

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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District of  
Columbia  
Official Code

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To amend the District of Columbia Election Code of 1955 to clarify procedures for recounting election results, to require the Board of Elections and Ethics to conduct a recount when the margin of victory in an election is less than one percent of the total votes cast, to clarify the procedures for the judicial review of an election result and the standards by which a court challenge to an election result shall be decided, and to authorize the District of Columbia Court of Appeals to require the losing party in a court challenge of an election result to pay the reasonable attorneys’ fees and court costs of the prevailing party.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Election Recount and Judicial Review Amendment Act of 2002”.

Sec. 2. Section 11 of the District of Columbia Election Code of 1955, approved August 12, 1955 (69 Stat. 703; D.C. Official Code § 1-1001.11), is amended to read as follows:

Amend  
§ 1-1001.11

“(a)(1) The Board shall recount the votes cast in one or more voting precincts, if within 7 days after the Board certifies the results of an election for an office, a candidate for that office petitions the Board in writing and specifies the precincts in which the recount shall be conducted. The candidate shall deposit a fee of \$50 for each precinct included in the recount. If the result of the election is changed as a result of the recount, the fee deposited by the petitioner shall be refunded.

“(2) If in any election for President and Vice President of the United States, Delegate to the House of Representatives, Mayor, Chairman of the Council, member of the Council, President of the Board of Education, or member of the Board of Education, the results certified by the Board show a margin of victory for a candidate that is less than one percent of the total votes cast for the office, the Board shall conduct a recount. The cost of a recount conducted pursuant to this paragraph shall not be charged to any candidate.

“(3) In the case of an initiative or referendum measure placed on the ballot pursuant to section 16, or a recall measure placed on the ballot pursuant to section 17, the Board shall conduct a recount if the difference between the number of votes for and against the

initiative, referendum, or recall measure is less than one percent of the total votes cast.

“(4) The Board shall issue regulations prescribing the procedures for the Board to:

“(A) Provide notice of a recount to candidates for an office subject to a recount;

“(B) Conduct a recount and certify the official result of an election, initiative, referendum, or recall measure which is the subject of the recount; and

“(C) Ensure that each candidate for an office subject to a recount may designate watchers to be present while the recount is conducted, or in the case of an initiative, referendum, or recall measure, ensure that members of the public may be present while the recount is conducted.

“(b)(1) Within 7 days after the Board certifies the results of an election, any person who voted in the election may petition the District of Columbia Court of Appeals to review the election. The Court’s authority to review the results of an election shall include initiative, referendum, and recall measures as well as elections for a particular office.

“(2) In response to such a petition, the Court may set aside the results certified and declare the true results of the election, or void the election in whole or in part. To determine the true results of an election, the Court may order a recount or take other appropriate action, whether or not a recount has been conducted or requested pursuant to subsection (a) of this section. The Court shall void an election only if it:

“(A) Determines that the candidate certified as the winner of the election does not meet the qualifications required for office; or

“(B) Finds that there was any act or omission, including fraud, misconduct, or mistake serious enough to vitiate the election as a fair expression of the will of the registered qualified electors voting in the election.

“(3) If the Court voids an election, it may order a special election, which shall be conducted in such a manner, and at such time, as the Board may prescribe.

“(4) The decision of the Court in any case brought pursuant to this subsection shall be final and may not be appealed.

“(5) The Court shall have the authority to require the losing party to reimburse the prevailing party for reasonable attorneys’ fees and other costs associated with the case, but shall not exercise this authority if it finds that the reimbursement would impose an undue financial hardship on the losing party.”.

### Sec. 3. Fiscal impact statement.

The Council projects that this legislation will not have a fiscal impact. First, the legislation does not create new requirements or processes in the administration of District of Columbia elections. Instead, the legislation would modify the Board of Elections and Ethics’ recount procedure and the District of Columbia Court of Appeals’ procedure for reviewing

certified election results that have long been mandated by the District of Columbia Election Code.

The legislation would add a new element to the recount procedure; namely, mandatory recounts by the Board of Elections and Ethics in elections where the margin of victory is less than one percent of the total votes cast in the election. Nevertheless, the mandatory recount is likely to reduce the probability of expensive and protracted court challenges of election results. In addition, the legislation would provide a deterrent to frivolous court challenges and protect the Board of Elections and Ethics from unreasonable court costs by authorizing the D.C. Court of Appeals to require the losing party in a court challenge to pay reasonable attorneys' fees and other court costs. As a result of these factors, the Council projects that the legislation will not have an adverse fiscal impact.

Sec. 4. Effective date.

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

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Chairman  
Council of the District of Columbia

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Mayor  
District of Columbia