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SENATE

{ REPORT
{ 112-186

DISTRICT OF COLUMBIA SPECIAL ELECTION
REFORM ACT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

H.R. 3902

TO AMEND THE DISTRICT OF COLUMBIA HOME RULE ACT TO RE-
VISE THE TIMING OF SPECIAL ELECTIONS FOR LOCAL OFFICE
IN THE DISTRICT OF COLUMBIA



JULY 16, 2012.—Ordered to be printed

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DISTRICT OF COLUMBIA SPECIAL ELECTION REFORM
ACT

JULY 16, 2012.—Ordered to be printed

Mr. LIEBERMAN, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany H.R. 3902]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (H.R. 3902) to amend the District of Columbia Home Rule Act to revise the timing of special elections for local office in the District of Columbia, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

H.R. 3902 amends the District of Columbia Code to enable the District of Columbia Board of Elections to schedule special elections to fill vacancies in the positions of Chairman of the Council, Member of the Council, Mayor, and Attorney General on a date that the Board of Elections concludes will provide the opportunity for the greatest level of voter participation.

II. BACKGROUND AND NEED FOR THE LEGISLATION

The District of Columbia Home Rule Act currently requires the District of Columbia Board of Elections (the Board) to hold special elections to fill vacancies that occur in the positions of Chairman of the Council, Member of Council, Mayor, and Attorney General

on the first Tuesday following the passage of 114 days from the date the vacancy occurs. Current law permits the Board to schedule special elections on the same day as the next general election, if that election occurs within 60 days of the date on which a special election would otherwise be held.¹

Unfortunately, these inflexible requirements have deprived the Board of the ability to hold special elections on dates that would have been more cost-effective or better promoted voter participation. For example, just this year, the District incurred additional expenses of approximately \$318,000 because the city was forced to hold a separate special election on May 15, 2012, to fill a vacated Council Member seat.² The Board could have avoided these additional costs by holding the special election a month earlier, at the same time as the already scheduled April 3, 2012, primary election, but the current statute did not give the Board that option.

Similarly, the Board's lack of authority to modify the date of a special election to avoid holding it on a cultural or religious holiday resulted in the Board holding a special election to fill a vacant at-large Council member seat on April 26, 2011, the eighth and final day of the Jewish holiday of Passover, which may have posed a conflict for some voters.

H.R. 3902 would give the Board flexibility to schedule special elections to provide the opportunity for the greatest level of voter participation by taking into account a number of factors. By doing so, this bill may allow the Board to schedule special elections in conjunction with previously scheduled elections in order to reduce costs that would otherwise be spent holding a separate special election. The bill also potentially lessens the time in which District residents would be without local representation by cutting 44 days off the required waiting period to hold a special election.

III. LEGISLATIVE HISTORY

D.C. Delegate Eleanor Holmes Norton introduced H.R. 3902 in the House of Representatives on February 6, 2012. This bill is similar to H.R. 5702, which Delegate Norton introduced on July 1, 2010, in the 111th Congress, and which passed the House, but was not acted upon in the Senate. H.R. 3902 passed the House under suspension of the rules on February 29, 2012.

On March 1, 2012, H.R. 3902 was received in the Senate and referred to the Senate Committee on Homeland Security and Governmental Affairs, which in turn, referred H.R. 3902 to the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia on March 12, 2012. The Subcommittee approved, by a poll, reporting H.R. 3902 to the full Committee on April 17, 2012. On April 25, 2012, the Committee considered the measure, which was adopted by voice vote and ordered reported favorably to the Senate. Members present for the vote on H.R. 3902 were Senators Lieberman, Levin, Akaka, Carper, McCaskill, Begich, Collins, Coburn, Brown, and Johnson.

¹See Public Law No. 93-198 §§401(b)(3), (d)(1) and (d)(2), 421(c)(2), 435(b)(1); codified at D.C. Code §§ 1-204.01(b)(3), (d)(1) and (d)(2), 1-204.21(c)(2), 1-204.35(b)(1).

²Delegate Norton (DC). "District of Columbia Special Election Reform Act." *Congressional Record* 158:32 (February 29, 2012) p. H1086.

IV. SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section names the bill the “District of Columbia Special Election Reform Act.”

Section 2. Timing of special elections for local office in District of Columbia

This section contains three subsections specifying new scheduling requirements for special elections. The section directs the Board to schedule a special election on a Tuesday occurring between 70 and 174 days after a vacancy occurs, and to base its choice as to which Tuesday on a totality of the circumstances, taking into account, among other things, cultural and religious holidays and the administrability of the election, with the goal being to provide the greatest level of voter participation.

As part of the new scheduling requirements, this section also eliminates the current exemption that allows the Board to hold a special election on the same day as the next general election in the District if it occurs within 60 days of the date on which a special election would otherwise have been held.

The first subsection amends the District of Columbia Home Rule Act to require this new scheduling for vacancies for the Office of the Chairman of the Council of the District of Columbia, or a Council member elected from a ward or elected at-large.

The second subsection amends the District of Columbia Home Rule Act to require the new scheduling for vacancies for the Office of the Mayor of the District of Columbia.

The third subsection amends the District of Columbia Home Rule Act to require the new scheduling for the Office of the Attorney General for the District of Columbia.

Section 3. Effective date

This section dictates that section 2 applies to vacancies occurring on or after the enactment of this Act.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill. The Committee concurs with the Congressional Budget Office, which states that H.R. 3902 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on State, local, or tribal governments. The legislation contains no other regulatory impact.

VI. ESTIMATED COST OF LEGISLATION

APRIL 27, 2012.

Hon. JOSEPH I. LIEBERMAN,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3902, the District of Columbia Special Election Reform Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 3902—District of Columbia Special Election Reform Act

CBO estimates that enacting H.R. 3902 would have no effect on the federal budget. The bill would change the period of time during which the Board of Elections of the District of Columbia is required by law to hold a special election to fill a vacancy in the following positions: Chairman of the Council, Council Member, Mayor, and Attorney General. H.R. 3902 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 3902 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

On February 14, 2012, CBO provided a cost estimate for H.R. 3902, as ordered reported by the House Committee on Oversight and Government Reform on February 7, 2012. The two versions of the legislation are similar and their costs are identical.

The CBO staff contact for this estimate is Matthew Pickford. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the following changes in existing law made by the bill, as reported, are shown as follows: (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

DISTRICT OF COLUMBIA OFFICIAL CODE
DIVISION I—GOVERNMENT OF DISTRICT
TITLE 1—GOVERNMENT ORGANIZATION
CHAPTER 2—DISTRICT OF COLUMBIA HOME RULE
Subchapter IV—The District Charter
PART A. THE COUNCIL
Subpart 1. Creation of the Council

§ 1-204.01. *Creation and Membership*

(a) * * *

(b) * * *

* * * * *

(3) To fill a vacancy in the Office of Chairman, the Board of Elections shall hold a special election in the District on the

Tuesday occurring at least 70 days and not more than 174 days after the date on which such vacancy occurs which the Board of Elections determines, based on a totality of the circumstances, taking into account, inter alia, cultural and religious holidays and the administrability of the election, will provide the opportunity for the greatest level of voter participation. [To fill a vacancy in the Office of Chairman, the Board of Elections shall hold a special election in the District on the 1st Tuesday occurring more than 114 days after the date on which such vacancy occurs, unless the Board of Elections determines that such vacancy could be more practicably filled in a special election held on the same day as the next general election to be held in the District occurring within 60 days of the date on which a special election would otherwise have been held under the provisions of this paragraph.] The person elected Chairman to fill a vacancy in the Office of Chairman shall take office on the day in which the Board of Elections certifies his election, and shall serve as Chairman only for the remainder of the term during which such vacancy occurred. When the Office of Chairman becomes vacant, the Council shall select one of the elected at-large members of the Council to serve as Chairman and one to serve as Chairman pro tempore until the election of a new Chairman.

* * * * *

(d)(1) *In the event of a vacancy in the Council of a member elected from a ward, the Board of Elections shall hold a special election in the District on the Tuesday occurring at least 70 days and not more than 174 days after the date on which such vacancy occurs which the Board of Elections determines, based on a totality of the circumstances, taking into account, inter alia, cultural and religious holidays and the administrability of the election, will provide the opportunity for the greatest level of voter participation.* [In the event of a vacancy in the Council of a member elected from a ward, the Board of Elections shall hold a special election in the District such ward to fill such vacancy on the 1st Tuesday occurring more than 114 days after the date on which such vacancy occurs, unless the Board of Elections determines, that such vacancy could be more practicably filled in a special election held on the same day as the next general election to be held in the District occurring within 60 days of the date on which a special election would otherwise have been held under the provisions of this subsection.] The person elected as a member to fill a vacancy on the Council shall take office on the day on which the Board of Elections certifies his election, and shall serve as a member of the Council only for the remainder of the term during which such vacancy occurred.

(2) In the event of a vacancy in the Office of Mayor, and if the Chairman becomes a candidate for the Office of Mayor to fill such vacancy, the Office of Chairman shall be deemed vacant as of the date of the filing of his candidacy. In the event of a vacancy in the Council of a member elected at large, other than a vacancy in the Office of Chairman, who is affiliated with a political party, the central committee of such political party shall appoint a person to fill such vacancy, until the Board of Elections can hold a special election to fill such vacancy, *and such special election shall be held on the Tuesday occurring at least 70 days and not more than 174 days*

after the date on which such vacancy occurs which the Board of Elections determines, based on a totality of the circumstances, taking into account, *inter alia*, cultural and religious holidays and the administrability of the election, will provide the opportunity for the greatest level of voter participation. [and such special election shall be held on the 1st Tuesday occurring more than 114 days after the date on which such vacancy occurs unless the Board of Elections determines that such vacancy could be more practicably filled in a special election held on the same day as the next general election to be held in the District occurring within 60 days of the date on which a special election would otherwise be held under the provisions of this subsection.] The person appointed to fill such vacancy shall take office on the date of his appointment and shall serve as a member of the Council until the day on which the Board certifies the election of the member elected to fill such vacancy in either a special election or a general election. The person elected as a member to fill such a vacancy on the Council shall take office on the day on which the Board of Elections certifies his election, and shall serve as a member of the Council only for the remainder of the term during which such vacancy occurred. With respect to a vacancy on the Council of a member elected at large who is not affiliated with any political party, the Council shall appoint a similarly non-affiliated person to fill such vacancy until such vacancy can be filled in a special election in the manner prescribed in this paragraph. Such person appointed by the Council shall take office and serve as a member at the same time and for the same term as a member appointed by a central committee of a political party.

(3) * * *

PART B. THE MAYOR

§ 1-204.21. Election, Qualifications, Vacancy, and Compensation

* * * * *

(c) * * *

* * * * *

(2) *To fill a vacancy in the Office of Mayor, the Board of Elections shall hold a special election in the District on the Tuesday occurring at least 70 days and not more than 174 days after the date on which such vacancy occurs which the Board of Elections determines, based on a totality of the circumstances, taking into account, inter alia, cultural and religious holidays and the administrability of the election, will provide the opportunity for the greatest level of voter participation. [To fill a vacancy in the Office of Mayor, the Board of Elections shall hold a special election in the District on the 1st Tuesday occurring more than 114 days after the date on which such vacancy occurs, unless the Board of Elections determines, that such vacancy could be more practicably filled in a special election held on the same day as the next general election to be held in the District occurring within 60 days of the date on which a special election would otherwise have been held under the provisions of this paragraph.] The person elected Mayor to fill a vacancy in the Office of Mayor shall take office on the day on which the Board of Elections certifies his election, and shall serve as Mayor only for*

the remainder of the term during which such vacancy occurred. When the Office of Mayor becomes vacant the Chairman shall become Acting Mayor and shall serve from the date such vacancy occurs until the date on which the Board of Elections certifies the election of the new Mayor at which time he shall again become Chairman. While the Chairman is Acting Mayor, the Chairman shall receive the compensation regularly paid the Mayor, and shall receive no compensation as Chairman or member of the Council. While the Chairman is Acting Mayor, the Council shall select one of the elected at-large members of the Council to serve as Chairman and one to serve as chairman pro tempore, until the return of the regularly elected Chairman.

* * * * *

PART C-I. ELECTION OF THE ATTORNEY GENERAL

§ 1-204.35. Election of the Attorney General

(a) * * *

(b)(1) If a vacancy in the position of Attorney General occurs as a consequence of resignation, permanent disability, death, or other reason, *the Board of Elections shall hold a special election in the District on the Tuesday occurring at least 70 days and not more than 174 days after the date on which such vacancy occurs which the Board of Elections determines, based on a totality of the circumstances, taking into account, inter alia, cultural and religious holidays and the administrability of the election, will provide the opportunity for the greatest level of voter participation* [the Board of Elections shall hold a special election in the District on the 1st Tuesday occurring more than 114 days after the date on which the vacancy occurs, unless the Board of Elections determines that the vacancy could be more practicably filled in a special election held on the same day as the next general election to be held in the District occurring within 60 days of the date on which a special election would otherwise have been held under the provisions of this paragraph]. The person elected Attorney General to fill a vacancy in the Office of the Attorney General shall take office on the day in which the Board of Elections certifies his or her election, and shall serve as Attorney General only for the remainder of the term during which the vacancy occurred unless reelected.

* * * * *