

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON LABOR AND WORKFORCE DEVELOPMENT
COMMITTEE REPORT**

1350 Pennsylvania Avenue, NW, Washington, D.C. 20004

TO: All Councilmembers
FROM: Councilmember Elissa Silverman,
Chairperson, Committee on Labor and Workforce Development
DATE: December 18, 2017
SUBJECT: Report on B22-0552, the “Office of Employee Appeals Hearing Examiner Classification Amendment Act of 2017”

The Committee on Labor and Workforce Development, to which B22-0552, the “Office of Employee Appeals Hearing Examiner Classification Amendment Act of 2017,” was referred, reports favorably and recommends approval by the Council of the District of Columbia.

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I. BACKGROUND AND NEED

On November 1, 2017, Councilmember Silverman introduced B22-0552, the “Office of Employee Appeals Hearing Examiner Classification Amendment Act of 2017.” B22-0552 would reclassify the Office of Employee Appeals’ hearing examiners from the Career Service to the Legal Service. As a result, their compensation would be increased to match other attorneys within the District government performing similar work.

The reclassification of the Office of Employee Appeals’ hearing examiners is necessary because the office requires highly qualified attorneys to perform its work. Compensating these attorneys at lower levels than other attorneys in the District government makes it harder to attract and retain suitable employees, increasing the likelihood of erroneous decisions. Decisions made in error not only risk an improper outcome for the District or for a District employee, but they also commit District resources to defending those decisions on appeal and potentially rehearing the case if the courts remand it. It is therefore in the best interest of the District, its employees, and its finances to make the necessary change to ensure that the Office of Employee Appeals has

the resources it needs to reach the correct decision in each case. A necessary component is to compensate hearing examiners commensurate with the work they do.

Background

As testified by the Office of Employee Appeals' Executive Director, Sheila Barfield, the process to reclassify the agency's hearing examiners began when a taskforce to reform the District's personnel classification and compensation system was created. In 2012 D.C. Human Resources (DCHR) asked OEA to attend training related to the reclassification project. In the course of this training, it became apparent that the Office of Employee Appeals' hearing examiners perform work most similar to administrative judges in the Office of Administrative Hearings, rather than to the hearing examiners of other agencies such as the Department of Employment Services.

In 2014 the Office of Employee Appeals and DCHR reached an agreement and finalized job specifications and worked together through September 2015 to map then-existing job titles onto the new titles that would exist after the reform with the expectation that in FY2016 there would be comprehensive classification reform. In 2016, the Council enacted the "Legal Service Employee Compensation System Changes Approval Resolution of 2016." The reform did not include the Office of Employee Appeals' hearing examiners, who remained classified as career service.

The Office of Employee Appeals continued to work with DCHR over the following year, and then during the FY2018 budget process, OEA submitted an enhancement request to secure the funds to pay their hearing examiners consistent with other barred attorneys in the District government. Although the Committee on Labor and Workforce Development concurred with the Office of Employee Appeals that their hearing examiners should be compensated commensurate with their experience and qualifications, the Executive's budget did not include sufficient funds to make the change and the Committee was unable to secure the additional funds necessary.

Committee Print

The Committee Print differs from the introduced version of the bill in that it codifies the existing practice of requiring the Office of Employee Appeals' hearing examiners to be attorneys licensed to practice in the District. This requirement was included both to ensure that the agency maintains its high quality of hearing examiners and to avoid the possibility that the D.C. Code would mandate that non-attorneys be classified as attorneys.

COMMITTEE RECOMMENDATION:

The Committee recommends the passage of B22-0552, the "Office of Employee Appeals Hearing Examiner Classification Amendment Act of 2017," because it will help the Office of Employee Appeals recruit and retain a well-qualified workforce to resolve disputes between the District and its employees.

II. LEGISLATIVE CHRONOLOGY

- November 1, 2017 B22-0552 Introduced by Councilmember Silverman at the Office of the Secretary
- November 7, 2017 Referred to the Committee on Labor and Workforce Development
- November 10, 2017 Notice of Intent to Act on B22-0552 Published in the District of Columbia Register
- November 10, 2017 Notice of Public Hearing Published in the District of Columbia Register
- November 30, 2017 Public Hearing on B22-0552

III. POSITION OF THE EXECUTIVE

The Committee did not receive any comments from the Executive.

IV. ADVISORY NEIGHBORHOOD COMMISSION

The Committee did not receive comments from any Advisory Neighborhood Commission.

V. SUMMARY OF TESTIMONY

The Committee on Labor and Workforce Development held a public hearing on November 30, 2017 at 10 a.m. Committee Chair Elissa Silverman made an opening statement:

Good morning. I am At-Large Councilmember Elissa Silverman, chair of the Committee on Labor and Workforce Development. Today is Thursday, November 30th, 2017 and the time is 10:01 a.m. and we are in room 412 of the John A. Wilson Building in the District of Columbia. I'm calling to order this meeting of the Committee on Labor and Workforce Development. Today we are holding a hearing on the following three measures:

B22-552, the "Office of Employee Appeals Hearing Examiner Classification Amendment Act of 2017"

B22-553, the "Public Employee Relations Board Term Limit Amendment Act of 2017"

B22-554, the "Adult Career Pathways Taskforce Expansion Amendment Act of 2017"

Let me give an explanation of the bills.

The first bill, B22-552, the "Office of Employee Appeals Hearing Examiner Classification Amendment Act of 2017" was introduced by me on November 1, 2017. This legislation would reclassify the hearing examiners at the Office of Employee

Appeals as attorneys. These employees, who are already required to be attorneys, are currently compensated at a lower rate than attorneys in other parts of DC government. By reclassifying them as attorneys, we can make sure they are fairly compensated in comparison to other attorneys and ensure that we can recruit experienced and qualified attorneys to these important positions.

Our second bill today, B22-553, the “Public Employee Relations Board Term Limit Amendment Act of 2017,” was also introduced by me on November 1, 2017. This bill allows members of the Public Employee Relations Board to serve three consecutive terms instead of two. It is necessary because it is difficult to find highly qualified individuals to serve on the Board who are willing to serve despite only a small stipend for compensation. This is the permanent version of legislation that was passed on emergency on November 7, 2017.

The third bill is B22-554, the “Adult Career Pathways Taskforce Expansion Amendment Act of 2017.” This bill would expand the Adult Career Pathways Taskforce to include three additional members, each representing the business community from an in-demand industry. These additional members will ensure that the taskforce has valuable insight into the industries that are most likely to give our residents a path to a living wage career.

I want to thank the masses who are here to testify today. Please present yourself and submit any written testimony to my legal counsel, Michael Ambinder. The record for today’s hearing will be open until 5 p.m. on Thursday, December 14, 2017. If you did not bring written testimony, please submit your testimony electronically by then.

No public witnesses testified at the public roundtable regarding B22-552, the “Office of Employee Appeals Hearing Examiner Classification Amendment Act of 2017.”

Government Testimony

Sheila Barfield, Executive Director of the Office of Employee Appeals, testified in favor of B22-552. She provided a history of the agency’s efforts to get their hearing examiners reclassified to the legal service in her testimony. She further testified that the legislation would assist the agency in retaining hearing examiners with more than 100 years of cumulative experience, but that without the legislation they were concerned they would continue losing hearing examiners to the federal government, as had happened recently.

VI. IMPACT ON EXISTING LAW

B22-552 would reclassify the Office of Employee Appeals’ hearing examiners as attorneys and require them to be licensed to practice law in the District of Columbia.

VII. FISCAL IMPACT STATEMENT

The Committee adopts the fiscal impact statement from the District's Chief Financial Officer. See Attachment 6.

VIII. SECTION BY SECTION ANALYSIS

Section 1 provides the long and short titles of the legislation.

Section 2 amends the definition of attorney to include hearing examiners employed by the Office of Employee Appeals within the definition of attorney.

Section 3 requires hearing examiners at the Office of Employee Appeals to be attorneys licensed to practice law in the District of Columbia.

Section 4 fiscal impact statement

Section 5 effective date

IX. COMMITTEE ACTION

The Committee on Labor and Workforce Development convened at time on date, to consider and vote on bill. Chairperson Silverman recognized the presence of a quorum, consisting of herself and Councilmembers _____.

Chairperson Silverman moved bill, and opened the floor for discussion.

Discussion having ended, Chairperson Silverman then moved the proposed committee print and report for resolution bill, with leave for the Committee staff to make technical and conforming amendments. The Members present voted _____ to approve the committee print and report for resolution bill.

The committee meeting adjourned at time

X. ATTACHMENTS

1. B22-0552 as introduced
2. Notice of Intent to Act.
3. Public hearing notice for B22-0552.
4. Witness list and copies of testimony from the November 30, 2017 public hearing.
5. Legal sufficiency determination.
6. Fiscal impact statement.
7. Comparative Print of B22-552.
8. Committee Print of B22-552.

ATTACHMENT 1

B 22-0552 as introduced.


Councilmember Elissa Silverman

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To classify Hearing Examiners within the Office of Employee Appeals as Legal Service employees within the District Government.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Office of Employee Appeals Hearing Examiner Classification Amendment Act of 2017”.

Sec. 2. Section 851(2) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-608.51(2)), is amended to read as follows:

“(2) “Attorney” means:

“(A) Any position which is classified as part of Series 905, except for any position that is occupied by a person whose duties, in whole or in substantial part, consist of hearing cases as an administrative law judge or as an administrative hearing officer; and

“(B) Notwithstanding subparagraph (A) of this paragraph, a hearing examiner employed by the Office of Employee Appeals.”.

Sec. 3. Fiscal impact statement.

32 The Council adopts the fiscal impact statement in the committee report as the fiscal
33 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
34 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

35

36 Sec. 4. Effective date.

37 This act shall take effect following approval by the Mayor (or in the event of a veto by
38 the Mayor, action by the Council to override the veto), a 30-day period of congressional review
39 as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
40 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
41 Columbia Register.

ATTACHMENT 2

Notice of Intent to Act.

COUNCIL OF THE DISTRICT OF COLUMBIA
NOTICE OF INTENT TO ACT ON NEW LEGISLATION

The Council of the District of Columbia hereby gives notice of its intention to consider the following legislative matters for final Council action in not less than **15 days**. Referrals of legislation to various committees of the Council are listed below and are subject to change at the legislative meeting immediately following or coinciding with the date of introduction. It is also noted that legislation may be co-sponsored by other Councilmembers after its introduction.

Interested persons wishing to comment may do so in writing addressed to Nyasha Smith, Secretary to the Council, 1350 Pennsylvania Avenue, NW, Room 5, Washington, D.C. 20004. Copies of bills and proposed resolutions are available in the Legislative Services Division, 1350 Pennsylvania Avenue, NW, Room 10, Washington, D.C. 20004 Telephone: 724-8050 or online at www.dccouncil.us.

COUNCIL OF THE DISTRICT OF COLUMBIA**PROPOSED LEGISLATION****BILLS**

B22-538

Watkins Alley Designation Act of 2017

Intro. 10-31-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole

B22-539

Boris Nemtsov Plaza Designation Act of 2017

Intro. 10-31-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole

B22-552

Office of Employee Appeals Hearing Examiner Classification Amendment Act of 2017

Intro. 11-1-17 by Councilmember Silverman and referred to the Committee on Labor and Workforce Development

B22-553

Public Employee Relations Board Term Limit Amendment Act of 2017

Intro. 10-31-17 by Councilmember Silverman and referred to the Committee on Labor and Workforce Development

- B22-554 Adult Career Pathways Taskforce Expansion Amendment Act of 2017
Intro. 11-1-17 by Councilmember Silverman and referred to the Committee on Labor and Workforce Development
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- B22-555 Closing of a Public Alley in Square 211, S.O. 17-26363, Act of 2017
Intro. 11-1-17 by Councilmember Evans and referred to the Committee of the Whole
-
- B22-557 Israel Baptist Church Way Designation Act of 2017
Intro. 11-1-17 by Councilmember McDuffie and referred to the Committee of the Whole
-
- B22-558 Community Health Investment Amendment Act of 2017
Intro. 11-3-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health
-
- B22-559 Dupont Circle Business Improvement District Amendment Act of 2017
Intro. 11-3-17 by Councilmember Evans and referred to the Committee on Finance and Revenue
-
- B22-560 Second Chance Amendment Act of 2017
Intro. 11-6-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety
-
- B22-561 Crummell School Site Surplus and Disposition Approval Act of 2017
Intro. 11-6-17 by Chairman Mendelson at the request of the Mayor and referred sequentially to the Committee on Transportation and the Environment and the Committee on Business and Economic Development
-

- B22-568 Washington Metropolitan Area Transit Authority Dedicated Funding Act of 2017
Intro. 11-7-17 by Councilmembers Evans, Grosso, R. White, Cheh, McDuffie, Gray, Bonds, Silverman, Nadeau, Todd, Allen, T. White, and Chairman Mendelson and referred to the Committee on Finance and Revenue
-
- B22-569 Oxygen Therapy Regulation Amendment Act of 2017
Intro. 11-7-17 by Councilmembers Cheh and Bonds and referred to the Committee on Health
-
- B22-570 Rental Housing Affordability Re-establishment Amendment Act of 2017
Intro. 11-7-17 by Councilmembers Bonds and Nadeau and referred to the Committee on Housing and Neighborhood Revitalization
-
- B22-571 Abortion Provider Non-Discrimination Amendment Act of 2017
Intro. 11-7-17 by Councilmembers Grosso, Allen, R. White, Nadeau, Evans, and Bonds and referred to the Committee on Judiciary and Public Safety
-
- B22-572 Wage Garnishment Fairness Amendment Act of 2017
Intro. 11-7-17 by Councilmembers Silverman, Evans, T. White, Grosso, Nadeau, and Bonds and referred to the Committee on Judiciary and Public Safety
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- B22-573 Slumlord Deterrence Amendment Act of 2017
Intro. 11-7-17 by Councilmembers Silverman, R. White, T. White, Nadeau, Grosso, and Bonds and referred to the Committee of the Whole
-
- B22-574 District of Columbia Paperwork Reduction and Data Collection Act of 2017
Intro. 11-7-17 by Councilmembers Nadeau, Grosso, and R. White and referred to the Committee on Government Operations
-

- B22-575 D.C. Cemetery Private Road and Parking Lot Exemption of Clean Water Fees Amendment Act of 2017
Intro. 11-7-17 by Councilmembers Todd, Gray, and Evans and referred to the Committee on Transportation and the Environment
-
- B22-576 Energy-Efficiency and Water- Efficiency Sales Tax Holiday Amendment Act of 2017
Intro. 11-7-17 by Councilmembers Todd, Nadeau, R. White, Bonds, Gray, and T. White and referred to the Committee on Finance and Revenue
-
- B22-577 Performing Arts Promotion Amendment Act of 2017
Intro. 11-7-17 by Councilmembers R. White, Nadeau, and Grosso and referred to the Committee on Finance and Revenue
-
- B22-578 Neighborhood Reinvestment from Advertising Regulation Amendment Act of 2017
Intro. 11-7-17 by Councilmembers R. White, Grosso, Bonds, Allen, and Silverman and referred to the Committee on Finance and Revenue
-
- B22-579 Helicopter Landing Pad Amendment Act of 2017
Intro. 11-7-17 by Councilmembers Gray and Evans and referred to the Committee of the Whole
-
- B22-580 Veterans Specialty License Plate Amendment Act of 2017
Intro. 11-7-17 by Councilmembers Gray, Evans, Allen, McDuffie, Silverman, Nadeau, Grosso, R. White, Bonds, T. White, and Todd and referred to the Committee on Transportation and the Environment
-
- B22-581 Transit Worker Protection Amendment Act of 2017
Intro. 11-7-17 by Councilmembers T. White, Bonds, Evans, and Gray and referred to the Committee on Judiciary and Public Safety
-

B22-582 District of Columbia Community Schools Incentive Amendment Act of 2017
Intro. 11-7-17 by Councilmembers T. White, Nadeau, and McDuffie and referred to the Committee on Education

B22-583 Opioid Abuse Prevention Amendment Act of 2017
Intro. 11-7-17 by Chairman Mendelson and referred to the Committee on Health

PROPOSED RESOLUTIONS

PR22-596 Director of the Department of Small and Local Business Development Kristi C. Whitfield Confirmation Resolution of 2017
Intro. 11-2-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business and Economic Development

PR22-597 Commission on Human Rights Clifton Lewis Confirmation Resolution of 2017
Intro. 11-2-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety

PR22-598 Youth Apprenticeship Advisory Committee Dr. Madye Henson Confirmation Resolution of 2017
Intro. 11-2-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Labor and Workforce Development

PR22-599 Real Estate Commission David W. Forster Confirmation Resolution of 2017
Intro. 11-2-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Housing and Neighborhood Revitalization

PR22-600 Homeland Security Commission Joseph Green Confirmation Resolution of 2017
Intro. 11-2-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety

- PR22-611 Fifth Street N.W. and I Street N.W. Term Sheet Amendment Approval Resolution of 2017
- Intro. 11-6-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business and Economic Development
-
- PR22-612 Commission on Aging Councilmember Anita Bonds Appointment Resolution of 2017
- Intro. 11-6-17 by Chairman Mendelson and referred to the Committee of the Whole
-
- PR22-616 Sense of the Council Calling on Congress to Continue Aiding Puerto Rico and the U.S. Virgin Islands on their Relief and Recovery Efforts Resolution of 2017
- Intro. 11-7-17 by Councilmembers Bonds, Grosso, R. White, Evans, Todd, Allen, T. White, Silverman, Nadeau, Cheh, McDuffie, Gray, and Chairman Mendelson and Retained by the Council
-

ATTACHMENT 3

Public hearing notice for B 22-0552.

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON LABOR AND WORKFORCE DEVELOPMENT
NOTICE OF PUBLIC HEARING**
1350 Pennsylvania Avenue, NW, Washington, D.C. 20004

**CHAIRPERSON ELISSA SILVERMAN
COMMITTEE ON LABOR AND WORKFORCE DEVELOPMENT**

ANNOUNCE A PUBLIC HEARING ON

**B22-0552, THE “OFFICE OF EMPLOYEE APPEALS HEARING EXAMINER
CLASSIFICATION AMENDMENT ACT OF 2017”**

**B22-0553, THE “PUBLIC EMPLOYEE RELATIONS BOARD TERM LIMIT
AMENDMENT ACT OF 2017”**

**B22-0554, THE “ADULT CAREER PATHWAYS TASKFORCE EXPANSION
AMENDMENT ACT OF 2017”**

**Thursday, November 30, 2017, 10:00 a.m.
Hearing Room 123, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004**

Councilmember Elissa Silverman, Chair of the Committee on Labor and Workforce Development announces a hearing on B22-552, the “Office of Employee Appeals Hearing Examiner Classification Amendment Act of 2017,” on B22-553, the “Public Employee Relations Board Term Limit Amendment Act of 2017,” and on B22-554, the “Adult Career Pathways Taskforce Expansion Amendment Act of 2017.” The hearing will be held at 10 a.m. on Wednesday, November 30, 2017, in Room 123 of the John A. Wilson Building.

The purpose of B22-0552, the “Office of Employee Appeals Hearing Examiner Classification Amendment Act of 2017,” is to classify the attorneys working in the Office of Employee Appeals as attorneys within the DCHR classification of employees, thereby aligning their compensation to be commensurate with their experience and with other attorneys in the District government. The Purpose of B22-553, the “Public Employee Relations Board Term Limit Amendment Act of 2017,” is to increase the number of consecutive terms a member of the Public Employee Relations Board may serve from two terms to three terms. This change would allow the retention of high quality Board members. The purpose of B22-554, the “Adult Career Pathways Taskforce Expansion Amendment Act of 2017,” is to require Council approval of mayoral nominees to the Adult Career Pathways Taskforce and to add three members to that body representing the business community in in-demand industries.

Those who wish to testify before the Committee are asked to contact Ms. Charnisa Royster at labor@dccouncil.us or (202) 724-7772 by 5:00 p.m. on Monday, November 27, 2017, to provide their name, address, telephone number, organizational affiliation and title (if any), as well as the

language of oral interpretation, if any, they require. Those wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. Those representing organizations will have five minutes to present their testimony, and other individuals will have three minutes to present their testimony; less time may be allowed if there are a large number of witnesses.

If a witness is unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted by email to Ms. Royster at labor@dccouncil.us or mailed to the Committee on Labor and Workforce Development, Council of the District of Columbia, Suite 115 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on Thursday, December 14, 2017.

ATTACHMENT 4

Witness list and copies of testimony from the November 30, 2017 public hearing.

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON LABOR AND WORKFORCE DEVELOPMENT
PUBLIC HEARING: AGENDA AND WITNESS LIST
1350 Pennsylvania Avenue, NW, Washington, D.C. 20004**

**CHAIRPERSON ELISSA SILVERMAN
COMMITTEE ON LABOR AND WORKFORCE DEVELOPMENT**

ANNOUNCES A PUBLIC HEARING ON

**B22-552, THE “OFFICE OF EMPLOYEE APPEALS HEARING EXAMINER
CLASSIFICATION AMENDMENT ACT OF 2017”**

AND

**B22-553, THE “PUBLIC EMPLOYEE RELATIONS BOARD TERM LIMIT
AMENDMENT ACT OF 2017”**

AND

**B22-554, THE “ADULT CAREER PATHWAYS TASKFORCE EXPANSION
AMENDMENT ACT OF 2017”**

**Thursday, November 30, 2017, 10:00 a.m.
Hearing Room 123, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004**

AGENDA AND WITNESS LIST

- I. CALL TO ORDER**
- II. OPENING REMARKS**
- III. WITNESSES**

**B22-552, The “Office of Employee Appeals Hearing Examiner Classification
Amendment Act of 2017”**

Government Witness

1. Sheila Barfield, Executive Director of the Office of Employee Appeals

B22-553, the “Public Employee Relations Board Term Limit Amendment Act of 2017”

Government Witness

2. Clarene Martin, Executive Director of the Public Employee Relations Board

B22-554, the “Adult Career Pathways Taskforce Expansion Amendment Act of 2017”

Public Witnesses

3. Judy Berman, Deputy Director, DC Appleseed
4. Emily Price, Center for Employment Training Chief Program Officer, So Others Might Eat

Government Witness

5. Courtney Snowden, Deputy Mayor for Greater Economic Opportunity

THE OFFICE OF EMPLOYEE APPEALS

Before

THE COUNCIL OF THE DISTRICT OF COLUMBIA

COMMITTEE ON LABOR AND WORKFORCE DEVELOPMENT

The Honorable Elissa Silverman, Chairperson

PUBLIC HEARING ON

**THE "OFFICE OF EMPLOYEE APPEALS HEARING EXAMINER CLASSIFICATION
AMENDMENT ACT OF 2017"**

Testimony Submitted By

**Sheila Barfield, Executive Director
November 30, 2017**

Good morning, Councilmember Silverman and members of the Committee on Labor and Workforce Development. Thank you for introducing the “Office of Employee Appeals Hearing Examiner Classification Amendment Act of 2017.” And thank you for allowing me to testify in support of this legislation. Once passed, this legislation will legally classify the Office of Employee Appeals’ (OEA) Hearing Examiners, also referred to as Administrative Judges, in the 905 Series where they will be paid from the Legal Services pay scale.

The reclassification process for our judges began over seven years ago, when the District government assembled a taskforce whose mission was to reform the classification and compensation system of the District government. OEA became actively involved in this process in 2012 when we were asked by D.C. Human Resources (DCHR) to attend training related to classification and compensation reform. Position experts from various agencies were selected and asked to attend the sessions.

The training sessions were divided into specific positions within the government (attorneys, paralegals, hearing examiners, administrative judges). The purpose of the training was to draft position descriptions and job specifications that represented at least 80% of the work performed by staff within these positions across the government. Initially, OEA attended the training for Hearing Examiners. However, it was quickly realized by the DCHR facilitators and OEA that although OEA Administrative Judges are referred to as Hearing Examiners, the work performed by our judges more clearly aligned with the work of other Administrative Judges within District agencies like within the Office of Administrative Hearings (OAH).

By 2014, OEA and DCHR finalized job specifications. In September of 2015, as a result of the newly created job specifications, we moved on to the process of mapping current position titles to the titles judges would have under the new classification reform. At this point, OEA was

told that there would be a roll out of a comprehensive classification and compensation overhaul in FY16. In 2016, the Council enacted the "Legal Service Employee Compensation System Changes Approval Resolution of 2016." Salary adjustments to Legal Service employees were made in October of 2016 (FY17).

In November and December of 2016, OEA had a series of conference calls with DCHR's Classification and Compensation Manager, General Counsel, and Associate Director. The purpose of the calls was to discuss the classification and compensation for OEA Administrative Judges. It was determined then that OEA's Administrative Judges were improperly classified as Career Service employees and should have been classified on the Legal Service scale, as they are barred attorneys.

As a result of these meetings, OEA submitted an Enhancement Request for fiscal year 2018, to reclassify our judges and to secure funding for the salary changes. Unfortunately, our request was not granted last fiscal year. However, the recent introduction of the "Office of Employee Appeals Hearing Examiner Classification Amendment Act of 2017" would satisfy a portion of our Enhancement Request by reclassifying our judges to the Legal Service scale.

We are hopeful that this bill will pass and funding can be secured so that our judges are paid comparable salaries to their District and Federal government counterparts. As an agency, our goal is to retain our judges who have over 100 years of employment law experience combined. Without the proper classification and funding to pay comparable salaries, we fear that our judges will leave the employ of OEA to work for the federal government, as we have had happen recently. In an effort to maintain the institutional knowledge that we have within our judge's unit, we have submitted an Enhancement Request for a total of \$238,327 to have our Junior Judges move a Grade 14 and our Senior Judges to a Grade 15 on the Legal Service Scale.

ATTACHMENT 5

Legal Sufficiency Determination

ATTACHMENT 6

Fiscal Impact Statement.

Government of the District of Columbia
Office of the Chief Financial Officer



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
Chief Financial Officer

DATE: December 14, 2017

SUBJECT: Fiscal Impact Statement – Office of Employee Appeals Hearing
Examiner Classification Amendment Act of 2017

REFERENCE: Bill 22-552, Draft Committee Print sent to the Office of Revenue
Analysis on December 8, 2017

Conclusion

Funds are not sufficient in the fiscal year 2018 through fiscal year 2021 budget and financial plan to implement the bill. The bill will cost \$159,000 in fiscal year 2018 and \$916,000 over the four-year budget and financial plan.

Background

The bill reclassifies¹ hearing examiners in the Office of Employee Appeals as legal service employees. Currently these employees are classified as career service employees.

Financial Plan Impact

Funds are not sufficient in the fiscal year 2018 through fiscal year 2021 budget and financial plan to implement the bill. The bill will cost \$159,000 in fiscal year 2018 and \$916,000 over the four-year budget and financial plan.

The bill will increase the salaries and benefits of seven FTEs in the Office of Employee Appeals. As career service employees, these employees would earn salaries and benefits totaling about \$746,000 in fiscal year 2018. As legal service employees, their salaries and benefits would increase to \$984,000, roughly \$238,000 more a year than they currently earn. In fiscal year 2019, the change in classification would increase the employees' salaries by a total of \$248,000. In fiscal year 2020

¹ By amending Section 851(2) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-608.51(2)).

The Honorable Phil Mendelson

FIS: Bill 22-552, "Office of Employee Appeals Hearing Examiner Classification Amendment Act of 2017," Draft Committee Print sent to the Office of Revenue Analysis on December 8, 2017

and fiscal year 2021, the increase in employees' salaries and benefits will be higher because we assume salaries and benefits will increase by 1.7 percent a year.

The table below pro-rates the fiscal year 2018 cost to account for only the portion of the year for which we assume the bill will be in effect.

Cost of the Office of Employee Appeals Hearing Examiner Classification Amendment Act of 2017, Fiscal Years 2018 - 2021				
FY 2018	FY 2019	FY 2020	FY 2021	Four-Year Total
\$159,000	\$248,000	\$252,000	\$257,000	\$916,000

Table notes:

- In fiscal year 2018 the cost of salaries and benefits for affected employees would increase from a total of \$746,000 to \$984,000 if the bill were in effect the whole year. However, we have pro-rated the costs for 8 months, assuming the bill will go into effect February 2018.
- In fiscal year 2019 the cost of salaries and benefits for affected employees would increase from a total of \$755,000 to \$1.003 million.
- For fiscal year 2020 and fiscal year 2021, we assume salaries and benefits will increase 1.7 percent a year.

ATTACHMENT 7

Comparative Print of B22-552.

OEA Compensation Comparative Print

§ 1–606.01. Establishment of the Office of Employee Appeals; composition; qualifications; term of office; vacancies; Chairperson; quorum; appeal procedure; conflict of interest; compensation; appointment of employees; expenditures; removal; exclusivity of position.

(a) There is established an Office of Employee Appeals (hereinafter referred to in this subchapter as the “Office”). The Office shall be composed of 5 members to be appointed by the Mayor in accordance with the provisions of subsection (b) of this section within 60 days of the date this chapter becomes effective as provided in § 1-636.02. Members of the Office shall have demonstrated knowledge concerning personnel management or labor relations, and a reputation for impartiality and integrity in the discharge of their responsibilities. No member shall be eligible for reappointment.

(b) The term of office of each member of the Office shall be 6 years: Except, that: (1) Of those members first appointed, 2 shall serve for 2 years and 3 shall serve for 4 years, respectively, from the date of appointment; and (2) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of such term. No member may serve beyond the expiration of his or her term, except that a member serving a term of less than 6 years, who was appointed under clause (1) of this subsection, or a member who is appointed to serve the remainder of an unexpired term of three years or less, who was appointed under clause (2) of this subsection, may be reappointed for a full 6-year term. Appointments to fill vacancies shall be made in accordance with the provisions of subsection (a) of this section. The Mayor shall designate the term of each member at the time of his or her appointment.

(c) The Chairperson of the Office shall be designated by the Mayor. The Chairperson shall be the chief executive of the Office. 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.

(d) Three members of the Office shall constitute a quorum for the transaction of official business and the issuance of rules and regulations. The Office may hear appeals brought before it under this subchapter by a hearing examiner. An appeal from a decision of any such hearing examiner may be taken either to the full Office or to the Superior Court of the District of Columbia at the option of any adversely affected party. If an appeal is taken directly to the Superior Court of the District of Columbia, the decision of a hearing examiner, for the purposes of such appeal, shall be considered as the final decision of the Office. If an appeal is taken from a decision of a hearing examiner to the full Office, the decision of the hearing examiner shall be stayed pending a final decision of the Office. Upon a vote of a majority of its members, the Office may hear de novo all issues of fact or law relating to an appeal of a decision of the hearing examiner, except the Office may decide to consider only the record made before such hearing examiner. A final decision of the full Office, relating to an appeal brought to it from a hearing examiner, shall be appealable to the Superior Court of the District of Columbia. Upon reviewing the final decision of the Office, the Court shall determine if it is supported by substantial evidence.

(e) If at any time any matter comes before the Office in which any member has any interest, directly or indirectly, other than as that of a taxpayer, the member shall publicly so state and this statement shall be recorded in the minutes of that meeting. The member thereafter is disqualified from participation in the consideration of the matter under deliberation.

(f) Each member of the Office is entitled to compensation at the rate of \$125 per diem or \$15.62 per hour whichever provides less, while actually in the service of the Office. Should a member serve in excess of 8 hours on a particular day, such member may be paid additional compensation for such period of service, to a maximum of 2 per diem payments for any consecutive 24-hour period. Adjustment to such rates of compensation shall be made in accordance with § 1-611.08(b), not to exceed the sum of \$20,000 per annum.

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

(A)(i) An Executive Director;

(ii) The Executive Director shall be a District resident throughout his or her term and failure to maintain District residency shall result in a forfeiture of the position;

(B) A General Counsel, who shall report to the Executive Director.

(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 § 1-606.09.

(h) The Office shall be considered an independent agency for budgetary and administrative purposes.

(i)(1) The Mayor may remove any member of the Office who engages in any activity prohibited by subsection (j) of this section, and appoint a new member to serve until the expiration of the term of the member so removed. When the Mayor believes that any member has engaged in any such activity he or she shall initiate an action, in the Superior Court of the

District of Columbia in accordance with the provisions of § 16-3521 et seq., to remove such member.

(2) Any vacancy occurring in the Office shall be filled within 45 days after the occurrence of such vacancy excluding Saturdays, Sundays and legal holidays.

(3) The procedure provided for in subsections (a) and (b) of this section for filling a vacancy resulting from the expiration of a term of office shall be initiated at least 30 days prior to the expiration. If a vacancy occurs during a term due to removal, resignation or death of a member, the new appointee's term of office is the remainder of the unexpired term. Appointment procedures for such new appointees shall be those provided in subsections (a) and (b) of this section.

(j) Any member of the Office who: (1) Violates the provisions of subsection (k) of this section; (2) engages in a conflict of interest in violation of the provisions of subchapter XVIII of this chapter; or (3) is convicted of a crime, which if committed in the District of Columbia would be a felony, which is by this or any other statute punishable by disqualification to hold office, in addition to the other punishment prescribed for such offense, shall be removed from office as provided in this section.

(k) No member of the Office may hold any other position in the District government or any subordinate position in the Office.

(l) Notwithstanding the provisions of Unit A of Chapter 14 of Title 2, each qualified District resident applicant shall receive an additional 10-point preference over a qualified non-District resident applicant for all positions within the Office unless the applicant declines the preference. This 10-point preference shall be in addition to, and not instead of, qualifications established for the position. All persons hired after February 6, 2008, shall submit proof of residency upon employment in a manner determined by the Office. An applicant claiming the hiring preference under this section shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of residency annually to the Director of Personnel for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment. The Office of Employee Appeals shall submit to the Mayor and Council annual reports detailing the names of all new employees and their pay schedules, titles, and place of residence.

(m) Hearing examiners employed by the Office of Employee Appeals must be licensed to practice law in the District of Columbia.

§ 1-608.51. Definitions.

For the purposes of this subchapter, the term:

(1) "Agency" means any subordinate or independent agency of the District government, but does not include the following entities:

- (A) Superior Court or the Court of Appeals;
- (B) District of Columbia Financial Responsibility and Management Assistance Authority;
- (C) Board of Parole;
- (D) Repealed;
- (E) Housing Finance Agency;

(F) Pretrial Services Agency;
(G) Public Defender Service;
(H) Water and Sewer Authority;
(I) Washington Convention and Sports Authority;
(J) Housing Authority; or
(K) Any agency or unit thereof excluded by court order from coverage pursuant to this chapter.

(2) “Attorney” means:

(A) any-Any position which is classified as part of Series 905, except for any position that is occupied by a person whose duties, in whole or in substantial part, consist of hearing cases as an administrative law judge or as an administrative hearing officer; and

(B) - Notwithstanding subparagraph (A) of this paragraph, a hearing examiner employed by the Office of Employee Appeals.

(3) “Senior Executive Attorney Service position” means:

(A) Any attorney position which is classified above DS-15, or an equivalent position, and in which the employee:

(i) Directs the work of an organizational unit;

(ii) Is held accountable for the success of one or more specific programs or projects;

(iii) Monitors progress toward organizational goals and periodically evaluates and makes appropriate adjustments to these goals;

(iv) Supervises the work of employees other than personal assistants;

(v) Performs important legal policy-making or policy-determining functions; or

(vi) Provides significant leadership in legal counseling or in the trial of cases;

(B) Any attorney who is a Deputy Attorney General, Chief Deputy Attorney General, Special Deputy Attorney General, Senior Counsel to the Attorney General, General Counsel or the equivalent for any agency subordinate to the Mayor, or any other attorney in the Office of the Attorney General for the District of Columbia who routinely reports directly to the Attorney General; or

(C) Any attorney who is a General Counsel employed by an independent agency, except attorneys employed by the Chief Financial Officer.

ATTACHMENT 8

Committee Print of B 22-0552.

1 **Committee Print**
2 **Committee on Labor and Workforce Development**
3 **December 18, 2017**
4
5
6
7

8 A BILL

9
10 B22-552

11
12 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
13
14

15 To classify Hearing Examiners within the Office of Employee Appeals as Legal Service
16 employees within the District Government.
17

18 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
19 act may be cited as the “Office of Employee Appeals Hearing Examiner Classification
20 Amendment Act of 2017”.

21
22 Sec. 2. Section 851(2) of the District of Columbia Government Comprehensive Merit
23 Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code
24 § 1-608.51(2)), is amended to read as follows:

25 “(2) “Attorney” means:

26 “(A) Any position which is classified as part of Series 905, except for any
27 position that is occupied by a person whose duties, in whole or in substantial part, consist of
28 hearing cases as an administrative law judge or as an administrative hearing officer; and

29 “(B) Notwithstanding subparagraph (A) of this paragraph, a hearing
30 examiner employed by the Office of Employee Appeals.”.

31 Sec 3. Section 601 of the District of Columbia Government Comprehensive Merit
32 Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code
33 § 1-606.01, is amended by inserting a new subsection (m) to read as follows: “Hearing

34 examiners employed by the Office of Employee Appeals must be licensed to practice law in the
35 District of Columbia.”

36 Sec. 4. Fiscal impact statement.

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

40 Sec. 5. Effective date.

41 This act shall take effect following approval by the Mayor (or in the event of a veto by
42 the Mayor, action by the Council to override the veto), a 30-day period of congressional review
43 as 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.