



Board of Ethics and
Government Accountability

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2017 Best Practices Report

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The Board of Ethics and Government Accountability (BEGA) was established in 2012, a time when, according to the Council, the “ethics framework” then existing in the District government was “ill-suited to promoting a culture of high ethical conduct.”¹ Underlying problems included “fragmented [ethics] laws” and “a lack of uniform application” of those laws.² To remedy the problems, the Council passed the Ethics Act,³ in part, to “includ[e] all applicable ethics laws in one location.”⁴

That one location is the Code of Conduct. However, even under the Ethics Act, the Code of Conduct is merely a defined term. It includes a number of laws and regulations, as well as the Council’s Code of Official Conduct.⁵ Furthermore, not all of the covered provisions apply to District government employees and elected officials uniformly. For example, the Council’s Code of Official Conduct only applies to Councilmembers and Council staff; the District Personnel Manual, codified in part in Chapter 18 of Title 6B of the District Municipal Regulations, only applies to public officials and employees in the Executive Branch.

In 2014, the Council itself recognized these continuing shortcomings, noting that “[t]he Ethics Act took great strides toward consolidating ethics statutes under a single heading within the Code; however, the complete Code of Conduct is still scattered between statutes, regulations, and the Council’s Code of Official Conduct.”⁶ The Council also recognized the consequences of this state of the law, that is, that “the continued lack of uniformity and cohesion of the District’s ethics laws presents difficulties for the Council, BEGA, and the District’s other enforcement authorities – not to mention the more than 30,000 District government employees who must be able to rely on one comprehensive set of laws.”⁷

¹ Report of the Committee on Government Operations on Bill 19-511, the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Act of 2011, at 2 (Council of the District of Columbia, December 5, 2011) (Ethics Act Committee Report).

² *Id.*

³ The Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161.01 *et seq.*).

⁴ Ethics Act Committee Report at 2.

⁵ *See* section 101(7) of the Ethics Act (D.C. Official Code § 1-1161.01(7)).

⁶ Report of the Committee on Government Operations on Bill 20-412, the Comprehensive Code of Conduct and BEGA Amendment Act of 2014, at 4-5 (Council of the District of Columbia, March 25, 2014) (BEGA Amendment Act Committee Report).

⁷ *Id.* at 4.

This awareness resulted in legislative action.⁸ BEGA was required to “submit to the Council for its consideration proposed legislation ... to establish a revised Code of Conduct, which shall be explicitly applicable to all employees and public officials serving the District of Columbia, its instrumentalities, subordinate and independent agencies, the Council of the District of Columbia, boards and commissions, and Advisory Neighborhood Commissions, but excluding the courts.”⁹ BEGA submitted the proposed legislation in the form of Bill 21-250, the “Comprehensive Code of Conduct of the District of Columbia Establishment and BEGA Amendment Act of 2015,” on June 12, 2015. The bill was referred to the Committee on the Judiciary and was the subject of a public hearing on July 8, 2015. Along with another measure introduced by Chairman Mendelson and Councilmember Grosso,¹⁰ the bill was praised in a *Washington Post* editorial as “creat[ing] bright lines that make clear what is expected of those who work in government.”¹¹

Despite numerous meetings and otherwise productive exchanges of information between BEGA and Committee members and staff, the Committee took no official action after the hearing, and, consequently, Bill 21-250 lapsed at the end of the Council Period. However, the lapsing was without prejudice,¹² and BEGA introduced a substantially similar bill, the “Comprehensive Code of Conduct of the District of Columbia Establishment and BEGA Amendment Act of 2017” (Bill 22-136), on February 28, 2017. As suggested by its title, the bill would establish the Comprehensive Code of Conduct of the District of Columbia (CCC), which would apply to the ethical responsibilities of all employees and public officials serving the District of Columbia, its instrumentalities, subordinate and independent agencies, the Council, boards and commissions, and Advisory Neighborhood Commissions. The CCC, in other words, would operate to further the Council’s clear and continuing intent “to create an independent and unified ethics scheme”¹³ in two significant ways – by consolidating the District’s government ethics laws in one place and by standardizing most practices across the legislative and executive branches.

⁸ See Comprehensive Code of Conduct and BEGA Amendment Act of 2014 (BEGA Amendment Act), effective July 15, 2014 (D.C. Law 20-122; 61 DCR 8246).

⁹ See section 2(c) of the BEGA Amendment Act (amending section 209 of the Ethics Act (D.C. Official Code § 1-1162.09)).

¹⁰ Bill 21-332, the “Council Financial Disclosure Amendment Act of 2015” (later enacted, effective April 7, 2017, as D.C. Law 21-240). The new law, among other things, established financial disclosure requirements for the Council.

¹¹ Editorial, *The D.C. Council’s Commendable Effort on Ethics*, Wash. Post, July 29, 2015 (available at https://www.washingtonpost.com/opinions/the-dc-councils-commendable-effort-on-ethics/2015/07/29/c7b8aff6-30bc-11e5-8f36-18d1d501920d_story.html).

¹² See Rule 418(a)(1), Rules of Organization and Procedure for the Council of the District of Columbia, Council Period 21.

¹³ See BEGA Amendment Act Committee Report at 4.

Bill 22-136 was referred to the Committee on the Judiciary and Public Safety and, on November 2, was the subject of a public hearing.¹⁴ BEGA appreciates the Committee's action on the bill and could end this report by urging that the measure be passed along to the full Council for approval. After all, between the CCC and other provisions in the proposed legislation, Bill 22-136 incorporates many of the recommendations made in previous Best Practices Reports, but have yet to see Council action. However, BEGA would be remiss in failing to point up the significant aspects of the fact that Bill 22-136 is only one of at least three other bills now pending before the Committee that also would amend the Ethics Act or operate to impact BEGA operations.¹⁵

First, the bills, together with Bill 22-136, represent a continuation of the Council's "incremental approach"¹⁶ to enhance the District's government ethics laws and to make the government itself more open and accountable. As the *Washington Post* editorial recognized, "[e]thics reform ... must be an ongoing process."¹⁷

Second, unlike the Ethics Act, the bills come at a time of a relative ethics "calm" in the District.¹⁸ The fact that the bills "are not a response to any recent scandal speaks to the commendable desire to get ahead of conduct that could lead to trouble."¹⁹

In sum, the Council should take the next and much needed step in ethics reform by passing Bill 22-136.²⁰ With that action, the CCC would be far more than just a defined term, as the Code of Conduct is now. The CCC would be positive law, immune from amendment by any Executive Branch agency.²¹ Most importantly, passage of the bill would build on the public trust earned

¹⁴ A video of the hearing is available at http://dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=4192.

¹⁵ The three bills, all introduced by Councilmembers, are Bill 22-036, the "Ethics Reform Amendment Act of 2017"; Bill 22-038, the "Lobbyist Activity Reporting Transparency Amendment Act of 2017"; and Bill 22-344, the "Lobbying Disclosure Amendment Act of 2017". All the bills are available at <http://lms.dccouncil.us>.

¹⁶ See BEGA Amendment Act Committee Report at 3.

¹⁷ See footnote 11.

¹⁸ See Ethics Act Committee Report at 2 ("In response to recent allegations of misconduct by several members of the Council of the District of Columbia and the Mayor, 12 measures [including the Ethics Act] were introduced to reform the District's ethics laws.").

¹⁹ *Washington Post* editorial, footnote 11.

²⁰ The Council may well choose to incorporate provisions of the other pending bills into Bill 22-136. A similar process was employed in 2012, when the then Committee on Government Operations scrutinized twelve bills and synthesized them into what became the Ethics Act. See Ethics Act Committee Report at 2, 3-4.

²¹ See BEGA Amendment Act Committee Report at 5 ("[A] large number of District employees are subject to the District Personnel Manual. Because the District Department of Human Resources could amend these regulations at any point, such a significant change could take place without the Council's or BEGA's involvement.").

with the Ethics Act.²² As the Acting Director of the federal Office of Government Ethics said in a recent memo encouraging agency leaders to re-double their commitments to ethics in government, “[t]he public’s trust is not guaranteed. We must earn that trust every day, because the loss of that trust is catastrophic.”²³

²² See Ethics Act Committee Report at 2 (noting that ultimate goal in passing Ethics Act was “to restore the public’s trust in its government”).

²³ See <https://oge.gov/web/oge.nsf/News+Releases/B81D82338A7E7BDE852581B5004F6BA0?opendocument>.