GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL

Brian Schwalb
Attorney General

January 2, 2026

ADVISORY OPINION OF THE ATTORNEY GENERAL

Re: Proposed Initiative, "Prohibiting the Force-Feeding of Birds Act of 2026"

Ms. Terri Stroud
General Counsel
Board of Elections
1015 Half Street, S.E.
Washington, D.C. 20003
ogc@dcboe.org

Dear Ms. Stroud:

This memorandum responds to your December 12, 2025, request, on behalf of the Board of Elections ("Board"), that the Office of the Attorney General (the "Office") provide an advisory opinion on whether the proposed initiative, the "Prohibiting the Force-Feeding of Birds Act of 2026" ("Proposed Initiative"), is a proper subject of initiative in the District of Columbia, pursuant to D.C. Official Code § 1-1001.16(b)(1A)(B)(i).

The Proposed Initiative is the same as Initiative No. 85, the "Prohibiting Force-Feeding of Birds Act," which we concluded was a proper subject in our attached October 27, 2025, advisory opinion. The only difference is that the Proposed Initiative now includes a clause providing that the Proposed Initiative will become applicable upon the later of the date of the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer, or July 1, 2027. The Office of the Chief Financial Officer determined that Initiative No. 85 had unbudgeted costs.[1]

For the same reasons that we stated in our earlier advisory opinion, the Proposed Initiative is a proper subject. It would not appropriate funds because any mandatory provisions with unbudgeted costs would necessarily be subject to appropriations before taking effect under section 4a(b) of the General Legislative Procedures Act of 1975.[2] This is so regardless of whether the Proposed Initiative includes an applicability clause restating that it is subject to appropriations. Because the Proposed Initiative is a proper subject, as

[1] Memorandum from Glen Lee, Chief Financial Officer, to Chairman Phil Mendelson, on Fiscal Impact Statement – Initiative Prohibiting the Force-Feeding of Birds (Nov. 26, 2025).
[2] Effective October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a(b)) ("Permanent and emergency acts which are accompanied by fiscal impact statements which reflect unbudgeted costs, shall be subject to appropriations prior to becoming effective."); *see also* Letter from Brian Schwalb, Att'y Gen., to Terri Stroud, Gen. Counsel, D.C. Bd. of Elections, Advisory Opinion of the Attorney General on Proposed Initiative, "The Make All Votes Count Act of 2024," at 7–9 (June 9, 2023).

you requested, we have attached recommended technical changes to ensure that it is in the proper legislative form.[3]

Sincerely,

Brian L. Schwalb
Attorney General for the District of Columbia

[3] If the Board accepts the Proposed Initiative, in accordance with D.C. Official Code § 1-1001.16(c)(3), this Office may provide further recommendations for ensuring that it is prepared in the proper legislative form.

INITIATIVE MEASURE

NO.

SHORT TITLE

"Prohibiting the Force-Feeding of Birds Act of 2026."

SUMMARY STATEMENT

If enacted, this Initiative would:

(a) Prohibit any person from force-feeding a bird for the purpose of enlarging the bird's liver beyond normal size;

(b) Ban the sale or distribution of any product resulting from force-feeding a bird, including foie gras;

(c) Define force-feeding as inserting a tube into the bird's throat to deliver excessive feed;

(d) Provide for enforcement by the Department of Energy and Environment during its routine food safety inspections; and

(c) Provide for civil penalties.

This Initiative will not be implemented unless the D.C. Council separately chooses to appropriate funds for the costs.

LEGISLATIVE TEXT

BE IT ENACTED BY THE ELECTORS OF THE DISTRICT OF COLUMBIA, That this act maybe cited as the "Prohibiting the Force-Feeding of Birds Act of 2026".

Sec. 2. Legislative intent.

The people of the District of Columbia hereby find and declare:

(1) That fattened bird liver products are 'luxury' food items produced from the diseased and enlarged liver of a bird, typically a duck or goose, typically produced through systematically force-feeding the animal until their liver becomes diseased and expands up to ten times its natural size;

(2) That the method typically used to force-feed these birds for production of food items is inhumane and involves inserting a foot-long metal or plastic tube into the bird's throat and administering excessive quantities of feed directly into the stomach, resulting in extreme pain and various health issues;

(3) That force-feeding induces liver disease in the birds, which is both painful and often fatal, causing the animals significant injury and illness, including bacterial and fungal infections, malnourishment, and/or lameness;

(4) That veterinary professionals widely regard the typical practice of force-feeding birds for food product production as inhumane;

(5) That the intensive confinement of these birds for food product production exacerbates environmental degradation and climate change through the necessitation of substantial water and energy consumption and polluting our city's air and waterways;

(6) That runoff from fattened bird liver production facilities contains high concentrations of phosphorus and nitrogen, two of the most common forms of water pollution in the United States; That workers in fattened bird liver production facilities face occupational hazards, including exposure to respiratory irritants and zoonotic diseases, posing risks to worker health and public health; and

(7) That eliminating the production and sale of fattened bird liver products from the marketplace is in our city's interest and authority to reduce animal cruelty, unsustainable environmental practices, and spread of zoonotic, and to uphold the District's values of humane animal treatment, public health, and environmental stewardship.

Sec. 3. Definitions.

For the purposes of this act, the term:

(1) "Bird" means any species of poultry, including ducks, geese, chickens, turkeys, guineas, or squabs.

(2) "Director" means the duly appointed Director of the Department of Energy and Environment ("the Department"), or their designee.

(3) "Fattened bird liver product" means any food product or by-product made from the livers of birds fattened through any method or practice, including foie gras, pâtés, spreads, and processed meat products derived from such livers, regardless of marketing terminology.

(4) "Food service establishment" means any place offering prepared food to be consumed by customers on or off premises, including restaurants, cafeterias, pushcarts, stands, or vehicles.

(5) "Force-feeding" means any process, whether by hand or machine, by which a bird is caused to ingest more food than it would consume voluntarily, including the use of a tube or device inserted into the esophagus.

(6) "Person" means any individual, corporation, partnership, joint venture, trust, government agency, organization, or other entity.

(7) "Retail establishment" means any store, shop, sales outlet,
farmers' market, or other place that sells or offers for sale food products to the public.

(8) "Sell" or "sale" means any act of selling, trading, distributing, bartering, or transferring for monetary or nonmonetary consideration, occurring where the recipient takes physical possession of the item.

Sec. 4. Prohibited conduct.

(a) No person shall force-feed a bird, or hire or direct another person to force-feed a bird, for the purpose of enlarging the bird's liver beyond its normal size. This subsection shall not apply to force-feeding directed by a licensed veterinarian solely for therapeutic purposes.

(b) No person, food service establishment, or retail establishment shall sell, offer for sale, distribute, or otherwise provide any fattened bird liver product within the District of Columbia, whether as a standalone item or as an ingredient in any product or dish.

(c) No person shall import, transport, or receive a fattened bird liver product into the District for sale, distribution, or any other commercial purpose, regardless of the jurisdiction where the product was produced or originated.

Sec. 5. Authority of Director.

The Director is hereby authorized to administer and enforce the provisions of this Act. Thereby, the Department:

(1) Is authorized to adopt procedures, rules, and forms to implement the provisions of this act;

(2) Shall ensure compliance with the provisions of this act during routine inspections of retail establishments;

(3) Shall also have the authority to issue subpoenas for records related to the purchase, storage, and sale of poultry products;

(4) Shall ensure members of the public are able to submit complaints notifying the Department of possible violations; and

(5) Shall maintain a publicly available online database of violations and penalties issued under this act, updated quarterly.

Sec. 6. Enforcement and penalties.

(a) Any person or establishment that violates any provision of this act shall be subject to a civil penalty of not less than $1,000 and not more than $5,000 per violation. Each day a violation continues shall constitute a separate violation.

(b) Repeated violations within a 12-month period may result in suspension or revocation of the violator's business license in accordance with applicable District law.

(c) In addition to civil penalties, the District may enforce this act through a civil action, including an action for injunctive relief.

Sec. 7. Applicability.

(a) This act shall apply upon the later of the date of inclusion of its fiscal effect in an approved budget and financial plan, or July 1, 2027.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan and provide notice to the Budget Director of the Council of the certification.

(c)(1) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of this act.

Sec. 9. Effective Date.

This act shall take effect after 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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL

Brian Schwalb
Attorney General

October 27, 2025

ADVISORY OPINION OF THE ATTORNEY GENERAL

Re: Proposed Initiative, "Prohibiting Force-Feeding of Birds Act"

Ms. Terri Stroud
General Counsel
Board of Elections
1015 Half Street, S.E.
Washington, D.C. 20003
ogc@dcboe.org

Dear Ms. Stroud:

This memorandum responds to your October 3, 2025 request, on behalf of the Board of Elections ("Board"), that the Office of the Attorney General (the "Office") provide an advisory opinion on whether the proposed initiative, the "Prohibiting Force-Feeding of Birds Act" ("Proposed Initiative"), is a proper subject of initiative in the District of Columbia, pursuant to D.C. Official Code § 1-1001.16(b)(1A)(B)(i). For the reasons set forth in this letter, the Proposed Initiative is a proper subject of initiative. Because the Proposed Initiative is a proper subject, as you requested, we have attached recommended technical changes to ensure that it is in the proper legislative form.[1]

STATUTORY BACKGROUND

The District Charter ("Charter") establishes the right of initiative, which allows District electors to "propose laws (except laws appropriating funds) and present such proposed laws directly to the registered qualified electors of the District of Columbia for their approval or disapproval."[2] The Charter requires that the Board submit an initiative to the voters "without alteration."[3] Pursuant to the Charter, the Council adopted section 16 of the Election Code of 1955[4] as an implementing statute detailing the initiative process.[5] Under this statute, any registered qualified elector may begin the initiative process by filing the full text of the proposed measure, a summary statement of not more than 100 words, and a short title with the Board.[6] After receiving

[1] If the Board accepts the Proposed Initiative, in accordance with D.C. Official Code § 1-1001.16(c)(3), this Office may provide further recommendations for ensuring that it is prepared in the proper legislative form.
[2] D.C. Official Code § 1-204.101(a).
[3] *Id.* § 1-204.103.
[4] Effective June 7, 1979 (D.C. Law 3-1; D.C. Official Code § 1-1001.16).
[5] D.C. Official Code § 1-204.107.
[6] *Id.* § 1-1001.16(a)(1).

a proposed initiative, the Board must refuse to accept it if the Board determines that it is not a "proper subject" of initiative.[7]

A proposed initiative is not a proper subject for initiative if it does not propose a law, is not in the proper form, or if it would:

- Appropriate funds;
- Violate or seek to amend the District of Columbia Home Rule Act ("Home Rule Act");
- Violate the U.S. Constitution;
- Authorize or have the effect of authorizing discrimination prohibited under the Human Rights Act of 1977; or
- Negate or limit an act of the Council enacted pursuant to section 446 of the Home Rule Act.[8]

If the Board determines that a proposed initiative is a proper subject of initiative, it must accept the measure and, within 20 calendar days, prepare and adopt a true and impartial summary statement, prepare a short title, prepare the proposed initiative in the proper legislative form, and request a fiscal impact statement from the Office of the Chief Financial Officer ("OCFO").[9] The Board must then adopt the summary statement, short title, and legislative form at a public meeting.[10] Within 24 hours after adoption, the Board must publish its formulation and the fiscal impact statement.[11] If no registered qualified elector objects to the Board's formulation by seeking review in Superior Court within 10 days after publication in the *District of Columbia Register*, the Board must certify the measure and provide the proposer with a petition form for use in securing the required signatures to place the proposed initiative on the ballot at an election.[12] If the requisite number of valid signatures from registered electors is obtained, the Board must then submit the initiative "without alteration" at the next primary, general, or city-wide special election held at least 90 days after it certifies the measure.[13]

FACTUAL BACKGROUND

The Proposed Initiative would regulate the force-feeding of birds and fattened bird liver products in the District. According to the Summary Statement, the Proposed Initiative, if enacted, would "[p]rohibit any person from force-feeding a bird for the purpose of enlarging the bird's liver beyond normal size," and "[b]an the sale or distribution of any product resulting from force-feeding a bird, including foie gras." The Legislative Text states the legislative intent, defines terms as used in the Proposed Initiative, specifies prohibited conduct, authorizes the Director of the Department of Energy and Environment ("DOEE") to administer and enforce the Proposed Initiative, and provides for administrative and civil penalties.

[7] *Id.* § 1-1001.16(b)(1).
[8] *Id.* §§ 1-204.101(a); 1-1001.16(b)(1); 3 DCMR § 1000.5.
[9] D.C. Official Code § 1-1001.16(c).
[10] *Id.* § 1-1001.16(d)(1).
[11] *Id.* § 1-1001.16(d)(2).
[12] *Id.* § 1-1001.16(e)–(i); *see also id.* § 1-204.102(a) (requiring, under the District Charter, an initiative petition to be signed by 5 percent of the registered electors in the District, including 5 percent of registered electors in each of five or more wards).
[13] *Id.* §§ 1-204.103, 1-1001.16(p)(1).

Specifically, section 48-653[14] would prohibit: (1) force-feeding, or hiring or directing another person to force-feed, a bird "for the purpose of enlarging the bird's liver beyond its normal size"; (2) selling or otherwise providing a fattened bird liver product within the District; and (3) "import[ing], transport[ing], or receiv[ing] a fattened bird liver product into the District for" commercial purposes, "regardless of the jurisdiction where the product was produced or originated." Section 48-654 provides that the DOEE Director "shall" ensure compliance "during routine inspections of food service establishments and retail establishments." It also provides that DOEE "shall ensure members of the public are able to submit complaints notifying the Department of possible violations" and "shall maintain a publicly available online database of violations and penalties issued under this Article, updated quarterly."

ANALYSIS

The right of initiative "is a power of direct legislation by the electorate."[15] This right must be construed "liberally," and "only those limitations expressed in the law or clear[ly] and compelling[ly] implied" may be imposed on that right.[16] As the District of Columbia Court of Appeals has explained, subject to these limitations, "the power of the electorate to act by initiative is coextensive with the legislative power."[17]

Turning to the Proposed Initiative, three limitations on the initiative power merit further discussion: the Commerce Clause of the Constitution, section 602(a)(3) of the Home Rule Act, and the Charter's prohibition against an initiative appropriating funds. In our view, the Proposed Initiative does not on its face conflict with any of these limitations and therefore is a proper subject. We note, however, that any of the Proposed Initiative's mandatory provisions that in fact impose costs would render the measure subject to appropriations before taking effect, and the decision whether to appropriate such funds would lie solely with the Council.

First, although the Proposed Initiative regulates the importation of products from other states, it does not violate the Constitution's Commerce Clause. The Commerce Clause allows Congress to "[t]o regulate Commerce . . . among the several States."[18] The "negative implication in the provision" is commonly referred to as the dormant Commerce Clause.[19] It "prohibits the enforcement of state laws 'driven by . . . economic protectionism—that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors.'"[20] "In this context, 'discrimination simply means differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter.'"[21] The dormant Commerce Clause does not broadly prohibit non-discriminatory laws that affect interstate

[14] For purposes of our advisory opinion, we refer to proposer's section numbering adding to Title 48 of the D.C. Official Code. However, Title 48 has not itself been legislatively enacted and is instead a codification of various organic acts enacted by the legislature. Our appended recommended language for the Proposed Initiative makes technical drafting changes to properly style the measure as a freestanding organic act. *See* Office of the Gen. Counsel, Council of the Dist. of Columbia, *Legislative Drafting Manual* § 2.5 (2019), *available at* https://dccouncil.gov/wp-content/uploads/2019/02/Legislative-Drafting-Manual-2019-Edition-FINAL.pdf.

[15] *Convention Ctr. Referendum Comm. v. D.C. Bd. of Elections & Ethics*, 441 A.2d 889, 897 (D.C. 1981) (en banc) (internal citations and quotations omitted).

[16] *Id.* at 913 (internal citations and quotations omitted).

[17] *Hessey v. Burden*, 615 A.2d 562, 578 (D.C. 1992) (quoting *Convention Ctr.*, 441 A.2d at 907).

[18] U.S. Const. art. I, § 8, cl. 3.

[19] *Dep't of Revenue of Ky. v. Davis*, 553 U.S. 328, 337 (2008)

[20] *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 369 (2023) (quoting *Dep't of Revenue of Ky.*, 553 U.S. at 337–338 (quotations and citation omitted)).

[21] *United Haulers Ass'n v. Oneida-Herkimer Solid Waste Mgmt. Auth.*, 550 U.S. 330, 338 (2007) (quoting *Ore. Waste Systems, Inc. v. Dep't of Envtl. Quality of Ore.*, 511 U.S. 93, 933 (1994)).

commerce.[22] "State laws that 'regulat[e] even-handedly to effectuate a legitimate local public interest . . . will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.'"[23]

The stated purpose of the Proposed Initiative is to reduce animal cruelty and promote public and environmental health. As the Supreme Court recently recognized, "[s]tates (and their predecessors) have long enacted laws aimed at protecting animal welfare."[24] The Proposed Initiative does not treat District and out-of-state actors differently by its express terms, nor does it reveal any intent to protect District economic interests at the expense of out-of-state economic interests. Rather than "plac[e] burdens on the flow of commerce across [the District's] borders that commerce wholly within those borders would not bear," it equally prohibits the sale of products within and into the District."[25] Further, federal courts in other jurisdictions have determined that nondiscriminatory state laws that even-handedly prohibit the sale and importation of certain meat products are not unduly burdensome.[26] So, even though the Proposed Initiative may have an incidental effect on out-of-state businesses by regulating what they may transport into the District, this does not offend the dormant Commerce Clause.

Second, the Proposed Initiative does not violate section 602(a)(3) of the Home Rule Act, which prohibits the Council from "[e]nact[ing] any act . . . which is not restricted in its application exclusively in or to the District."[27] Section 48-653(c) of the Proposed Initiative conceivably regulates extraterritorially by prohibiting conduct "regardless of the jurisdiction where the product was produced or originated." However, the prohibited conduct is the importing, transporting, or receiving of a "product *into the District*." Thus, the Proposed Initiative regulates persons outside the District only when they are "doing business in the District of Columbia," which is well within the District's legislative authority under the Home Rule Act.[28]

Finally, we cannot say as a matter of law that the Proposed Initiative on its face appropriates funds. Although the right of initiative must be construed broadly, the D.C. Court of Appeals has stated that "the exclusion from initiatives of laws appropriating funds is 'very broad[] . . . extend[ing] . . . to the full measure of the

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[22] *Ross*, 598 U.S. at 376.
[23] *South Dakota v. Wayfair*, 585 U.S. 162, 173 (2018) (quoting *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970)).
[24] *Ross*, 598 U.S. at 365 (discussing statutes).
[25] *Am. Trucking Ass'ns v. Mich. Pub. Serv. Comm'n*, 545 U.S. 429, 433 (2005) (quoting *Okla. Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 180 (1995)).
[26] *See, e.g.*, *Ass'n des Éleveurs de Canards et d'Oies du Québec v. Bonta*, 33 F.4th 1107, 1117–1120 (9th Cir. 2022), *cert. denied* 143 S. Ct. 2493 (2023) (upholding state prohibition on sale of force-fed bird liver products); *Empacadora de Carnes de Fresnillo, S.A. de C.V. v. Curry*, 476 F.3d 326, 335–337 (5th Cir. 2007) (upholding state prohibition against selling horsemeat for human consumption or possessing horsemeat with the intent to sell for human consumption); *Cavel Intern., Inc. v. Madigan*, 500 F.3d 551, 557 (7th Cir. 2007) (upholding state prohibition against slaughtering horses for human consumption and selling, importing, or exporting horse meat for human consumption); *see also Ill. Rest. Ass'n v. City of Chicago* 492 F. Supp. 2d 891, 898 (N.D. Ill. 2007), *vacated as moot*, No. 06 C 7014, 2008 WL 8915042 (N.D. Ill. Aug. 7, 2008) (upholding municipal ban on the sale of foie gras).
[27] D.C. Official Code § 1-206.02(a)(3).
[28] *See Am. Council of Life Ins. v. District of Columbia*, 645 F. Supp. 84, 89 (D.D.C. 1986) (holding that the Council may impose requirements on out-of-state insurance companies when doing business in the District); *see also Dimond v. District of Columbia,* 618 F. Supp. 519 (D.D.C. 1984), *rev'd on other grounds*, 792.F.2d 179 (D.C. Cir. 1986) (concluding that "it is within the District of Columbia's power . . . to require insurance companies *doing business in the District* to provide certain coverage" (emphasis added)).

Council's role in the District's budget process.'"[29] The Court has construed this limitation to prohibit an initiative that compels the allocation of funds to carry out mandatory provisions.[30]

Section 48-654 imposes several "mandatorily-phrased obligations" on DOEE.[31] Among these is section 48-654(a)(v), which states that DOEE "shall maintain a publicly available online database of violations and penalties issued under this Article, updated quarterly." Whether this mandate creates unbudgeted costs is a factual question that may be determined conclusively only by the OCFO through a fiscal impact statement. The OCFO has previously opined that legislation requiring the District government to create a database would have a fiscal impact.[32] Consequently, it is possible that the OCFO would determine that the Proposed Initiative has unbudgeted costs when it prepares the fiscal impact statement required by D.C. Official Code § 1-1001.16(c)(4).

However, any mandatory provisions with unbudgeted costs would necessarily be subject to appropriations before taking effect under section 4a(b) of the General Legislative Procedures Act of 1975.[33] Given this requirement, the Proposed Initiative cannot compel the allocation of funds, but only authorize the Council to fund it, if the Council so chooses. In other words, "the final decision about allocating funds [remains] the Council's," in keeping with the fundamental purpose of the appropriations limitation on the initiative right.[34] If the OCFO determines that the Proposed Initiative has unbudgeted costs, it must include an applicability clause indicating that the measure's effectiveness is subject to inclusion of its fiscal effect in an approved budget and financial plan.[35] Such a change would be technical and within the Board's authority to make when it prepares the proper legislative form. A subject-to-appropriations clause simply restates the preexisting requirement of section 4a(b) of the General Legislative Procedures Act of 1975.[36] Accordingly, in our attached drafting recommendations, we have included a subject-to-appropriations section for use in the event that the OCFO determines that there is a negative fiscal impact.[37]

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[29] *D.C. Bd. of Elections & Ethics v. District of Columbia*, 866 A.2d 788, 795 (D.C. 2005) ("*Campaign for Treatment*") (quoting *Dorsey*, 648 A.2d at 677 (D.C. 1994) (internal citations and quotations omitted)).
[30] *Id.* at 795–796.
[31] *See id.* at 796.
[32] *See, e.g.*, Memorandum from Glen Lee, CFO, to Chairman Phil Mendelson, on Fiscal Impact Statement – "Fiscal Year 2026 Budget Support Act of 2025" 65 (July 28, 2025) (finding fiscal impact for the Department of Motor Vehicles to develop a parking tag database); Memorandum from Glen Lee, CFO , to Chairman Phil Mendelson, on Fiscal Impact Statement – Secure DC Omnibus Amendment Act of 2024 14 (Jan. 17, 2024) (finding fiscal impact for Office of Police Complaints Access and Disciplinary Database).
[33] Effective October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a(b)) ("Permanent and emergency acts which are accompanied by fiscal impact statements which reflect unbudgeted costs, shall be subject to appropriations prior to becoming effective."); *see also* Letter from Brian Schwalb, Att'y Gen., to Terri Stroud, Gen. Counsel, D.C. Bd. of Elections, Advisory Opinion of the Attorney General on Proposed Initiative, "The Make All Votes Count Act of 2024," at 7–9 (June 9, 2023).
[34] *See Hessey v. D.C. Bd. of Elections & Ethics*, 601 A.2d 3, 13 (1991) (en banc).
[35] *See Campaign for Treatment,* 866 A.2d at 797 (opining that initiative would be a proper subject if it "condition[ed] . . . compliance with its dictates upon funding by the Council" by being subject to appropriations); *see also Legislative Drafting Manual* § 5.3.4 (discussing subject-to-appropriations applicability provision).
[36] *See In re Chateaugay Corp.*, 89 F.3d 942, 954 (2d Cir. 1996) (noting that "technical" amendments "did not purport to change the substantive meaning of the law"); *Whalen v. United States*, 826 U.S. 668, 669 (7th Cir. 1987) (finding that amendment "did not change but merely clarified preexisting law").
[37] *See Convention Ctr.*, 441 A.2d at 900–901 (opining that the Board's responsibility to prepare the "proper legislative form" under D.C. Official Code § 1-1001.16(c)(3) "may encourage the Board to give proposers some substantive guidance before circulation, at the time the Board approves the summary statement").

CONCLUSION

For the reasons above, it is the opinion of this Office that the *Prohibiting Force-Feeding of Birds Act* is a proper subject of initiative.

Sincerely,

Brian L. Schwalb
Attorney General for the District of Columbia

SHORT TITLE

"Prohibiting Force-Feeding of Birds Act"

SUMMARY STATEMENT

If enacted, the Initiative would:

(a) Prohibit force-feeding a bird in the District for the purpose of enlarging the bird's liver beyond normal size;
(b) Ban the sale or distribution in the District of any product resulting from force-feeding a bird;
(c) Defines force-feeding as causing a bird to ingest excessive feed;
(d) Provide for enforcement by the District Department of Energy and Environment during routine inspections; and
(e) Provide for civil penalties for violators.

This Initiative will not be implemented if it imposes unbudgeted costs unless the D.C. Council separately chooses to appropriate funds for the costs.

LEGISLATIVE TEXT

BE IT ENACTED BY THE ELECTORS OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Prohibiting Force-Feeding of Birds Act".

Sec. 2. Legislative intent.

The people of the District of Columbia hereby find and declare:

(1) That fattened bird liver products are "luxury" food items produced from the diseased and enlarged liver of a bird, typically a duck or goose, typically produced through systematically force-feeding the animal until their liver becomes diseased and expands up to ten times its natural size;

(2) That the method typically used to force-feed these birds for production of food items is inhumane and involves inserting a foot-long metal or plastic tube into the bird's throat and administering excessive quantities of feed directly into the stomach, resulting in extreme pain and various health issues;

(3) That force-feeding induces liver disease in the birds, which is both painful and often fatal, causing the animals significant injury and illness, including bacterial and fungal infections, malnourishment, and/or lameness;

(4) That veterinary professionals widely regard the typical practice of force-feeding birds for food product production as inhumane;

(5) That the intensive confinement of these birds for food product production exacerbates environmental degradation and climate change through the necessitation of substantial water and energy consumption and polluting our city's air and waterways;

(6) That runoff from fattened bird liver production facilities contains high concentrations of phosphorus and nitrogen, two of the most common forms of water pollution in the United States;

(7) That workers in fattened bird liver production facilities face occupational hazards, including exposure to respiratory irritants and zoonotic diseases, posing risks to worker health and public health; and

(8) That eliminating the production and sale of fattened bird liver products from the marketplace is in our city's interest and authority to reduce animal cruelty, unsustainable environmental practices, and spread of zoonotic diseases, and to uphold the District's values of humane animal treatment, public health, and environmental stewardship.

Sec. 3. Definitions.

For the purposes of this act, the term:

(1) "Bird" means any species of poultry, including ducks, geese, chickens, turkeys, guineas, or squabs.

(2) "Director" means the Director of the Department of Energy and Environment, or their designee.

(3) "Fattened bird liver product" means any food product or by-product made from the livers of birds fattened through any method or practice, including foie gras, pates, spreads, and processed meat products derived from such livers, regardless of marketing terminology.

(4) "Food service establishment" means any place offering prepared food to be consumed by customers on or off premises, including restaurants, cafeterias, pushcarts, stands, or vehicles.

(5) "Force-feeding" means any process, whether by hand or machine, by which a bird is caused to ingest more food than it would consume voluntarily, including the use of a tube or device inserted into the esophagus.

(6) "Person" means any individual, corporation, partnership, joint venture, trust, government agency, organization, or other entity.

(7) "Retail establishment" means any store, shop, sales outlet, farmers' market, or other place that sells or offers for sale food products to the public.

(8) "Sell" or "sale" means any act of selling, trading, distributing, bartering, or transferring for monetary or nonmonetary consideration, occurring where the recipient takes physical possession of the item.

Sec. 4. Prohibited conduct.

(a) No person shall force-feed a bird, or hire or direct another person to force-feed a bird, for the purpose of enlarging the bird's liver beyond its normal size. This subsection shall not apply to force-feeding directed by a licensed veterinarian solely for therapeutic purposes.

(b) No person, food service establishment, or retail establishment shall sell, offer for sale, distribute, or otherwise provide any fattened bird liver product within the District of Columbia, whether as a standalone item or as an ingredient in any product or dish.

(c) No person shall import, transport, or receive a fattened bird liver product into the District for sale, distribution, or any other commercial purpose, regardless of the jurisdiction where the product was produced or originated.

Sec. 5. Authority of Director.

The Director is hereby authorized to administer and enforce the provisions of this act. Thereby, the Department of Energy and Environment ("Department"):

(1) Is authorized to adopt procedures, forms, and, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code 2-501 *et seq.*), rules to implement the provisions of this act;

(2) Shall ensure compliance with the provisions of this act during routine inspections of food service establishments and retail establishments;

(3) Shall also have the authority to issue subpoenas for records related to the purchase, storage, and sale of poultry products;

(4) Shall ensure members of the public are able to submit complaints notifying the Department of possible violations; and

(5) Shall maintain a publicly available online database of violations and penalties issued under this act, updated quarterly.

Sec. 6. Enforcement and penalties.

(a) Any person or establishment that violates any provision of this act shall be subject to a civil penalty of not less than $1,000 and not more than $5,000 per violation. Each day a violation continues shall constitute a separate violation.

(b) Repeated violations within a 12-month period may result in suspension or revocation of the violator's business license in accordance with applicable District law.

(c) In addition to civil penalties, the District may enforce this act through a civil action, including an action for injunctive relief.

Sec. 7. Severability.

If any provision of this act, or its application to any person or circumstance, is held invalid, the remainder of the act, and the application of its provisions to other persons or circumstances, shall not be affected.

Sec. 8. Applicability.

(a) This act shall apply upon the later of the date of inclusion of its fiscal effect in an approved budget and financial plan, or July 1, 2027.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan, and provide notice to the Budget Director of the Council of the certification.

(c)(1) The Budget Director shall cause the notice of the certification to the published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of this act.

Sec 9. Effective date.

This act shall take effect after 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§ l-206.02(c)(1)), and publication in the District of Columbia Register.