

Report for Congress

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District of Columbia: Issues in the 108th Congress

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Eugene Boyd
Analyst
Government and Finance Division

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Summary

The United States Constitution gives Congress exclusive legislative authority over the affairs of the District of Columbia. As a result, the 108th Congress may debate a number of funding, governance, and constitutional issues affecting the District of Columbia, including approval of the city's budget, enactment of a general federal payment, budget autonomy for the city, and voting representation in Congress. In addition, Congress will consider whether to continue to include in the District's appropriations bills for FY2003 and FY2004, a number of controversial general provisions that District officials claim infringe on the principles of home rule.

Given the District's status as the seat of the national government, what should Congress do to ensure the long term fiscal health of the nation's capital? One option Congress may explore is the reinstatement of a general federal payment, but at what level? The city's mayor has suggested an annual federal payment of \$400 million. Alternatively, given the District's unique status as the nation's capital, Congress could shift additional state-like functions to the federal government. The city's Chief financial officer estimates that the city currently spends \$500 million in local funds for such activities. Congress could also approve legislation granting the city control over locally-generated revenues.

Voting representation in Congress for the citizens of the District of Columbia is a perennial issue. At the heart of the debate is the question of how constitutional dictates on the political status of the District of Columbia are to be balanced with the principles of representative democracy (governance with the consent of the governed). At least one bill has been introduced during the 108th Congress that would retrocede a portion of District to Maryland as a means of achieving voter representation in Congress.

District Mayor Anthony Williams insists that the city's new health care delivery system for the indigent is a success while critics counter that it is a disaster. Who is right? What role should Congress play in the delivery of health care services? Should Congress review the state of the current health care delivery system for the poor as a part of its oversight responsibilities? District officials contend that congressional intervention would run counter to the spirit of home rule. The new system administered by the newly created Health Care Safety Net Administration provides health care services to District residents whose incomes do not exceed 200% of the poverty level through a contract with the Health Care Alliance, a coalition of health care providers headed by Greater Southeast Community Hospital. The effectiveness of the new system has been called into question by two recent events. First, Greater Southeast Community Hospital faces an ongoing financial crisis requiring it to curtail services. Second, an October 2, 2002, audit by the city's inspector general found significant problems in both the Department of Health's oversight of the city's contract with the Health Care Alliance, and the Alliance's administration of the enrollment process.

This report, which provides an overview of District of Columbia-related policy and funding issues of interest to Congress, will be updated as events warrant.

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In the coming months the 108th Congress may debate a number of funding, governance, and constitutional issues affecting the District of Columbia, including approval of the city's budget, reinstating a general federal payment, budget autonomy for the city, and voting representation in Congress. In addition, Congress will consider whether to continue to approve a number of so-called social riders included in the District's appropriations bills. These social riders include prohibition on the use of federal or District funds to implement needle exchange programs, a medical marijuana initiative, and abortion services. Several of these issues again will be considered during the appropriations process¹, while others may be taken up by House and Senate oversight committees.

Background

The United States Constitution gives Congress exclusive legislative authority over the affairs of the District of Columbia. Congress has exercised its constitutional authority in a number of ways. In 1974, it passed a limited Home Rule Act.² The Act allowed for the popular election of a mayor and city council and authorized them to legislate and manage the city's affairs. It also established a budget and legislative review process allowing Congress to disapprove the implementation of any legislative measure passed by the city's elected leaders and to review the city's annual budget as a part of the congressional appropriations process.

Congress continues to play a role in District of Columbia governance. For example, during the past 10 years Congress has passed legislation encouraging the creation of charter schools,³ authorized the takeover of city services and finances through the establishment of a financial control board and the Office of the Chief Financial Officer,⁴ transferred responsibility for funding prisons and courts and a greater share of Medicaid cost to the federal government, and transferred unfunded pension liabilities for the city's judges, police, firefighters, and teachers to the federal

¹ In previous appropriations bills Congress has prohibited or restricted the District of Columbia from using District or federal funds for abortion services, needle exchange and medical marijuana programs.

² P.L. 93-198

³ P.L. 104-134

⁴ P.L. 104-8

government.⁵ Congress also has approved legislation prohibiting or restricting the use of public funds in support of the city's efforts to gain voting representation in Congress,⁶ and to implement or fund particular initiatives and referenda approved by the city's voters or legislation passed by the city council. The District is currently prohibited from, or restricted in the use of, federal or District funds for needle exchange programs, a medical marijuana initiative, and abortion services.⁷

Voting Representation in Congress

Voting representation in Congress for the citizens of the District of Columbia is an issue that dates back to the creation of the federal district in 1790, and its subsequent occupation as the seat of government in 1800.⁸ District of Columbia citizens have been able to elect a non-voting delegate to the House of Representatives since 1971, but have unsuccessfully sought full voting representation throughout the city's 203-year history.⁹ Proponents of voting representation point out that the United States is the world's only democratic nation and the only federal system of governance that does not grant citizens of its national capital voting representation in the national legislature.

At the heart of the debate on the question of voting representation for residents of the District of Columbia is the question of how constitutional dictates on the political status of the District are to be balanced with the principles of representative democracy. The U.S. Constitution confers upon Congress exclusive legislative control of the seat of the federal government. Conversely, among the principles on which the United States was founded is that of governance with the consent of the governed, i.e., participation of the citizenry in the governing process. This principle is captured in the slogan "no taxation without representation," a rallying cry for the

⁵ P.L. 105-133

⁶ The District of Columbia Appropriations Act for FY2003, Division C of the Omnibus Appropriations Act for FY2003, P.L. 108-7, includes two such provisions. One provision prohibits the city from using public funds in support of statehood activities or voting representation in Congress or the District of Columbia. This provision was first included in the District of Columbia Appropriations Act for FY1980, P.L. 96-530. The second provision prohibits the District Government, including the Office of the Corporation Counsel, from providing any assistance for any petition drive or civil action seeking to require Congress to provide voting representation in Congress for the citizens of the District of Columbia. This provision was first included in the District of Columbia Appropriations Act for FY1999, P.L. 105-277.

⁷ Congress first restricted the use of public funds for abortion services in the District of Columbia Appropriations Act for 1980, P.L. 96-530. Congress first prohibited the use of public funding of a needle exchange program and the implementation of a medical marijuana initiative in the District of Columbia Appropriations Act of 1999, P.L. 105-277.

⁸ 1 Stat. 130

⁹ District of Columbia Delegates to the House of Representatives include: Norton P. Chipman (1871-1874), Water Fauntroy (1971-1991), and Eleanor Holmes Norton (since 1991). Although the District's Delegate to Congress may vote in committee, she may not vote in the Committee of the Whole or floor votes.

nation in its war of independence that has been embraced by many citizens of the District of Columbia.

Strict readers of the Constitution see little merit and several hurdles to granting District residents voting representation in Congress. They point to constitutional provisions granting voting representation in the House and Senate only to states, and granting Congress “exclusive Legislation in all Cases whatsoever” over the District of Columbia. They further cite the founders’ clear intention that the national interest should be paramount in the federal district, asserting that the principle remains valid today. Proponents of voting representation note that the United States is the only federal democratic republic that denies citizens of the national capital voting representation in the national legislature, while such citizens must meet all other requirements of citizenship including the payment of federal taxes and military service.

In recent years, citizens of the District have renewed efforts to gain voting representation, petitioning both the Supreme Court and Congress. In a decision issued in 2000, the Supreme Court affirmed a lower court ruling on voting representation in Congress for District residents. On March 20, 2000, in *Adams v. Clinton* and *Alexander v. Daley*, the United States District Court for the District of Columbia ruled that the question of voting rights for the citizens of the District was a legislative issue that could only be addressed by Congress through the political process.¹⁰ Over the past few years legislation has been introduced in Congress that would convey voting rights to the citizens of the District of Columbia. These proposals fall into four categories:

- bills that would retrocede the non-federal portion of the District of Columbia back to Maryland,
- bills granting statehood to the non-federal portion of the District of Columbia,
- bills seeking full voting representation in Congress, and
- bills allowing city residents to vote for Maryland House and Senate candidates.

Current Legislative Proposals. H.R. 381, the District of Columbia-Maryland Reunion Act, introduced by Representative Regula on January 27, 2003, would retrocede a portion of the District to Maryland and create a National Capital Service Area, which would remain under congressional control. The National Capital Service Area would comprise the principal federal monuments, the White House, the Capitol Building, the United States Supreme Court, and the federal executive, legislative, and judicial office buildings located adjacent to the Mall and the Capitol. The bill allows for a temporary increase in the number of representatives until the first reapportionment occurring after the effective date of the Act with the

¹⁰ *Adams v. Clinton* and *Alexander v. Daley*. D.C. D.C., Civil Action No. 98-1665 and 98-2187. Opinions filed March 20, 2000.

city's Delegate to the House of Representatives serving as a member of the House of Representatives from the State of Maryland.

During congressional consideration of previous District of Columbia appropriations acts, District officials have asked Congress to remove certain general provisions denying District citizens the use of public funds to lobby on behalf of statehood or voting representation before Congress or any state legislature, but Congress has not acted on these proposals. Currently two general provisions are included in the District of Columbia Appropriations Act for FY2003, P.L. 108-7. One allows the use of District funds for lobbying activities, except in instances involving the promotion of any boycott or activity in support of statehood for the District or voting representation in Congress for District citizens. Another provision prohibits the use of federal and District funds, including funds for the corporation counsel, to cover the cost of court challenges aimed at providing city residents with voting representation in Congress.

Policy Questions. The United States Supreme Court has ruled that a judicial response to the voting representation issue would be inappropriate and suggested that any remedy must be achieved through the legislative process. The lack of a judicial remedy may allow proponents of voting rights to focus on Congress and the political process, although Congress has been reluctant to address this issue because of its broad political implications.

A number of specific policy and constitutional questions would have to be addressed if Congress considered legislation granting District citizens voting representation in the national legislature. These include identifying a constitutionally acceptable means by which representation could be achieved (a constitutional amendment, statehood, retrocession, and the secondary effects of each option). Should residents of the District of Columbia, which is not a state, gain the same standing as states, including voting representation in both chambers House and Senate and would such an accommodation violate the Constitution? Would the granting of such representation necessitate a repeal of the 23rd Amendment, which grants District citizens the right to vote in national elections and conveys three votes in the electoral college to District voters?

Funding and Budget Issues

Given the District's status as the seat of the national government, what should Congress do to ensure the long term fiscal health of the nation's capital? Despite its success in producing 6 consecutive years of balanced or surplus budgets, city leaders contend that the city faces a long term structural imbalance. One option Congress may consider is the reinstatement of a general federal payment, but at what level? The city's mayor has suggested an annual federal payment of \$400 million. Alternatively, given the District's unique status as the nation's capital, Congress could shift additional state-like functions to the federal government. The city's chief financial officer estimates that the city currently spends \$500 million in local funds for such activities. Congress could also approve legislation granting the city unrestricted control over locally generated revenues.

In October 2002, at the urging of Congress, the mayor and the city council submitted to Congress a revised budget for FY2003 aimed at addressing a \$323 million shortfall. Although District officials contend that the current shortfall is the result of a cyclical downturn in the economy, they continue to maintain that the District faces an imbalance between its long-term expenditure needs and the city's ability to generate sufficient revenues in support of the current level of program services and capital investments. In congressional testimony and several public forums, District officials, including the city's chief financial officer (CFO), the mayor, and former chair of the city's control board, have argued that the city faces a "fiscal structural imbalance." Several factors contribute to this imbalance, including security planning; public services and facilities costs associated with the federal presence in the city; the financial burden placed on the District in carrying out state-like functions; and restrictions on the District's ability to expand its tax base, including the institution of a commuter tax and the inability to generate revenues from properties owned by tax-exempt entities.

FY2003 Budget Outlook. Congress recently completed its review and approved the District's Appropriation Act for FY2003, Division C of P.L. 108-7, the Omnibus Appropriations Act for FY2003. Congress passed the legislation on February 13, 2003, and it was approved by the President on February 20, 2003. In October 2002, the mayor and the city council submitted to Congress a revised budget for FY2003 aimed at addressing the \$323 million shortfall.

Budget Autonomy. City leaders argue that the District's operating budget, which is financed with local revenues, was held hostage as Congress considered an omnibus appropriations act and other national issues. City leaders continue to contend that congressional review of the city's budget hinder their ability to manage the District's financial affairs. They have noted that the delays in passing the city's appropriations act for FY2003 and the subsequent passage of several continuing budget resolutions, which required the District to operate at its FY2002 appropriations level, negatively impacted city services. Congress's delay in approving the District's FY2003 budget and, the city's attempts to address a projected \$323 million budget shortfall, prompted city leaders to reiterate their call for budget autonomy over locally raised revenues. During the 107th Congress two bills were introduced that would have granted local official some level of budget autonomy.¹¹ Some version of these bills may be reintroduced during the 108th Congress. Proponents of increased budget autonomy note that the Bush Administration's budget for FY2004 includes a statement in support of budget autonomy for the District of Columbia.

¹¹ H.R. 2995, which was introduced by Representative Morella of Maryland, was referred to the House Government Reform Committee, Subcommittee on the District of Columbia. The Subcommittee considered and marked-up the bill of November 15, 2001. No action was taken by the full committee.

S. 2316, which was introduced by Senator Landrieu, was referred to the Committee on Governmental Affairs, Subcommittee on Oversight of Government Management, Restructuring and the District of Columbia. No action was taken by the subcommittee or the full committee.

Federal Payment. One possible response to the asserted “structural imbalance” affecting the city’s long term fiscal health is a general federal payment that compensates the city for the cost attributable to the federal presence. Another possible alternative is institution of a commuter tax. Based on previous responses to proposals involving such a tax, an effort to enact a commuter tax would likely be opposed by some Members from the surrounding states of Virginia and Maryland. In the past, some legislators have maintained, that given the District’s unique status as the Nation’s capital, any costs attributable to the federal presence should be shared by all states.

When it enacted the National Capital Revitalization Act of 1997, P.L. 105-133, Congress eliminated an annual federal payment (that amounted to \$660 million the last fiscal year it was provided) in exchange for the federal government assuming responsibility for the District’s unfunded pension liability for teachers, judges, policeman, and firefighters, and the assumption of certain state-like functions most notably, the criminal justice system including the courts, corrections, and offender supervision. The 1997 Revitalization Act also transferred responsibility for funding of several state-like functions from the District to the federal government, most notably, corrections and the courts, and increased the federal share of the city’s Medicaid program from 50% to 70%. The District’s CFO estimates that the city currently expends \$500 million annually in state-like functions such as human services, mental health and higher education.

Current Legislation. The FY2003 Appropriations Act for the District of Columbia includes a number of special federal payments to the city, but not a general payment. For the current fiscal year, these special federal payments will total \$512 million. The majority of these special federal payments are allocated to courts and criminal justice activities. Of the \$512 million in special federal payments included in proposed District appropriations for FY2003, approximately 69% of the funds are for court operations, defender services, and court services and offender supervision.

Policy Questions. Given the District’s status as the seat of the national government, what should Congress do to ensure the long term fiscal health of the Nation’s Capital? Is there a structural imbalance that impinges on the city’s long-term ability to maintain an adequate level of services? What factors contribute to any imbalance, and what might be done to address it? Should the federal government provide a general federal payment to the District to compensate the it for costs associated with the federal presence? If a federal payment is justified, what should be the basis for such a payment? Are there certain state-like functions that the federal government should assume, and what is the long-term impact on the District, and on the federal government, of such actions?

Congressional Oversight

Delivery of Health Care Services. Despite the bankruptcy of the Greater Southeast Community Hospital, the lead provider of health care services for the city’s indigent, Mayor Williams and his administration insist that the city’s new health care delivery system is a success, while critics counter that it is a failure. Who is right? What role should Congress play in the delivery of health care services? Should

Congress review the state of the current health care delivery system for the poor as a part of its oversight responsibilities? District officials contend that congressional intervention would run counter to the spirit of home rule. While others counter that such a review is part of Congress' oversight responsibilities.

Reform of the city's health care delivery system for the poor continues to be a divisive political issue. During the past 2 years, the city's political leadership has become bitterly divided over the downsizing of D.C. General Hospital, the demise of the city financed Public Benefit Corporation (PBC), and the restructuring of the city's health care delivery system for indigent and uninsured residents of the city. Reform in the city's delivery of health care for the poor was sought by Congress because of the PBC's mismanagement of D.C. General Hospital. From 1997 to its dismantling in 2001, the PBC amassed \$109 million in unbudgeted loans from the city, using its power to borrow from the city's general fund to cover deficit spending and defer repayment of mounting debt. The new system administered by the newly created Health Care Safety Net Administration began functioning on April 21, 2001. It provides health care services to District residents whose incomes that do not exceed 200% of the poverty level through a contract with the Health Care Alliance, a coalition of health care providers headed by Greater Southeast Community Hospital.

The effectiveness of the new system has been called into question by two recent events. First, Greater Southeast Community Hospital faces an ongoing financial crisis requiring it to curtail services. Second, an October 2, 2002, audit by the city's Inspector General found significant problems in the Department of Health's oversight of the city's contract with the Health Care Alliance, and the Health Care Alliance's administration of the enrollment process. Specifically, the report noted that the city's Department of Health had failed to hire critical personnel in a timely fashion, and the Health Care Alliance had failed to properly screen and eliminate thousands of ineligible enrollees, including Medicaid recipients. The city's current plan is financed with city funds. Residents who receive Medicaid are ineligible for assistance under the health care alliance. Under the new program, Medicaid is considered a third-party insurance provider. Shifting eligible residents to Medicaid could lower the city cost of providing services under its health care plan.

Policy Questions. Should Congress defer to local officials, in the name of home rule, in addressing the issues surrounding the delivery of health care services, or should it take a more active role in carrying out its oversight responsibility? Is the new system the most cost effective means of delivering health care services? Should District officials reconsider the city's commitment to the new system of privatized health care for the indigent? What is the interface between Medicaid, which provides federal assistance to the poor, and the city's health care delivery system, and is the city effectively managing both systems?