



OFFICE OF CHAIRMAN PHIL MENDELSON
COUNCIL OF THE DISTRICT OF COLUMBIA

Statement of Introduction

“Initiative Amendment Act of 2023”

Today I along with Councilmember Anita Bonds am introducing the “Initiative Amendment Act of 2023” in response to a recent ruling by the DC Board of Elections. Ever since Congress approved an amendment to the Home Rule Act in 1978 to permit voter initiatives, it has been the law that “electors of the District of Columbia may propose laws (except laws appropriating funds)...” (emphasis added). The District of Columbia Court of Appeals has interpreted this limitation on the use of the initiative process very broadly.

Nonetheless, earlier this year the proponents of an Initiative crafted a novel approach to circumvent the prohibition: make the Initiative subject to appropriations. No matter how costly a proposal may be, simply make the Initiative “subject to appropriations.” The Board of Elections went along with this argument, reversing longstanding practice of rejecting proposals that would have a fiscal cost.

The effect of this novel interpretation is either (1) to put before the voters an Initiative proposal that will not be meaningful because it will not be funded; or (2) to seek to bind the Council to appropriate funds, because this is the voters’ will. Either outcome is contrary to the clear intent of the Home Rule Act: that the Initiative process may be used to establish laws provided that they do not have a cost.

Examples of citizen lawmaking that do not require an appropriation are numerous, and include: to legalize some forms of gambling (Initiative #6); to limit campaign contributions (#41); to legalize recreational cannabis (#71); and to eliminate the tipped minimum wage (#82).

We must emphasize: without this bill, the Initiative Amendment Act of 2023, it is possible that the floodgates will open to all kinds of good, but expensive proposals, and policymaking by the Council will become reactive to the Initiative process.

While many of the proposals from citizens are good, the Council has an orderly process for consideration. For 45 years this has worked. But the Board of Elections would now allow Initiative proposals for any law that has a cost – even a substantial cost – so long as it is “subject to appropriation.” The Initiative Amendment Act of 2023 would ensure that the original intent of the 1978 Charter amendment is maintained.

1 
2 Councilmember Anita Bonds


Chairman Phil Mendelson

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6 A BILL
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12 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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17 To amend the District of Columbia Election Code of 1955 to ensure that voter initiatives do not
18 have an effect on the appropriation of funds, consistent with Charter Amendment No. 1 to
19 the Home Rule Act.
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21 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
22 act may be cited as the “Initiative Amendment Act of 2023”.

23 Sec. 2. Section 16 of the District of Columbia Election Code of 1955, approved August
24 12, 1955 (69 Stat. 699; D.C. Official Code § 1-1001.16) is amended as follows:

25 (a) Subsection (b) is amended as follows:

26 (1) Paragraph (1) is amended by adding a new subparagraph (E) to read as
27 follows:

28 “(E) The measure would be subject to appropriations prior to becoming
29 effective.”.

30 (2) A new paragraph (1B) is added to read as follows:

31 “(1B) If the measure is a proposed initiative measure, within one business day
32 after the proposed measure is received by the Board, the Board shall request a fiscal impact
33 statement from the Office of the Chief Financial Officer, who shall issue a fiscal impact
34 statement within 15 business days after receipt of the request from the Board.”.

35 (b) Subsection (c)(4) is repealed.

36 Sec. 3. Fiscal impact statement.

37 The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact
38 statement required by section 4a of the General Legislative Procedures Act of 1975, approved
39 October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

40 Sec. 4. Effective date.

41 This act shall take effect following approval by the Mayor (or in the event of veto by the
42 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
43 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
44 24, 1973 (87 Stat. 813; D.C. Official Code §1-206.02(c)(1)), and publication in the District of
45 Columbia Register.