

FILING SHEET

RECEIVED FEB 5 13
OFFICE OF THE
CLERK OF THE HOUSE

DATE: _____, 2010

1. _____ SHORT TITLE OF MEASURE OR DOCUMENT

*Elected Atty General Implementation
Legal Service Establishment
Amendment Act of 2013*

2. _____ NAME/LOCATION ON V DRIVE: _____
_____ DISK ATTACHED

3. REFERRAL OF PROPOSED LEGISLATION _____

4. _____ COMMITTEE REPORT

5. _____ EMERGENCY LEGISLATION

_____ Circulated Statement of Reason and Effect of Emergency

_____ Emergency Declaration Resolution

_____ Emergency Legislation

_____ Temporary Legislation

6. _____ CIRCULATED CEREMONIAL RESOLUTION

Should be framed by _____
date

7. _____ REPROGRAMMING REQUEST

8. _____ AMENDMENT(S) _____ Bill No. _____ / _____ PR No. _____

9. _____ PUBLIC HEARING NOTICE

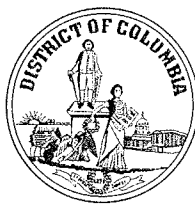
10. _____ PUBLIC ROUNDTABLE NOTICE

11. _____ PUBLIC OVERSIGHT HEARING NOTICE

12. _____ OTHER CORRESPONDENCE

FILED BY

CHAIRMAN, MEMBER OR COMMITTEE



VINCENT C. GRAY
MAYOR

JAN 12 2013

The Honorable Phil Mendelson
Chairman, Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, N.W., Suite 504
Washington, D.C. 20004

Dear Chairman Mendelson:

Enclosed for consideration by the Council of the District of Columbia is the “Elected Attorney General Implementation and Legal Service Establishment Amendment Act of 2013” (the “bill”). In January 2015, pursuant to the District of Columbia Clarification and Elected Term Amendment Act of 2009,¹ an elected Attorney General for the District of Columbia will for the first time take office. Our current Attorney General Irvin Nathan and the OAG staff have been studying the practical consequences of this new system of divided authority, where both the Mayor and the Attorney General will be elected, neither will be subordinate to the other, and both will serve in the Executive Branch. As a result of this evaluation and my administration’s review, I have determined that several significant changes in the law are needed to ensure the best prospects for long-term success of this new arrangement for both the Office of the Mayor and the subordinate agencies and for the OAG.

Our proposal follows the core principle that the Mayor must generally control the budget and policy choices of the executive branch, and the Attorney General must generally control the executive’s litigation and legal opinions. Applying this principle to the transition from an appointed to an elected Attorney General, I have identified three principal changes required that are reflected in the bill, each of which would become effective October 1, 2014, before the general election.

First, the bill ensures that the attorneys serving in the general counsel offices for those agencies subordinate to the Mayor remain in the Mayoral reporting line. The bill will transfer the General Counsels of the subordinate agencies and their staffs from the OAG to the respective agencies, along with the associated resources and authority. All attorneys and staff who perform work as or for the General Counsels of the subordinate agencies would become employees of the

¹ Title I, effective May 27, 2010, D.C. Law 18-160, D.C. Official Code §1-301.81 (2012 Supp.); Title II, section 435 of the District of Columbia Home Rule Act, as added May 30, 2011, D.C. Law 18-160a, D.C. Official Code § 1-204.35 (2012 Supp.).

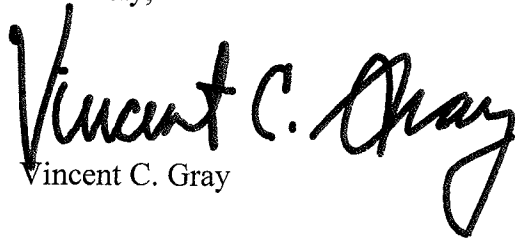
subordinate agencies they advise and would be supervised by their agency heads, who in turn report to the Mayor.

Second, the bill reflects our conclusion that a small office should be established in the Executive Office of the Mayor with a Director that reports to the Mayor and is responsible for cross-agency legal, training, and other issues associated with the agency counsel offices. The bill would establish a Mayor's Office of Legal Counsel and create the position of Director, to be staffed with a small complement of attorneys.

Finally, the bill would transfer the OAG's Child Support Services Division to the Department of Human Services, which will be the District's child support agency for federal law purposes. Consistent with the principle I described above, this critical social service program for our families and children should remain within the mayoral reporting line.

I urge you to take prompt and favorable action on the enclosed bill. The District should be prepared for the coming transition and should make the important policy and practical decisions before the electoral process for the 2014 Attorney General election begins in April, 2014.

Sincerely,

A handwritten signature in black ink that reads "Vincent C. Gray". The signature is written in a cursive style with a large, prominent initial "V".

Vincent C. Gray

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Chairman Phil Mendelson
at the request of the Mayor

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Chairman Phil Mendelson, at the request of the Mayor, introduced the following bill, which was referred to the Committee on _____.

To amend the District of Columbia Comprehensive Merit Personnel Act of 1978 to create the Mayor's Office of Legal Counsel and the position of Director of the Mayor's Office of Legal Counsel, to provide that all attorneys who perform work as or for the General Counsels of the subordinate agencies shall be employed by the subordinate agencies they advise, to establish that Senior Executive Attorneys facing removal or demotion may be appointed to positions in the Office of the Attorney General or the Mayor's Office of Legal Counsel, to establish that a Senior Executive Attorney appointed by the head of subordinate agency shall serve at the pleasure of the subordinate agency head, to require the subordinate agency head to consult with the Director of the Mayor's Office of Legal Counsel prior to terminating an attorney who works as or for the General Counsel of a subordinate agency, to provide that attorneys who perform work as or for the General Counsels of subordinate agencies shall be appointed by the subordinate agency head after consulting with the Director of the Mayor's Office of Legal Counsel, to provide that attorneys employed by a subordinate agency shall act under the direction, supervision and control of the subordinate agency head, to provide that the subordinate agency heads are responsible for the discipline of attorneys under their control, to require the Attorney General and the Director of the Mayor's Office of Legal Counsel to provide training and establish performance standards, to authorize the Director of the Mayor's Office of Legal Counsel to adopt rules, to transfer attorneys from the Office of the Attorney General to the subordinate agencies as of October 1, 2014, to provide that the Office of the Attorney General shall continue to be responsible for the compensation of these attorneys until the Legal Service budget for them is transferred, to provide for the transfer of resources, and to confirm the applicability of the attorney-client privilege to communications and legal advice between Legal Service attorneys and their clients in the subordinate agencies; and to amend the District of Columbia Child Support Enforcement Amendment Act of 1985 to establish the Department of Human Services as the District's IV-D agency and transfer the Child Support Services Division currently in the Office of the Attorney General to this Department.

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3 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
4 act may be cited as the “Elected Attorney General Implementation and Legal Service
5 Establishment Amendment Act of 2012”.

6 Sec. 2. The District of Columbia Government Comprehensive Merit Personnel Act of
7 1978, effective March 3, 1979 (D. C. Law 2-139; D.C. Official Code § 1-601.01 *et seq.*), is
8 amended as follows:

9 (a) A new section 851a is added to read as follows:

10 “Sec. 851a. Establishment of the Mayor’s Office of Legal Counsel.

11 “(a) Pursuant to section 404(b) of the District of Columbia Home Rule Act, approved
12 December 24, 1973 (87 Stat. 787; D.C. Official Code § 1-204.04(b)), the Council establishes the
13 Mayor’s Office of Legal Counsel, within the executive branch of the District of Columbia
14 government. This Office shall be headed by a Director who shall be appointed by the Mayor and
15 serve at the Mayor’s pleasure.

16 “(b) The purposes of the Mayor’s Office of Legal Counsel shall include coordinating the
17 hiring, compensation, training, and resolution of significant personnel-related issues for
18 subordinate agency counsel in conjunction with agency directors; providing legal policy advice
19 to the Mayor and executive branch; resolving interagency legal issues for the Mayor; overseeing
20 the representation of agencies in investigative matters before the federal Executive Branch,
21 Congress, or the Council of the District of Columbia; and supervising outside counsel in matters
22 where the Office of the Attorney General is recused from a matter or otherwise not available.

23 The Director shall employ attorneys and support staff to assist in carrying out the purposes of the
24 office. At least one staff member shall have as one of his or her primary duties the management

1 of issues arising from subordinate agency general counsel-related matters. Nothing in this
2 section shall be construed to abrogate the provisions of sections 109 or 121 of the Attorney
3 General for the District of Columbia Clarification and Elected Term Amendment Act of 2010,
4 effective May 27, 2010 (D.C. Law 18-160; D.C. Official Code §§ 1-301.89 and 1-301.90).”.

5 (b) Section 852 (D.C. Official Code § 1-608.52) is amended by striking the phrase “all
6 attorneys who perform work for subordinate agencies shall become employees of the Office of
7 the Attorney General for the District of Columbia” and inserting the phrase “all attorneys who
8 perform work primarily as or for the General Counsels of the subordinate agencies shall become
9 employees of the subordinate agencies they advise.”.

10 (c) Section 853 (D.C. Official Code § 1-608.53) is amended as follows:

11 (1) Subsection (c) is amended by striking the phrase “Attorney General” and
12 inserting the phrase “Director of the Mayor’s Office of Legal Counsel or Attorney General” in its
13 place.

14 (2) Subsection (d) is amended by adding two new sentences at the end to read as
15 follows: “A Senior Executive Attorney employed by a subordinate agency shall serve at the
16 pleasure of the head of the subordinate agency. A Senior Executive Attorney employed by the
17 Mayor’s Office of Legal Counsel shall serve at the pleasure of the Director of the Mayor’s Office
18 of Legal Counsel.”.

19 (3) Subsection (e) is amended to read as follows:

20 “(e) A Senior Executive Attorney employed by a subordinate agency shall serve at the
21 pleasure of the head of the subordinate agency, and the subordinate agency head shall consult
22 with the Director of the Mayor’s Office of Legal Counsel before making any decision concerning
23 the termination of a Senior Executive Attorney.”.

1 (d) Section 854(a) (D.C. Official Code § 1-608.54(a)) is amended to read as follows:

2 “(a) Attorneys employed by the Office of the Attorney General shall be hired by the
3 Attorney General. Attorneys employed by subordinate agencies shall be hired by the subordinate
4 agency heads after consultation with the Director of the Mayor’s Office of Legal Counsel.
5 Attorneys employed by the Mayor’s Office of Legal Counsel shall be hired by the Director of the
6 Mayor’s Office of Legal Counsel.”.

7 (e) Section 855 (D.C. Official Code § 1-608.55) is amended as follows:

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

9 “(a-1) Attorneys employed by subordinate agencies shall act under the direction,
10 supervision, and control of the head of the subordinate agency.”.

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

12 “(b) Attorneys employed by the Mayor’s Office of Legal Counsel shall be under the
13 direction, supervision, and control of the Director of the Mayor’s Office of Legal Counsel.”.

14 (3) Subsection (d) is amended to read as follows:

15 “(d) The Director of the Mayor’s Office of Legal Counsel may, with the consent of a
16 subordinate agency director, assign an attorney employed by the Mayor’s Office of Legal
17 Counsel to perform work primarily as or for the General Counsel of the affected subordinate
18 agency, whether located at the agency or not, in the Director of the Mayor’s Office of Legal
19 Counsel’s discretion.”.

20 (f) Section 856 (D.C. Official Code § 1-608.56) is amended as follows:

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

22 (A) A new paragraph (1A) is added to read as follows:

1 “(1A) The Director of the Mayor’s Office of Legal Counsel when the attorney is
2 employed by the Mayor’s Office of Legal Counsel and performs work primarily for that office,
3 whether located in that Office or not;”.

4 (2) Paragraph (2) is repealed.

5 (3) Paragraph (3) is amended to read as follows:

6 “(3) The agency head or the Senior Executive Attorney designee when the
7 attorney is employed by an independent agency, and by the subordinate agency head in
8 consultation with the Director of the Mayor’s Office of Legal Counsel when the attorney is
9 employed by a subordinate agency.”.

10 (2) Subsection (c) is amended to read as follows:

11 “(c) Any disciplinary action taken pursuant to this section against an attorney employed
12 by a subordinate agency or the Mayor’s Office of Legal Counsel may be appealed to the Mayor.
13 Any such action taken against an attorney employed by the Office of the Attorney General may
14 be appealed to the Attorney General. The Mayor’s and the Attorney General’s decisions
15 regarding disciplinary actions shall be final.”.

16 (g) Section 857 (D.C. Official Code § 1-608.57) is amended as follows:

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

18 “(a) Attorneys in the Legal Service, other than attorneys employed by independent
19 agencies, shall participate in an annual mandatory program of continuing legal education. The
20 Attorney General shall establish a program for attorneys employed by the Office of the Attorney
21 General, and the Director of the Mayor’s Office of Legal Counsel shall establish a program for
22 attorneys employed by the subordinate agencies and the Mayor’s Office of Legal Counsel.
23 Training programs offered by the Office of the Attorney General shall to the extent practicable

1 be made available with no charge to attorneys employed by the subordinate agencies; likewise,
2 training programs offered by the District for attorneys employed by the subordinate agencies
3 shall to the extent practicable be made available with no charge to attorneys in the Office of the
4 Attorney General. Attorneys in the Legal Service who supervise one or more other attorneys as
5 part of their normal duties shall maintain and enhance their management and supervisory skills
6 through at least annual in-house or other training arranged or approved by their employing
7 agency;”.

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

9 “(b) The Attorney General and the Director of the Mayor’s Office of Legal Counsel shall
10 each develop and establish performance management systems that include accountability
11 standards and individual accountability plans for all attorneys, including Senior Executive
12 Attorneys, in the Legal Service who are under their direction, supervision or control. The
13 performance management systems shall link pay to performance.”.

14 (3) Subsection (c) is amended by striking the second sentence and inserting the
15 following sentence in its place: “The head of an independent agency may utilize a system
16 developed for use by the Attorney General or the Director of the Mayor’s Office of Legal
17 Counsel for attorneys under the independent agency head’s direction or control.”.

18 (h) Section 861 (D.C. Official Code § 1-608.61) is amended by striking the phrase
19 “Attorney General may” and inserting the phrase “Attorney General and the Director of the
20 Mayor’s Office of Legal Counsel may each” in its place.

21 (i) Section 862(5) (D.C. Official Code § 1-608.62(5)) is amended to read as follows:

1 “(5) Effective October 1, 2014, any attorney who is employed by the Office of
2 the Attorney General and performs work primarily as or for the General Counsel of a subordinate
3 agency shall become an attorney employed by the subordinate agency.

4 (j) Section 863 (D.C. Official Code § 1-608.63) is amended to read as follows:

5 “Until the Legal Service budget for attorneys and support staff who perform work,
6 primarily as or for the General Counsel of a subordinate agency is transferred to the budget of
7 the subordinate agency involved, the Office of the Attorney General shall continue to be
8 responsible for the compensation of these attorneys and support staff and for related non-
9 personal services expenses. After the budget is transferred, the subordinate agency shall
10 reimburse the Office of the Attorney General for any costs or expenses incurred between October
11 1, 2014 and the completion of the transfer from the Office of the Attorney General to the
12 subordinate agency.”.

13 (k) Section 864 (D.C. Official Code § 1-608.64) is amended to read as follows:

14 “By October 5, 2014, the District of Columbia Department of Human Resources, in
15 collaboration with the Office of the Attorney General, shall transfer to the subordinate agencies,
16 all attorney and support staff employees, personal property, full-time equivalent positions
17 authority, assets, records and all unexpended balances of appropriations, allocations, and other
18 funds available or to be made available relating to the furnishing of legal and other services by
19 the attorneys who perform work primarily as or for the General Counsels of the subordinate
20 agencies as of October 1, 2014.

21 (l) Section 865 (D.C. Official Code § 1-608.65) is amended as follows:

22 (1) Subsection (a) is repealed.

23 (2) Subsection (b) is repealed.

1 (3) Subsection (c) is amended by striking the phrase “Attorney General’s” and
2 inserting the phrase “subordinate agencies” in its place.

3 (m) A new section 866 is added to read as follows:

4 “Sec. 866. Privilege.

5 “Nothing in this act shall limit, waive, or abrogate the scope or nature of the attorney-
6 client privilege, whether statutory or common law, with respect to communications between
7 attorneys employed by the Office of the Attorney General and subordinate agency personnel, or
8 legal advice given by Office of the Attorney General attorneys to subordinate agency personnel
9 prior to the date of the appointment of these attorneys to positions in the subordinate agencies.
10 This privilege shall continue to apply fully to all communications made and legal advice
11 provided between subordinate agency personnel and attorneys employed by the subordinate
12 agencies after attorneys are transferred to that Office.”.

13 Sec. 3. The District of Columbia Child Support Enforcement Amendment Act of 1985,
14 effective February 24, 1987 (D.C. Law 6-166; D.C. Official Code § 46-201 *et seq.*), is amended
15 by adding a new section 3a-1 to read as follows:

16 “Sec. 3a-1. Establishment of the Child Support IV-D Agency.

17 “(a) The Department of Human Services is hereby established as the District’s Child
18 Support IV-D agency, and shall be responsible for administering or supervising the
19 administration of the District’s State Plan under title IV, part D of the Social Security Act,
20 approved January 24, 1975 (88 Stat. 2351; 42 U.S.C. § 651 *et seq.*), pertaining to parent locator
21 services, paternity establishment, and the establishment, modification, and enforcement of
22 support orders.

1 “(b) Within the Department of Human Services there is established a Child Support
2 Services Division (“CSSD”), which shall be the entity primarily responsible for applying for and
3 receiving federal funds for the operation of the District’s Child Support IV-D Program. CSSD
4 shall be headed by a Director who shall be appointed by the Director of the Department of
5 Human Services and serve at his or her pleasure. CSSD shall take all steps necessary for the
6 submission and approval of the District’s IV-D State Plan and any plan amendments.

7 “(c) Notwithstanding section 101(a)(1) of the Attorney General for the District of
8 Columbia Clarification and Elected Term Amendment Act of 2010, effective May 27, 2010
9 (D.C. Law 18-160; D.C. Official Code § 1-301.81(a)(1)), CSSD shall be responsible for
10 representing the interests of the District in all administrative and trial level legal matters related
11 to establishing and enforcing support orders in IV-D cases. CSSD shall also coordinate and enter
12 into such cooperative agreements as necessary with other District government agencies engaged
13 in child support enforcement activities, including, but not limited to, the Office of the Attorney
14 General, the Superior Court of the District of Columbia, the Office of Tax and Revenue, the
15 Department of Health, the Metropolitan Police Department, the Office of Administrative
16 Hearings, and the Lottery and Charitable Games Control Board.

17 “(d) The Director of CSSD in the Department of Human Services, in the performance of
18 the duties and functions transferred by this act, may establish such organizational components for
19 the Division, with such specified functions as the Director deems appropriate.

20 “(e) Notwithstanding any other law, including other provisions of this Act, CSSD
21 attorneys and other staff shall be under the Director of the Department of Human Services’
22 direction, supervision, and control. The Director of the Department of Human Services shall
23 make all appointment, discipline, and termination decisions concerning CSSD attorneys, in

1 consultation with the Director of CSSD and the Director of the Mayor's Office of Legal Counsel.
2 The decision of Director of the Department of Human Services may be appealed to the Mayor.
3 The Mayor's decisions regarding discipline shall be final."

4 "(f) Notwithstanding any other law, during fiscal year 2015 and each fiscal year
5 thereafter, the entire Legal Service budget for CSSD attorneys in the Office of the Attorney
6 General, including personal and non-personal services budgets associated with the pay and
7 benefits of attorneys and their support staff, grants, as well as all related administrative overhead,
8 supplies, materials, equipment and equipment rentals, and contractual services shall be under the
9 management authority and control of the Department of Human Services.

10 "(g) By October 5, 2014, all positions, personnel, property, records, equipment, and
11 unexpended balances of appropriations, allocations, and other funds available or to be made
12 available, including fixed costs, that relate primarily to the functions of the IV-D program shall
13 be transferred from the Office of the Attorney General to the Department of Human Services.
14 The Child Support Services Division in the Office of the Attorney General is abolished as of the
15 completion of the transfer.

16 "(h) Until the Legal Service budget for attorneys and support staff who perform work for
17 CSSD is transferred to the budget of the Department of Human Services, the Office of the
18 Attorney General shall continue to be responsible for the compensation of these attorneys and
19 support staff and for related non-personal services expenses. After the budget is transferred, the
20 Department of Human Services shall reimburse the Office of the Attorney General for any costs
21 or expenses incurred between October 1, 2014 and the completion of the transfer from the Office
22 of the Attorney General to the Department of Human Services."

23 Sec. 4. Applicability.

1 This act shall apply on October 1, 2014.

2 Sec. 5. Fiscal impact statement.

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

6 Sec. 6. Effective date.

7 This act shall take effect following approval by the Mayor (or in the event of veto by the
8 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as
9 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
10 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
11 Columbia Register.

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



Legal Counsel Division

MEMORANDUM

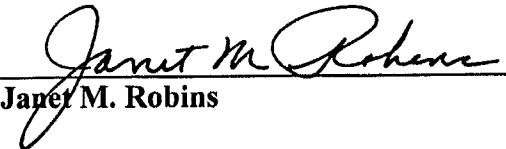
TO: Lolita S. Alston
Director
Office of Legislative Support

FROM: Janet M. Robins
Deputy Attorney General
Legal Counsel Division

DATE: February 1, 2013

SUBJECT: Legal Sufficiency Review of the "Elected Attorney General
Implementation and Legal Services Establishment Amendment Act of
2013"
(AE-12-582B)

This is to Certify that this Office has reviewed the above-referenced legislation and found it to be legally unobjectionable. If you have any questions in this regard, please do not hesitate to call me at 724-5524.


Janet M. Robins