

A BILL

13-445

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA



To amend the District of Columbia Election Code of 1955 to reduce from 90 days to 45 days the period before an election in which voters cannot challenge the qualifications of other voters or apply to the Board for correction of the voter roll, to modify the procedures for voters to make election-day challenges to the qualifications of other voters, to clarify the standards governing the adjudication of election-day voter challenges, to provide for an immediate right of appeal to a Board hearing examiner if a precinct captain denies a voter challenge made at the polling place on election day, and to clarify the procedures for the Board of Elections and Ethics to review ballots cast by voters who have been successfully challenged on election day.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Election Day Challenge Procedures Amendment Act of 2000".

Sec. 2. The District of Columbia Election Code of 1955, approved August 12, 1955 (69 Stat. 699; D.C. Code §1-1301 *et seq.*), is amended as follows:

(a) The last sentence of section 7(e)(5)(A) is amended to read as follows:

"The Board shall issue regulations establishing an expedited procedure for its review of a voter registration challenge or an application for correction of the voter roll filed during the period beginning on the 90th day before an election and ending on the 45th day before an election. The Board shall not accept a voter registration challenge or application for correction of the voter roll after the 45th day before an election."

(b) Section 9 (D.C. Code § 1-1313) is amended as follows:

(1) Subsection (d) is amended to read as follows:

“(d)(1) A registered voter may challenge another voter's status as a qualified elector of the District of Columbia by stating in writing the name of the person challenged, the basis for the challenge, and the evidence provided to support the challenge. The challenger shall sign an affidavit, declaring under penalty of perjury, that the challenge is based upon substantial evidence which he or she believes in good faith shows that the person challenged is not a qualified elector of the District. After receiving a challenge or making a challenge on his or her own initiative, the precinct captain or other official in charge of the polling place shall give the challenged voter an opportunity to respond.

“(d)(2) Notwithstanding paragraph (1) of this subsection, a voter shall not be challenged solely on the basis of characteristics or perceived characteristics not directly related to the challenged voter's status as a registered qualified elector, including race, color, religion, sex, personal appearance, sexual orientation, matriculation status, political affiliation, or physical handicap. The Board may remove a precinct captain or void the credentials of an authorized watcher, or refer the matter for prosecution as a violation of section 12, if the Board determines that the precinct captain or the watcher has violated the provisions of this paragraph.

“(d)(3) The precinct captain shall review the evidence presented and shall affirm the challenge if he or she finds that it is based on substantial evidence specific to the voter being challenged and probative of the challenged voter's status as a qualified elector. The precinct

captain shall deny the challenge if he or she finds that the challenge is not based on substantial evidence that is specific to the voter being challenged and probative of the challenged voter's status as a qualified elector. The precinct captain shall record the decision and the rationale for the decision on a form provided by the Board.

"(d)(4) If the precinct captain denies the challenge, he or she shall inform the challenger that the challenger may appeal the decision to the Board and shall give the challenger copies of the rules regarding challenges and appeals to the Board. Any appeal of the precinct captain's decision to deny the challenge shall be made either before the challenged voter casts a regular ballot, or before either the challenger or the challenged voter leaves the polling place, whichever is earlier. If the challenger does not appeal the precinct captain's decision to deny the challenge, the challenged voter shall cast a regular ballot.

"(d)(5) If the challenger appeals the precinct captain's decision to deny the challenge, the precinct captain shall state the facts of the case to a Board's hearing officer, who is authorized to rule on the appeal for the Board. A Board member, the Board's Executive Director, or the Board's chief voter registration official may serve as the Board's hearing officer for the appeal. The precinct captain shall contact the hearing officer by telephone. The hearing officer shall ensure that the hearing is recorded, and shall take testimony under oath from the challenger, the person challenged, the precinct captain, and any witnesses to the challenge who wish to testify. Each person who testifies before the hearing officer shall state for the record their:

"(1) Name as recorded on the Board's voter registration list;

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- "(2) Residence address, mailing address, and telephone number; and 1
- "(3) Role in the challenge. 2

"(d)(6) The hearing officer shall receive evidence and testimony pursuant to paragraph (5) 3
of this subsection and then shall close the hearing. The hearing officer shall review all of the 4
evidence presented pertaining to the challenge and make a decision regarding the appeal, based on 5
his or her determination of whether the challenger has presented substantial evidence that is 6
specific to the voter being challenged and probative of the challenged voter's status as a qualified 7
elector. The recording of the hearing shall be transcribed and shall serve as the official case 8
record along with the written documentation of the precinct captain's initial decision to deny the 9
challenge. 10

"(d)(7) The hearing officer shall notify the precinct captain of his or her decision on the 11
appeal of the unsuccessful challenge, and the precinct captain shall notify each party of the hearing 12
officer's decision. If the hearing officer affirms the precinct captain's decision to deny the 13
challenge, the challenged voter shall cast a regular ballot. The precinct captain shall inform the 14
challenger of his or her right to appeal the decision of the Board hearing officer to the Superior 15
Court of the District of Columbia. If the hearing officer overturns the precinct captain's decision 16
to deny the challenge, the challenged voter shall be allowed to vote only by casting a paper ballot 17
marked "challenged" in accordance with the procedures set forth in paragraph (8) of this 18
subsection. 19

"(d)(8) If the precinct captain affirms the challenge made at the polling place, or if the 20

Board's hearing officer overturns the decision of the precinct captain to deny a challenge, the 1
 precinct captain shall allow the person to vote only by casting a paper ballot marked "challenged" 2
 and shall provide the voter with written notification of his or her right of appeal as provided in 3
 subsection (e) of this section. Challenged ballots shall be segregated, and no challenged ballot 4
 shall be counted until the challenge has been removed pursuant to subsection (e) of this section. 5
 The precinct captain shall not allow the challenged voter to cast a "challenged" ballot unless the 6
 voter signs an affidavit swearing or affirming under penalty of perjury that he or she is a registered 7
 qualified elector in the District of Columbia who resides in the precinct in which the ballot is to be 8
 cast, and if applicable, the Advisory Neighborhood Commission single-member district in which 9
 the ballot is to be cast. 10

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

"(e)(1) A voter's signing of a challenged or special ballot envelope shall be deemed as the 12
 filing of an appeal by the voter of the refusal by the Board's chief voter registration official to 13
 permit the voter to vote on election day by regular ballot, and a waiver of personal notice from 14
 the Board of any denial or refusal to a later count of the challenged or special ballot. The Board 15
 shall review all available evidence pertaining to the eligibility of each voter casting a challenged or 16
 special ballot, and shall make a preliminary decision about whether to count or to reject each 17
 challenged or special ballot based on its review of the available evidence. 18

"(e)(2) No later than the second Wednesday following the election, the Board shall cause 19
 to be displayed in its main office, on its Internet site, in the main public library, and at least one 20

public library in each ward, an alphabetical list of persons who cast a challenged or special ballot 1
 and the Board's preliminary decision to count or reject each ballot, along with the reason or 2
 reasons for each decision. The Board shall publish notice of the availability of the list in at least 3
 one newspaper of general circulation on the Tuesday following the election. Not later than the 4
 Tuesday following the election, during regular business hours, the Board shall maintain a 5
 telephone service by which any voter who has voted a challenged or special ballot may learn of 6
 the Board's preliminary decision to count or reject his or her ballot along with the reason or 7
 reasons for each decision. 8

"(e)(3) If the Board has made a preliminary determination that a challenged ballot shall 9
 not be counted, it shall afford the challenged voter an opportunity to contest that determination in 10
 a hearing before the Board. If the Board has made a preliminary determination that a challenged 11
 ballot shall be counted, it shall afford the challenger an opportunity to contest that determination 12
 in a hearing before the Board. The hearings authorized by this subsection shall take place not 13
 earlier than 8 days and not later than 10 days after any election held pursuant to this subchapter. 14
 The Board shall inform the voter and the challenger of the date scheduled for the hearings and the 15
 manner by which they may learn of the Board's final decision to count or reject the voter's 16
 challenged ballot. The notice shall be in writing and shall be provided to both parties at the time 17
 of voting. At the hearing, the voter and the challenger may appear and give testimony on the 18
 decision whether to count the challenged ballot. The Board shall make a final determination 19
 within 2 days after the date of the hearing. Any aggrieved party may appeal the decision of the 20

Board to the Superior Court of the District of Columbia within 3 days after the date of the Board's decision. The decision of the court shall be final and not appealable.".

"(e)(4) If the Board has determined that a special ballot shall be not be counted, it shall afford the voter an opportunity to contest that determination in a hearing before the Board no earlier than 8 days and not later than 10 days after any election held pursuant to this subchapter. The Board shall inform the voter in writing, at the time of voting, of the date scheduled for the hearing and the manner by which the voter may learn whether the Board has decided to count or reject his or her special ballot. The Board shall make a final determination within 2 days after the date of the hearing. The voter may appeal the decision of the Board to the Superior Court of the District of Columbia within 3 days after the date of the Board's decision. The decision of the court shall be final and not appealable.".

Sec. 3. 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. 913; D.C. Code § 1-233 (c)(3)).

Sec. 4. This act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (109 Stat. 116;

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D.C. Code § 47-392.3(a), a 30-day period of Congressional review as provided in section 1
602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 2
813; D.C. Code § 1-233(c)(1)), and publication in the District of Columbia Register. 3