

ENGROSSED ORIGINAL

A BILL 1

16-242 2

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA 3

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To establish a homeland security program within the Government of the District of Columbia 5  
and specify the components of the program; to establish a District of Columbia 6  
Homeland Security Commission and describe the responsibilities of the Commission; to 7  
establish strict liability and general and punitive damages against anyone who transports 8  
dangerous materials within the District of Columbia; to amend the Comprehensive Merit 9  
Personnel Act of 1978 to change the name of the Emergency Management Agency to the 10  
Homeland Security and Emergency Management Agency; to amend the District of 11  
Columbia Office of Energy Act of 1980 to replace a reference to the Office of 12  
Emergency Preparedness with a reference to the Homeland Security and Emergency 13  
Management Agency; to amend the Fiscal Year 2002 Budget Support Act of 2001 to 14  
replace a reference to the Emergency Management Agency with a reference to the 15  
Homeland Security and Emergency Management Agency; to amend the Language 16  
Access Act of 2004 to replace a reference to the Emergency Management Agency with a 17  
reference to the Homeland Security and Emergency Management Agency; and to amend 18  
an Act to authorize the District of Columbia government to establish an Office of Civil 19  
Defense, and for other purposes, to replace references to the Office of Emergency 20  
Preparedness with references to the Homeland Security Agency, and for other purposes. 21

BE IT ENACTED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this 22  
bill may be cited as the "Homeland Security, Risk Reduction, and Preparedness Act of 2006". 23

TITLE I. ESTABLISHING A HOMELAND SECURITY PROGRAM WITHIN THE 24  
GOVERNMENT OF THE DISTRICT OF COLUMBIA 25

Sec. 101. Findings and Purpose. 26

(a) The Council finds that: 27

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(1) The District of Columbia has been designated a high-threat target city by the U.S. Department of Homeland Security, and needs commensurate capabilities for preventing, mitigating and responding to terrorist attacks. These capabilities include risk-based strategic planning, threat and vulnerability analysis, and gap assessments.

(2) It is the policy of the District of Columbia to warn, inform and protect its residents by providing timely and accurate information before, during and after times of emergency. Such information can save lives, reduce property losses and speed economic recovery by providing residents with the information they need to make informed decisions and to take appropriate protective actions.

(3) The District of Columbia seeks to promote transparency regarding homeland security efforts, in order that government officials and the public can assess the risks, adequacy of programs, the progress made, and gaps remaining.

(4) Risks and vulnerabilities identified through an ongoing program of analysis should be addressed expeditiously and comprehensively.

(5) The Final Report of the National Commission on Terrorist Attacks Upon the United States outlined appropriate roles for the federal government and its counterparts at the local government level, and concluded that homeland security priorities and assistance should be based strictly on an assessment of risks and vulnerabilities.

(b) The purpose of this title is to establish a Homeland Security Program within the Government of the District of Columbia and to define such a program.

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Sec. 102. Definitions.	1
For the purposes of this title, the term:	2
(1) "Agency" means the Homeland Security and Emergency Management Agency.	3 4
(2) "Director" means the Director of the Homeland Security and Emergency Management Agency.	5 6
(3) "Program" means the Homeland Security Program created by Section 103.	7
Sec. 103. Homeland Security Program.	8
(a) The Director shall develop a Homeland Security Program to identify and mitigate threats, risks, and vulnerabilities within the District of Columbia. The program shall include, but not be limited to:	9 10 11
(1) Identifying public infrastructure and other public assets in the District that need protection, assessing vulnerability, and addressing priority needs;	12 13
(2) Establishing measurable readiness priorities and targets that balance the potential threat and magnitude of terrorist attacks, major disasters, and other emergencies with the resources required to prevent, respond to, and recover from them;	14 15 16
(3) Establishing readiness metrics and performance measures for preparedness in the areas of prevention, protection, response, and recovery;	17 18
(4) Assisting residents and public and private entities in emergency preparedness;	19
(5) Coordinating with federal, state, and regional authorities, and with private	20

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entities; and 1

(6) Developing a budget to implement the Program. 2

(b) Within one year of enactment, the Director shall contract for a baseline threat and 3  
vulnerability assessment of the District of Columbia to include risks associated with but not 4  
limited to terrorism (including bioterrorism), radiological weapons and their potential transport 5  
into the District of Columbia, food and water supply, cybersecurity, fire and rescue capability; an 6  
assessment of actions already taken to address security issues and recommendations on whether 7  
additional safety and security enforcement actions are needed; and recommendations for 8  
additional legislation needed to enhance the security of District residents. 9

(c) Beginning one year after the establishment of the Program, the Mayor shall submit an 10  
annual report to the Council describing the current level of the preparedness of the District of 11  
Columbia, including reports on the District’s homeland security capabilities, priority unmet 12  
needs and the cost of meeting those needs, relevant training and readiness exercises, resident 13  
education and the utilization of mutual aid. 14

Sec. 104. Public information and involvement program. 15

(a) The Mayor shall actively disseminate homeland security information to the public and 16  
engage residents in homeland security emergency planning, and shall solicit resident input in 17  
vulnerability assessment and planning activities and shall offer periodic training opportunities to 18  
members of the public. 19

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Sec. 105. District of Columbia government employee security training program. 1

(a) The Director, in consultation with other District of Columbia agencies, law 2  
enforcement, security, and terrorism experts, and representatives of public employees, shall 3  
develop and issue guidelines for a public employee security training program to meet 4  
requirements established in the District of Columbia Emergency Response Plan. 5

(b) At the request of the Director, District government agencies shall submit employee 6  
training programs to the Director for annual review. 7

Sec. 106. Large building security. 8

In consultation with organizations representing property owners, property managers, and 9  
building operators and managers, the Director shall: (1) develop guidance for building operators 10  
and managers to enhance the security of large commercial and residential buildings; and (2) in 11  
consultation with the Director of the Department of Consumer and Regulatory Affairs, the 12  
Director shall occasionally review the building code in order to determine potential changes that 13  
could improve building security. 14

Sec. 107. Exercises. 15

The Agency shall coordinate a regular program of readiness exercises to test the District 16  
of Columbia's emergency preparedness, propose action to address any gap in preparedness and 17  
coordinate with regional, federal and private entities. 18

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TITLE II. ESTABLISHMENT OF THE DISTRICT OF COLUMBIA HOMELAND	1
SECURITY COMMISSION	2
Sec. 201. Establishment. Membership. Terms of office.	3
(a) There is established a District of Columbia Homeland Security Commission	4
("Commission") which shall consist of seven persons with expertise in security, transportation,	5
communication, chemical safety, risk assessment, terrorism (including bioterrorism), or	6
occupational safety and health.	7
(b)(1) Commission members shall be nominated by the Mayor and confirmed by the	8
Council for terms of three years, in accordance with section 2(e) of the Confirmation Act of	9
1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(e)).	10
(2) The Mayor shall establish through rulemaking that Commission members	11
shall be subject to pre-nomination inquiries and security clearance requirements.	12
(3) The terms of the members first appointed shall begin on the date a majority of	13
the first members are sworn in, which shall become the anniversary date for all subsequent	14
appointments.	15
(4) Commission member's terms shall be staggered so that either four positions or	16
three positions will expire on the year's anniversary date.	17
(c) Members shall receive no salary for their service on the Commission but shall be	18
reimbursed for administrative costs associated with membership.	19
(d) The Agency shall provide staff to the Commission.	20

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Sec. 202. Responsibilities. 1

(a) The Commission shall gather and evaluate information on the status of homeland 2  
security in the District of Columbia; measure progress and gaps in homeland security 3  
preparedness; recommend security improvement priorities in consultation with major public and 4  
private entities, and, generally, advise the District of Columbia government on the Homeland 5  
Security Program. 6

(b) The Director may submit to the Commission and the Commission may request from 7  
the Director for periodic review, after-action reports on District of Columbia and other 8  
governmental homeland security exercises, assessments of regional homeland security efforts, 9  
and other documents relevant to the Commission’s responsibilities. 10

(c) The Commission, in consultation with the Director, shall use any information 11  
collected under Section 203(b) to make recommendations for improvements in security and 12  
preparedness. 13

Sec. 203. Confidentiality of proceedings. 14

(a) Commission proceedings shall be closed to the public and shall not be subject to 15  
section 742 of the District of Columbia Home Rule Act when the Committee is discussing 16  
specific public and private vulnerability assessments or where the information discussed would: 17

(1) reveal a trade secret or privileged or confidential commercial or financial 18  
information; or 19

(2) be detrimental to public safety. 20

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(b) Persons other than Commission members who attend any Commission meeting 1  
which, pursuant to this section, is not open to the public, shall not disclose what occurred at the 2  
meeting to anyone who was not in attendance, except insofar as disclosure is necessary for that 3  
person to comply with a request for information from the Commission. Commission members 4  
who attend meetings not open to the public shall not disclose what occurred with anyone who 5  
was not in attendance (except other Commission members), except insofar as disclosure is 6  
necessary to carry out the duties of the Commission. Any party who discloses information 7  
pursuant to this subsection shall take all reasonable steps to ensure that the information 8  
disclosed, and the person to whom the information is disclosed, are as limited as possible. 9

(c) Members of the Commission, persons attending a Commission meeting, and persons 10  
who present information to the Commission may not be required to disclose, in any 11  
administrative, civil, or criminal proceeding, information presented at or opinions formed as a 12  
result of a Commission meeting. 13

Sec. 204. Confidentiality of Information. 14

(a) All information and records generated by the Commission, including statistical 15  
compilations and reports, and all information and records acquired by, and in the possession of, 16  
the Commission are confidential. 17

(b) Except as permitted by this section, information and records of the Commission shall 18  
not be disclosed voluntarily, pursuant to a subpoena, in response to a request for discovery in 19  
any adjudicative proceeding, or in response to a request made under Title II of the District of 20

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Columbia Administrative Procedure Act, nor shall it be introduced into evidence in any administrative, civil, or criminal proceeding.

(c) Commission information and records may be disclosed only as necessary to carry out the Commission’s duties and purposes. The information and records may be disclosed by the Commission to another Homeland Security Commission if the other commission is governed by confidentiality provisions which afford the same or greater protections as those provided in this act.

(d) Information and records presented to the Commission shall not be immune from subpoena or discovery, or prohibited from being introduced into evidence, solely because the information and records were made available to the Commission, if the information and records could have been obtained through other sources.

Sec. 205. Records.

All records and information obtained by the Commission pursuant to Sections 202 and 403 shall be destroyed by the Commission one year after publication of the Commission’s annual report.

Sec. 206. Report to the Mayor, Council, and the public.

(a) The Commission shall report on an annual basis to the Mayor and Council on the work of the Commission and areas of the District of Columbia Homeland Security Program in need of improvement and shall make the annual report available to the public.

(b) Section 204(a) of the District of Columbia Administrative Procedure Act, effective

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March 25, 1977 (D.C. Law 1-96: D.C. Official Code § 2-534(a)), is amended as follows: 1

(a) Paragraph (11) is amended by striking the word “and” at the end. 2

(b) Paragraph (12) is amended by striking the period at the end and inserting the 3  
phrase “; and” in its place. 4

(c) A new paragraph (13) is added to read as follows: 5

“(13) Information exempt from disclosure by section 204 of the Homeland 6  
Security, Risk Reduction, and Preparedness Act of 2006, as approved by the Committee on the 7  
Judiciary on December 1, 2006 (Committee print of Bill 16-242).” 8

TITLE III. STRICT LIABILITY FOR RELEASE OF HAZARDOUS MATERIALS 9  
DURING TRANSPORT 10

Sec. 301. Definitions. 11

For the purposes of this title, the term: 12

(1) “Carrier” means the person who owns the locomotive or motor vehicle, 13  
excluding the trailer or railcar, used in transporting any of the hazardous materials identified in 14  
section 302. 15

(2) “Motor vehicle” means any vehicle propelled by internal-combustion engine, 16  
electricity, or steam, other than a vehicle designed to run only on rails or tracks, that is intended 17  
or used for moving freight, merchandise, or other commercial loads or property. The term 18  
“motor vehicle” shall include any trailer attached to the motor vehicle. 19

(3) “Person” shall have the same meaning as in section 3(5) of the District of 20

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Columbia Hazardous Waste Management Act of 1977, effective March 23, 1978 (D.C. Law 2- 1  
64; D.C. Official Code § 8-1302(5)). 2

(4) “Rail car” means any vehicle without motor power that is intended or used for 3  
moving freight, merchandise, or other commercial loads or property on rails or tracks and is 4  
drawn by a locomotive. 5

(5) “Trailer” means a vehicle without motor power intended or used for carrying 6  
freight, merchandise, or other commercial loads or property and drawn or intended to be drawn 7  
by a motor vehicle, whether such vehicle without motor power carries the weight of the property 8  
wholly on its own structure or whether a part of such weight rests upon or is carried by a motor 9  
vehicle. 10

(6) “Transport” means movement by a rail car or motor vehicle. 11

Sec. 302. Strict liability for release of hazardous materials during transport. 12

Subject only to the exclusions and limitations set forth in sections 304 and 305, and in 13  
addition to any other remedies available to the government of the District of Columbia, a carrier 14  
who transports into the District any of the hazardous materials listed in this section shall be 15  
strictly liable for all costs incurred by the District of Columbia in responding to a release or 16  
threatened release of any of the following within the geographic boundaries of the District of 17  
Columbia: 18

(1) Explosives of Class 1, Division 1.1, or Class 1, Division 1.2, as designated in 19  
49 C.F.R. ' 173.2, in a quantity greater than 500 kilograms; 20

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(2) Flammable gasses of Class 2, Division 2.1, as designated in 49 C.F.R. ' 173.2, 1  
in a quantity greater than 10,000 liters; 2

(3) Poisonous gasses of Class 2, Division 2.3, as designated in 49 C.F.R. ' 173.2, 3  
in a quantity greater than 500 liters, and belonging to Hazard Zones A or B, as defined in 49 4  
C.F.R. ' 173.116; 5

(4) Poisonous materials, other than gasses, of Class 6, Division 6.1, in a quantity 6  
greater than 1,000 kilograms, and belonging to Hazard Zones A or B, as defined in 49 C.F.R. ' 7  
173.133; 8

(5) Infectious agents, assigned to risk group 4 in 49 CFR Sec. 173.134 unless the 9  
infectious agent is the subject of an exception identified in 49 CFR Sec. 173.134; and; 10

(6) Radioactive materials in a concentration greater than that specified by the 11  
United States Nuclear Regulatory Commission in 10 C.F.R. § 30.70 (exempt concentrations); or 12  
in a quantity required to be labeled under 10 C.F.R. Part 30, Appendix B, or requiring the 13  
consideration of the need for an emergency plan for responding to a release under 10 C.F.R. § 14  
30.72. 15

Sec. 303. Costs recoverable by the District of Columbia. 16

Costs recoverable by the District of Columbia under section 302 shall include all costs 17  
related to: 18

(1) Containment of the gasses, explosives, and materials identified in section 302; 19

(2) Necessary cleanup and restoration of the site and the surrounding 20

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environment; 1

(3) Removal of the gasses, explosives, and materials identified in section 302; and 2

(4) Such actions as may be necessary to monitor, assess, and evaluate the release 3

or threat of release of any of the gasses, explosives, and materials identified in section 302, or to 4

mitigate damage to the public health or welfare that may otherwise result from a release or threat 5

of a release; 6

(5) Natural resource damages; 7

(6) Attorney’s fees and costs; 8

(7) Reimbursement for private collection firm’s services, when used; and 9

(8) Applicable interest on all costs and expenses incurred. 10

Sec. 304. Civil action. 11

(a) The Attorney General of the District of Columbia may institute an action in the 12

Superior Court of the District of Columbia against any person liable pursuant to section 302, in 13

order to recover all costs incurred by the District of Columbia. 14

(b) Notwithstanding the rights of the District of Columbia to institute an action as 15

provided in subsection (a) of this section, any person who has expended funds to remedy 16

environmental damage resulting from the release of any of the gasses, explosive, or materials 17

identified in section 302 may also bring an action in the Superior Court of the District of 18

Columbia against any person who may be liable for such damage pursuant to section 302. Such 19

person’s right to recover costs shall be limited to expenditures that are incurred for the purposes 20

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described in section 302 and that are consistent with the laws and rules of the District of Columbia. A person's right to recovery under this subsection shall not be barred by the fact that the party bringing the action is itself liable to the District of Columbia under this section.

Sec. 305. Defenses to liability.

(a) There shall be no liability under section 302 for a person otherwise liable who can establish by a preponderance of the evidence that the costs resulting from their acts or omissions were caused solely by:

(1) An act of God;

(2) An act of War;

(3) An act or omission of a third party other than an employee or agent of the defendant, or other than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant, if the defendant establishes by a preponderance of the evidence that the defendant:

(A) Exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances, and

(B) Took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or

(4) Any combination of the foregoing paragraphs.

Sec. 306. Punitive damages.

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In addition to the damages authorized elsewhere in this section, punitive damages may be awarded, if it is proved that the plaintiff's injuries were caused by the defendant's wanton or reckless disregard for public safety in the transportation of the gasses, explosives, and materials identified in section 302.

**Sec. 307. Establishment of Hazardous Materials Reimbursement Fund**

(a) There is established within the General Fund of the District of Columbia a segregated, nonlapsing fund to be known as the Hazardous Materials Reimbursement Fund ("Fund"). All funds as set forth in subsection (b) of this section shall be deposited into the Fund without regard to fiscal year limitation and shall not revert to the General Fund of the District of Columbia at the end of any fiscal year or at any other time, but shall be continually available for the uses and purposes set forth in subsection (c) of this section. The Fund shall be administered by the Mayor.

(b) The Chief Financial Officer shall deposit into the Fund all costs recovered by the District of Columbia pursuant to this title.

(c) All funds deposited shall be available for use by the Mayor to reimburse relevant District of Columbia agencies for costs incurred by the release or threatened release of the hazardous materials set forth in section 302.

**TITLE IV. DISTRICT OF COLUMBIA HOMELAND SECURITY NEEDS**

**Sec. 401.** The purpose of this title is to address homeland security needs in the District of Columbia, and to give policy direction and set priorities for the Homeland Security Program and

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District of Columbia Homeland Security Commission. 1

Sec. 402. Public notification of emergencies. 2

The Agency shall establish and implement an effective homeland security public warning 3  
and information capability (“warning capability”) that can be used during emergencies to warn 4  
residents timely and to disseminate emergency information to residents, both indoors and 5  
outdoors, at any time and regardless of residents’ special needs. The Agency shall also pay 6  
particular attention to the needs of senior citizens and low-income residents in establishing an 7  
effective homeland security warning capability. 8

Sec. 403. Private sector vulnerability assessments and mitigation plans. 9

(a) The Director shall request the voluntary sharing of information from private entities 10  
on best practices for prevention, mitigation, response, and recovery from a terrorist or other 11  
security incident, including information on relocation and other business continuity plans and 12  
programs, for the purpose of collaboration to improve public and private preparedness. 13

TITLE V. CONFORMING AMENDMENTS 14

Sec. 501. Section 301(17)(Q) of the Comprehensive Merit Personnel Act of 1978, 15  
effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-603.01(17)(Q) is amended by 16  
striking the phrase “Emergency Management Agency” and inserting the phrase “Homeland 17  
Security and Emergency Management Agency” in its place. 18

Sec. 502. Section 5 of the District of Columbia Office of Energy Act of 1980, effective 19  
March 4, 1981 (D.C. Law 3-132; D.C. Official Code § 2-904) is amended by striking the phrase 20

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"Office of Emergency Preparedness" wherever it appears and inserting the phrase "Homeland Security and Emergency Management Agency" in its place. 1  
2

Sec. 503. Section 305(b)(7) of the Fiscal Year 2002 Budget Support Act of 2001, 3  
effective October 3, 2001(D.C. Law 14-28; D.C. Official Code § 2-1374(b)(7)) is amended by 4  
striking the phrase "Emergency Management Agency" and inserting the phrase "Homeland 5  
Security and Emergency Management Agency" in its place. 6

Sec. 504. Section 2(3)(B)(ix) of the Language Access Act of 2004, effective June 19, 7  
2004 (D.C. Law 15-167; D.C. Official Code § 2-1931(3)(B)(ix)) is amended by striking the 8  
phrase "Emergency Management Agency" and inserting the phrase "Homeland Security and 9  
Emergency Management Agency" in its place. 10

Sec. 505. Sections 1, 2, 3, 4, 5, 6, 7, 8, and 9 of an Act to authorize the District of 11  
Columbia government to establish an Office of Civil Defense, and for other purposes, approved 12  
August 11, 1950 (64 Stat. 438; D.C. Official Code §§ 7-2201, 7-2202, 7-2203, 7-2204, 7-2205, 13  
7-2206, 7-2207, 7-2208, and 7-2209) are amended by striking the phrase "Office of Emergency 14  
Preparedness" wherever it appears and inserting the phrase " Homeland Security and Emergency 15  
Management Agency" in its place. 16

Sec. 506 Section 3(a) of the District of Columbia Public Emergency Act of 1980, 17  
effective March 5, 1989 (D.C. Law 3-149; D.C. Official Code § 7-2302(a)) is amended by 18  
striking the phrase "Emergency Management Agency" and inserting the phrase "Homeland 19  
Security and Emergency Management Agency" in its place. Sec. 507. Section 2(e) of the 20

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Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(e)), is amended by adding a new paragraph (29) to read as follows:

“(29) Homeland Security Commission.

TITLE VI. ESTABLISHMENT OF COMPREHENSIVE HOMICIDE ELIMINATION STRATEGY TASK FORCE.

There is hereby established a Comprehensive Homicide Elimination Strategy Task Force (“Task Force”). The Task Force shall consider the most effective elements of a comprehensive plan that would lead to the elimination of murder in Washington.

(1) The Task Force shall be comprised of representatives appointed by the Mayor from the government, non-profit organizations, business, schools, victims services organizations, arts, social services, religious, mental health, organized labor, ANC, and criminology professionals. The Mayor shall designate two co-chairs of the Task Force, one each from the government and non-government sector.

(2) The Task Force shall hold at least three public meetings, and shall present a report to the Mayor and the Council at the end of one year.

TITLE VI. 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)).

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TITLE VII. EFFECTIVE DATE

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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)(2) of the District of Columbia Home Rule Act, approved December  
24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of  
Columbia Register.

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