

Council of the District of Columbia
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY
MEMORANDUM

1350 Pennsylvania Avenue, NW, Washington, DC 20004

TO: Chairman Phil Mendelson
FROM: Councilmember Charles Allen *CA*
RE: Request to Agendize Measures for the November 2, 2021 Legislative Meeting
DATE: October 28, 2021

I am requesting that you agendize the following measures for the November 2, 2021 Legislative Meeting:

Emergency Contract Legislation at the Request of the Attorney General

- “Contract No. DCCB-2021-F-0014 with Edelson and MBG Emergency Declaration Resolution of 2021”
- “Contract No. DCCB-2021-F-0014 with Edelson and MBG Approval and Payment Authorization Emergency Act of 2021”

There exists a need to approve multiyear [Contract No. DCCB-2021-F-0014](#) with Edelson PC (“Edelson”) and Miner, Barnhill & Galland PC (“MBG”) to provide outside legal counsel to the Office of the Attorney General (“OAG”) for consumer protection matters. Edelson and MBG will assist OAG with an investigation and litigation against manufacturers, distributors, and sellers of chlordane, a synthetic pesticide widely used in residential homes and for commercial and agricultural uses, and perfluorooctane sulfonate and perfluorooctanoic acid.

On September 24, 2021, OAG entered into a letter contract with Edelson and MBG. OAG now seeks to definitize this letter contract by entering into Contract No. DCCB-2021-F-0014, in an amount not to exceed \$170 million. The base period of performance is from the date of award through five years thereafter, with two two-year option periods. The contract is a contingency fee contract with costs reimbursable based on net recoveries. Because this is a multiyear contract and involves expenditures in excess of \$1 million during a 12-month period, Council approval of this contract is required.

These measures have been filed timely by the Attorney General, and copies are attached. Please contact Kate Mitchell, Committee Director, at kmitchell@dccouncil.us with any questions.

Emergency Legislation at the Request of the Attorney General

- “Anti-SLAPP Emergency Declaration Resolution of 2021”
- “Anti-SLAPP Emergency Amendment Act of 2021”
- “Anti-SLAPP Temporary Amendment Act of 2021”

The Anti-SLAPP Act of 2010, effective March 31, 2011 (D.C. Law 18-351; D.C. Official Code § 16-5501 *et seq.*) (“Anti-SLAPP Act”), was enacted to insulate people and entities that speak out on matters of public interest from baseless lawsuits, known as “SLAPP suits” or

“Strategic Lawsuits Against Public Participation”, designed solely to punish speech and drain financial resources. Numerous jurisdictions, including the District, have passed these anti-SLAPP laws to ensure that people and entities can highlight misbehavior without fear of being tied up in retaliatory litigation. The District’s Anti-SLAPP Act allows defendants in such retaliatory suits to file special motions to dismiss that stay discovery proceedings while the motion is pending. It also requires that these special motions to dismiss be heard on an expedited basis.

In passing the Anti-SLAPP Act, the Council did not intend for it to be used against actions brought by the District itself. Recently, defendants that have been the subject of lawsuits by the Office of the Attorney General (“OAG”) have indicated they plan to use the Anti-SLAPP Act to frustrate and delay actions brought on behalf of the District. Corporations have turned these protections on their heads to stop legitimate government enforcement actions by claiming that government suits are in fact SLAPP suits. This frivolous and malicious use of the Anti-SLAPP Act is only expected to increase as these matters continue to gain publicity.

An amendment to the Anti-SLAPP Act is now necessary to clarify the Council’s intent in the Anti-SLAPP Act and prevent significant delays in cases of serious public import brought by the District. This emergency legislation would clarify that government enforcement suits are not subject to the Anti-SLAPP Act. This change is especially urgent because local enforcement actions have been obstructed by invocation of anti-SLAPP statutes. For example, large oil companies have attempted to use anti-SLAPP laws to stop state enforcement cases across the country, and OAG’s pending litigation against these companies for deception regarding climate change is vulnerable to this sort of attack without amendments to clarify the law’s reach.

These measures have been filed timely by the Attorney General, and copies are attached. Please contact Kate Mitchell, Committee Director, at kmitchell@dccouncil.us with any questions.

cc: Members, Council of the District of Columbia
Office of the Budget Director
Office of the General Counsel
Office of the Secretary
Mayor’s Office of Policy and Legislative Affairs