

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

*Codification
District of
Columbia
Official Code*

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To prohibit District government employees from engaging in political activity while on duty, to authorize the Board of Elections and Ethics to review claims of violations of the proscription against political activity and to impose fines for violations or to refer cases to the appropriate authorities, and to make it a misdemeanor for employees to solicit donations of money or other things of value in connection with an election campaign in a government facility.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Prohibition on Government Employee Engagement in Political Activity Act of 2010”.

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) “Board” means the Board of Elections and Ethics established by section 3 of the District of Columbia Election Code of 1955, approved August 12, 1955 (69 Stat. 699; D.C. Official Code § 1-1001.03).

(2) “Employee” means:

(A) Any individual paid by the District government from grant or appropriated funds for his or her services or holding office in the District of Columbia, other than the following:

- (i) Employees of the courts of the District of Columbia;
- (ii) The Mayor;
- (iii) The Attorney General, after January 1, 2014;
- (iv) The members of the Council;
- (v) Advisory Neighborhood Commissioners;
- (vi) Members of the State Board of Education;

(B) A member of a board or commission who is nominated for a position pursuant to section 2(e) of the Confirmation Act of 1978, approved March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(e)); and

(C) A member of a board or commission who is nominated for a position pursuant to section 2(f) of the Confirmation Act of 1978, approved March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(f)), when the member is engaged in political activity that relates to the subject matter that the member's board or commission regulates.

(3) "Partisan political office" means any office for which any candidate is nominated or elected as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected, but shall exclude any office or position within a political party or affiliated organization.

(4)(A) "Political activity" means any activity directed toward the success or failure of a political party, candidate for partisan political office, partisan political group, ballot initiative, or referendum.

(B)(i) The Board of Elections and Ethics may, by rule, define certain basic activities as nonpolitical activities.

(ii) The term "nonpolitical activities" shall include:

- (I) Media inquiries;
- (II) Answering questioners; and
- (III) Scheduling.

(5)(A) "Political contribution" means:

(i) A gift, subscription, loan, advance, or deposit of money, or anything of value, made for any political purpose;

(ii) A contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any political purpose;

(iii) A payment by any person, other than a candidate or a political party or affiliated organization, of compensation for the personal services of another person which are rendered to any candidate or political party or affiliated organization without charge for any political purpose; and

(iv) The provision of personal services, paid or unpaid, for any political purpose.

(B) The term "political contribution" shall not include the value of services provided without compensation by any individual on behalf of any candidate, campaign, political party, or partisan political group.

Sec. 3. Political activity authorized; prohibitions.

(a) An employee may take an active part in political management or in political campaigns; provided, that an employee shall not:

(1) Use his official authority or influence for the purpose of interfering with or affecting the result of an election;

(2) Knowingly solicit, accept, or receive a political contribution from any person, except if the employee has filed as a candidate for political office;

(3) File as a candidate for election to a partisan political office; or
(4) Knowingly direct, or authorize anyone else to direct, that any subordinate employee participate in an election campaign or request a subordinate to make a political contribution.

(b) The Mayor and each member of the Council may designate one employee while on leave to perform any of the functions described in subsection (a)(2) of this section; provided, that:

(1) The employee shall not perform the activities while the employee is on duty or in any room or building occupied in the discharge of official duties in the District government, including any agency or instrumentality thereof;

(2) Any designation pursuant to this subsection shall be made in writing to the Secretary of the District of Columbia or the Secretary to the Council;

(3) Any designated employee shall file a report within 15 days of being designated and as otherwise required pursuant to section 602 of the District of Columbia Campaign Finance Reform and Conflict of Interest Act, approved August 14, 1974 (88 Stat. 467; D.C. Official Code § 1-1106.02); and

(4) The Mayor and the Council shall issue standards of conduct implementing this subsection.

(c) An employee or candidate for partisan political office shall not knowingly request, or authorize anyone else to request, that any subordinate, or potential future subordinate, employee participate in an election campaign or make a political contribution.

Sec. 4. Political activities on duty; prohibition.

An employee shall not engage in political activity:

(1) While the employee is on duty;

(2) In any room or building occupied in the discharge of official duties in the District government, including any agency or instrumentality thereof;

(3) While wearing a uniform or official insignia identifying the office or position of the employee; or

(4) Using any vehicle owned or leased by the District of Columbia, including any agency or instrumentality thereof.

Sec. 5. Enforcement.

(a) The Board of Elections and Ethics may:

(1)(A) Investigate on its own initiative, or upon written complaint under oath by any individual, alleged violations of any provision of this act; and

(B) Hold hearings when it considers it necessary to investigate violations; and

(2)(A) Upon application made by any employee, and within a reasonable period of time, provide an advisory opinion, with respect to any specific transaction or activity inquired of, as to whether the transaction or activity would constitute a violation of any provision of this act.

(B) An advisory opinion shall be issued in accordance with the rules of the Board.

(C) The Board shall publish a concise statement of each request for an advisory opinion, without identifying the person seeking the opinion, in the District of Columbia Register within 20 days of its receipt. Comments on requested opinions shall be received by the Board for a period of at least 15 days following publication in the District of Columbia Register. The Board may waive the advance notice and public comment provisions if it finds that the issuance of the advisory opinion constitutes an emergency necessary for the immediate preservation of the public peace, health, safety, welfare, or morals.

(D) Advisory opinions shall be published in the District of Columbia Register within 30 days of their issuance; provided, that the identity of any person requesting an advisory opinion shall not be disclosed in the District of Columbia Register without prior consent in writing. When issued, an advisory opinion shall be deemed to be an order of the Board, reviewable in the Superior Court of the District of Columbia by any interested person adversely affected thereby.

(E) A employee to whom an advisory opinion is rendered and who, after the issuance of an advisory opinion, acts in good faith in accordance with its provisions and findings shall not, as a result of such actions, be subject to any sanctions under this section.

(b)(1) After finding that a violation of this act has occurred, the Board may:

(A) Impose a civil penalty not to exceed \$2,000 for each violation;

(B) Disqualify a person from appointment as an election monitor or from acting in any capacity at the polls on the day of an election if the Board finds that the person has knowingly violated any provision of this act; and

(C) Suspend, with or without pay, or remove a person from employment by the District government.

(2) The Board shall refer any case where there is probable cause of a willful violation of this act for prosecution under section 6.

(3)(A) The sanctions set forth in paragraph (1) of this subsection shall be assessed by the Board by written order:

(i) Only after the person charged with a violation has been given an opportunity for a hearing; and

(ii) Setting forth its findings of facts, that a violation did occur, and the amount of the penalty.

(B) A hearing under this section shall be of record and shall be held in accordance with section 10 the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1208; D.C. Official Code § 2-509).

(4) If the person against whom a civil penalty is imposed under subsection (b)(1) of this section fails to pay the penalty, the Board shall file a petition for enforcement of its order imposing the penalty in the Superior Court of the District of Columbia. The petition shall designate the person against whom the order is sought to be enforced as the respondent. A copy of the petition shall be forthwith sent by registered or certified mail to the respondent and his attorney of record, and, thereupon, the Board shall certify and file in the court the record upon which the order sought to be enforced was issued. The court may enter a judgment enforcing, modifying, enforcing as so modified, or setting aside, in whole or in part, the order and the decision of the Board or it may remand the proceedings to the Board for such further action as it may direct. The court may determine de novo all issues of law, but the Board's findings of fact, if supported by substantial evidence, shall be conclusive.

Sec. 6. Criminal penalties.

(a) A willful violation of section 3 shall be a misdemeanor and, upon conviction, be subject to:

- (1) A fine not to exceed \$2,000 for each violation or triple the amount of any improper payment or contributions received, whichever is greater;
- (2) Imprisonment not to exceed 180 days; or
- (3) Both.

(b) In a prosecution for an offense pursuant to subsection (a) of this section, it shall be an affirmative defense that the person so charged reasonably relied on an advisory opinion issued under section 5(a)(2).

Sec. 7. Rules.

The Board of Elections and Ethics, 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.

Sec. 8. Applicability.

(a) This act shall apply upon enactment by the Congress of an act excluding the District of Columbia from the coverage of 5 U.S.C. §§ 7321 through 7326 (Hatch Act).

(b) This act shall apply upon inclusion of its fiscal effect in an approved budget and financial plan.

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Sec. 9. Fiscal impact statement.

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

Sec. 10. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by 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