subsection (d) is amended by striking the phrase "3 member panel" wherever it appears and inserting the phrase "Hearing Examiner" in its place.

(3) Subsection (f) is amended by striking the period at the end and inserting the phrase ", not to exceed the sum of \$20,000 per annum." in its place.

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

"(g)(1) The Chairperson of the Office shall appoint:

"(A) An Executive Director; and

"(B) A General Counsel.

"(2) The Executive Director shall report to the Chairperson and shall:

"(A) Manage all agency operations and programs that support the work of the Office;

"(B) Make all final decisions regarding the performance of the Office's personnel, other than for the Executive Director and General Counsel, and fiscal management, general administrative support services, procurement, and contracts;

"(C) Maintain the security of documents and claims; and

"(D) Appoint other employees and make whatever expenditures are authorized to carry out the functions of the Office."

"(3) The Office shall:

"(A) Establish and maintain systems for the timely processing, recording, and control of cases;

"(B) Maintain a data base system to record and provide information on the status and disposition of cases;

"(C) Prepare and certify official records;

"(D) Publish final decisions of the Office;

"(E) Provide initial responses to Freedom of Information Act requests;

"(F) Manage a formal system for the organization, maintenance, and disposition of Office records;

"(G) Formulate and implement programs and policies that provide research assistance to the Office and the public; and

"(H) Maintain an updated index of cases, to include among other things subject matter and outcome, to provide research assistance to the Office and the public.

"(4) The General Counsel shall:

"(A) Provide legal advice to the Office; and

"(B) Assist in the enforcement of orders pursuant to section 608."

(c) Section 602 (D.C. Code, sec. 1-606.2) is amended as follows:

Section  
1-606.2

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

(A) Paragraph (4) is amended by striking the word "and" at the end;

(B) Paragraph (5) is amended by striking the period at the end and inserting the phrase "; and" in its place; and

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

"(6) Order any agency or employee of the government of the District of Columbia to comply with an order or decision issued by the Office under the authority of this act and to enforce compliance with the order or decision."

(d) Section 603(c) (D.C. Code, sec. 1-606.3(c)) is amended as follows:

Section  
1-606.3

(1) By inserting the phrase ", as well as the reasons or basis for the decision upon all material issues of fact and law presented on record," after the phrase "include findings of fact and written decision";

(2) By striking the phrase "with information identifying the employee and agency deleted,"; and

(3) By adding the following at the end of the 2nd sentence:

"Any decision by a Hearing Examiner shall be made within 120 days, excluding Saturdays, Sundays, and legal holidays, from the date of the appellant's filing of the appeal with the Office. Within 45 days, excluding Saturdays, Sundays, and legal holidays, after the appeal is filed with the Office, the Office shall determine whether, in accordance with section 603 and the Office's own rules, the Office has jurisdiction. Any decision shall include a statement of any further process available to the appellant including, as appropriate, a petition for review or a petition for enforcement and judicial review. Copies of the decision shall be immediately transmitted to the Office and all parties to the appeal, including named parties and intervenors. The initial decision of the Hearing Examiner shall become final 35 days after issuance, unless a party files a petition for review of the initial decision with the Office within the 35-day filing period. In accordance with section 4 of the Office of Employee Appeals Amendment Act of 1990, the Office may promulgate rules to allow a Hearing Examiner a reasonable extension of time if extraordinary circumstances dictate that an appeal cannot be decided within the 120 day period. After issuing the initial decision, the Hearing Examiner shall retain jurisdiction over the case only to the extent necessary to correct the record, rule on a motion for attorney fees, or process any petition for enforcement filed under the authority of the Office. If the Office denies all petitions for review, the initial decision shall become final upon the issuance of the

last denial. If the Office grants a petition for review, the subsequent decision of the Office shall be the final decision of the Office unless the decision states otherwise. Administrative remedies are considered exhausted when a decision becomes final in accordance with this section."

(e) The following new sections are added to read as follows:

"Sec. 605. Settlement.

New, Section  
1-606.6

"Settlement of the dispute may be raised by the Hearing Examiner with the parties at any time. If the parties agree to a settlement without a decision on the merits of the case, a settlement agreement, prepared and signed by all parties, shall constitute the final and binding resolution of the appeal, and the Hearing Examiner shall dismiss the appeal with prejudice.

"Sec. 606. Arbitration.

New Section  
1-606.7

"(a) The parties may agree in writing to arbitrate the dispute rather than have the Office adjudicate the case. An agreement by the parties to arbitrate the dispute must be reached within 30 days, excluding Saturdays, Sundays, and legal holidays, of the date the appeal was filed with the Office. Failure to reach an agreement to arbitrate shall result in the appeal being adjudicated by the Office.

"(b) If the parties agree to arbitrate the dispute, the Office shall immediately forward the matter to the American Arbitration Association ("AAA"). The dispute shall be arbitrated in accordance with the Voluntary Labor Arbitration rules of the AAA, except that a hearing on the dispute shall be held no later than 60 days from the date the dispute is referred to AAA.

"(c) When an employee who is a party to the dispute is not a member of a collective bargaining unit, the District shall bear the filing fee and the costs of the arbitration, including the arbitrator's fee. When an employee who is a party to the dispute is a member of a collective bargaining unit, the terms of the collective bargaining agreement and section 1603(d) shall govern with respect to the filing fee and the costs of arbitration.

"(d) The decision of the arbitrator may be appealed to the Superior Court of the District of Columbia within 30 days of issuance of the decision. The court shall vacate the arbitration award if:

"(1) The award was procured by corruption, fraud, or other undue means;

"(2) There was evident partiality by an arbitrator, corruption by an arbitrator, or misconduct prejudicing the rights of any party;

"(3) The arbitrator exceeded his or her authority;

"(4) The arbitrator refused to postpone the hearing upon sufficient cause being shown, refused to hear evidence material to the controversy, or otherwise conducted the hearing in a manner to prejudice substantially the rights of a party;

"(5) The award was not in accordance with applicable law, regulations, or rules; or

"(6) There was no agreement to arbitrate.

"Sec. 607. Attorney Fees.

"The Hearing Examiner or the Arbitrator may require payment by the agency of reasonable attorney fees if the appellant is the prevailing party and payment is warranted in the interest of justice.

New Section  
1-606.8

"Sec. 608. Enforcement of Order.

"If the Office determines that the respondent has not complied with an order within 30 calendar days of service of the order, the Office shall certify the matter to the General Counsel and any agency that may be appropriate for enforcement.

New Section  
1-606.9

"Sec. 609. Public Hearings.

"(a) Hearings shall be open to the public. However, the Hearing Examiner may order a hearing or any part of a hearing closed if to do so would be in the best interest of the appellant, a witness, the public, or any other affected person. An order closing the hearing shall set forth the reasons for the hearing examiner's decision. Any objection to closing the hearing shall be made part of the record.

New Section  
1-606.10

"(b) A vote or decision on the appeal by the Office shall be made in public, pursuant to section 742 of the District of Columbia Self-Government and Governmental Reorganizational Act of 1973, approved December 24, 1979 (87 Stat. 831; D.C. Code, sec. 1-1504).

"Sec. 610. Rules.

"Within 45 days of the effective date of the Office of Employee Appeals Amendment Act of 1990, the Office shall, pursuant to section 602, issue proposed rules to implement the provisions of sections 406, 601, 603(c), 605, 606, 607, 608, and 609. The proposed rules 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 approved."

New Section  
1-606.11

(f) Section 908(12) (D.C. Code, sec. 1-610.8(12)) is amended by striking the phrase "Chief Hearing Examiner" and inserting the phrase "Executive Director and General Counsel" in its place.

Section  
1-610.8

Sec. 3. (a) This act shall apply to:

Note, Section  
1-606.3

(1) Any appeal filed with the Office of Employee Appeals ("Office") after the effective date of this act; and

(2) Any appeal filed that has not, as of the effective date of this act, proceeded to a hearing.

(b) Upon the effective date of this act, the Mayor shall appoint a Chairperson and Vice Chairperson from the current members of the Office.

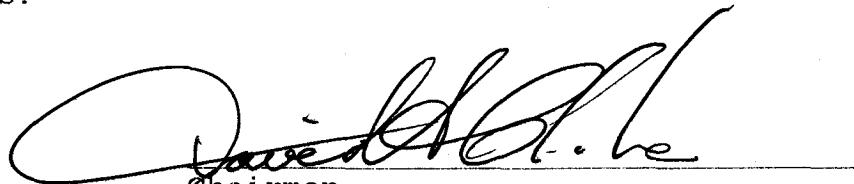
Note,  
Section  
1-606.4  
Note,  
Section  
1-606.1

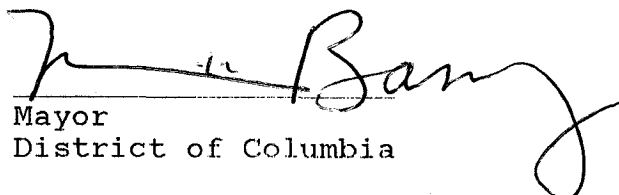
Sec. 4. The Office shall file a report on the operation of the Office with the Mayor and Council by October 31, 1990. The report shall include the following:

Note,  
Section  
1-606.2

- (1) The number of appeals filed with the Office;
- (2) The number of appeals sent to arbitration;
- (3) The number of decisions made by the Office;
- (4) The number of backlog appeals;
- (5) The costs incurred by the government of the District of Columbia for appeals sent to arbitration; and
- (6) The time taken to process all appeals within the Office and by arbitration.

Sec. 5. This act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in Section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code, sec. 1-233(c)(1), and publication in either the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations.

  
Chairman  
Council of the District of Columbia

  
Mayor  
District of Columbia

APPROVED: March 15, 1990





**COUNCIL OF THE DISTRICT OF COLUMBIA**  
**Council Period Eight**

**RECORD OF OFFICIAL COUNCIL VOTE**

DOCKET NO: Bill 8-482

Item on Consent Calendar

ACTION & DATE: Adopted First Reading, 2-13-90

VOICE VOTE: Approved

Recorded vote on request

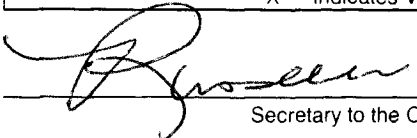
Absent: Kane

ROLL CALL VOTE: — RESULT \_\_\_\_\_ ( \_\_\_\_ / \_\_\_\_ / \_\_\_\_ )

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. CLARKE					MASON					THOMAS, SR.				
CRAWFORD					NATHANSON					WILSON				
JARVIS					RAY					WINTER				
KANE					ROLARK									
LIGHTFOOT					SMITH, JR.									

X — Indicates Vote      A.B. — Absent      N.V. — Present, not voting

CERTIFICATION RECORD

  
 Secretary to the Council

3-2-90  
 Date

Item on Consent Calendar

ACTION & DATE: Adopted Final Reading, 2-27-90

VOICE VOTE: Approved

Recorded vote on request

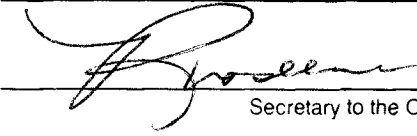
Absent: all present

ROLL CALL VOTE: — RESULT \_\_\_\_\_ ( \_\_\_\_ / \_\_\_\_ / \_\_\_\_ )

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. CLARKE					MASON					THOMAS, SR.				
CRAWFORD					NATHANSON					WILSON				
JARVIS					RAY					WINTER				
KANE					ROLARK									
LIGHTFOOT					SMITH, JR.									

X — Indicates Vote      A.B. — Absent      N.V. — Present, not voting

CERTIFICATION RECORD

  
 Secretary to the Council

3-2-90  
 Date

Item on Consent Calendar

ACTION & DATE: \_\_\_\_\_

VOICE VOTE: \_\_\_\_\_

Recorded vote on request

Absent: \_\_\_\_\_

ROLL CALL VOTE: — RESULT \_\_\_\_\_ ( \_\_\_\_ / \_\_\_\_ / \_\_\_\_ )

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. CLARKE					MASON					THOMAS, SR.				
CRAWFORD					NATHANSON					WILSON				
JARVIS					RAY					WINTER				
KANE					ROLARK									
LIGHTFOOT					SMITH, JR.									

X — Indicates Vote      A.B. — Absent      N.V. — Present, not voting

CERTIFICATION RECORD

\_\_\_\_\_  
 Secretary to the Council

\_\_\_\_\_  
 Date