District of Columbia: Issues in the 108th Congress

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Summary

The U.S. Constitution gives Congress exclusive legislative authority over the affairs of the District of Columbia. As a result, the 108th Congress has considered 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, gun control repeal, and voting representation in Congress. In addition, Congress is considering whether to continue to include in the District’s appropriations bill for FY2005 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 and what city officials describe as a structural fiscal imbalance, 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? A Government Accountability Office (GAO) study estimate places the fiscal imbalance at $800 million or more. 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 three bills have been introduced during the 108th Congress that would provide the District with voting representation in Congress: H.R. 381 would retrocede a portion of the District to Maryland as a means of achieving voter representation in Congress; H.R. 1285 would treat the District as a state and provide it with full voting representation in the House and Senate; and H.R. 4640 would temporarily add two House seats, one in Utah and the other in the District. This arrangement would remain operative until the 2010 census, when the size of the House would revert to 435. The District seat would become permanent and a reshuffling would occur for the remaining 434 seats.

Mayor Williams insists that the city’s new health care delivery system for the indigent is a success. Critics counter that it is a disaster. What role should Congress play in the delivery of health care services? Should Congress review the state of the health care delivery system for the poor as a part of its oversight responsibilities?

The District’s gun control laws have become a part of the national debate on the effectiveness and constitutionality of gun control. Two bills have been introduced (S. 1414 and H.R. 3193) that would repeal the city’s gun control legislation.

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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District of Columbia: Issues in the 108th Congress

The 108th Congress has debated 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, the repeal of the city’s gun control laws, 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 bill for FY2005. 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. Congress will also consider whether to continue to restrict the District from using public funds to lobby for statehood or voting representation in Congress. Several of these issues again will be considered during the appropriations process, 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. 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, authorized the takeover of city services and finances through the establishment of a financial control board and the Office of the Chief Financial Officer, 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 government.

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.\textsuperscript{5} Congress also has approved legislation prohibiting or restricting the use of public funds to support the city’s efforts to gain voting representation in Congress,\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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 — that is, participation of the citizenry in the governing process. This principle is captured in the slogan “no taxation without representation,” a rallying cry

\textsuperscript{5} P.L. 105-133.

\textsuperscript{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.


\textsuperscript{8} 1 Stat. 130.

\textsuperscript{9} District of Columbia Delegates to the House of Representatives include Norton P. Chipman (1871-1874), Walter 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.
for the 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. 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 U.S. 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 city’s

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

H.R. 1285, introduced by Delegate Norton of the District of Columbia, and S. 617, introduced by Senator Lieberman, would provide for full congressional voting representation in Congress for citizens of the District. The bill would allow for the election of two Senators and as many Representatives in the House of Representatives as a similarly populous state would be entitled to under the law. In this respect the bill is significantly different from the H.R. 381, which would retrocede a portion of the District back to Maryland. It would set aside one additional seat in the House of Representatives, with voting privileges until the results of the next Census and subsequent reapportionment.

H.R. 3709, introduced by Representative Rohrabacher, is what may best be described as a semi-retrocession bill. It would treat residents of the District, for purposes of voting rights only, as Maryland citizens. The bill would allow District residents to vote in Maryland, to run for the Maryland Senate seats, but the city would remain an independent jurisdiction.

H.R. 4640, introduced by Representative Tom Davis, would temporarily increase the number of votes in the House from 435 to 437. One of the two additional seats would be set aside for the District, the other for Utah, and the change would take effect on January 3, 2005. This arrangement would end with reapportionment following the 2010 census. At that time the House of Representative would revert to 435 members. The District seat would become permanent, and the other districts would be reshuffled for the remaining 434 seats. The measure also would eliminate the District delegate and its statehood representative.

During congressional consideration of previous District of Columbia appropriations acts, District officials 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 rejected these proposals. Currently two general provisions are included in the District of Columbia Appropriations Act for FY2005, H.R. 4850. 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. The Senate-passed version of H.R. 4850 would remove language restricting the use of District funds for lobbying activities in support of statehood and voting representation in Congress.

Policy Questions. The U.S. 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 the House and the 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 seven 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? A Government Accountability Office (GAO) study estimate places the fiscal imbalance at $800 million or more. 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 contended that the shortfall was 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 the 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 restrictions on the institution of a commuter tax and the inability to generate revenues from properties owned by tax-exempt entities.

**FY2005 Budget Outlook.** Congress has not yet completed its review and approved the District’s appropriations act for FY2005, H.R. 4850. The House approved the city’s $8.2 billion budget and $560 million in special federal payments on July 20, 2004. The Senate completed action on its version of the bill on September 22, 2004. Differences in the House and Senate version of the bill must be reconciled by a conference committee. Congress may be unable to complete action on the bill before the beginning of the year, which may result in funding for the District being included in a temporary budget resolution.
**Budget Autonomy.** City leaders argue that the District’s operating budget, which is financed with local revenues, is often held hostage as Congress considers other appropriations acts and other national issues. City leaders continue to contend that delayed congressional review of the city’s budget hinders 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

Two bills (S. 126 and H.R. 2472) have been introduced during the 108th Congress. The Senate bill was reported (S.Rept. 108-212) by the Senate Governmental Affairs Committee. Both bills would decouple congressional approval of the city’s general fund budget — that portion of the budget financed with local revenues — from the special federal payments Congress approves each year. Both bills would allow a 30 calendar day review of the District general fund budget by Congress with Congress retaining its authority to act should it object to any portion of the local budget. Special federal payment funding for the District would continue to go through the normal federal appropriations process. Proponents of increased budget autonomy note that the Bush Administration’s budget for FY2004 included a statement in support of budget autonomy for the District of Columbia.

**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

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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.
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 FY2004 Appropriations Act for the District of Columbia includes a number of special federal payments to the city, but not a general payment. For the coming fiscal year, FY2005, these special federal payments will total $560 million. The majority of these special federal payments are allocated to courts and criminal justice activities. Of the $560 million in special federal payments included in proposed District appropriations for FY2005, approximately 75% 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 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?

**Gun Control Repeal**

The District’s gun control laws have become a part of the national debate on the effectiveness and constitutionality of gun control. Supporters of the District’s gun control laws note that city residents support the restrictions while opponents question whether the provisions are a violation of a citizen’s Second Amendment right to “bear arms.” The District of Columbia has some of the most stringent gun control laws in the nation.

The city’s gun control laws prohibit the sale or possession of handguns and semiautomatic weapons, and limit the possession of gun ammunition. Congressional supporters of bills to repeal the city’s gun control laws contend that the restrictions have not enhanced public safety. The District’s mayor and its congressional delegate have voiced opposition to the repeal of the city’s gun control measures, characterizing congressional efforts to do so as an “assault on home rule” and warning that repealing the city’s gun control measures would jeopardize public safety by increasing the availability of weapons. Supporters of the repeal of the city’s gun control measures counter that the bill is intended not as an intrusion on home rule, but rather as an effort to restore to District residents the constitutionally guaranteed right to keep and bear arms. In addition, supporters of lifting the gun ban note that the District’s gun control measures have been ineffective in stemming the city’s crime rate.
Current Legislative Proposals. During the 108th Congress, legislation has been introduced in the House (H.R. 3193) and the Senate (S. 1414) that would repeal a number of long-standing gun control measures passed by the District of Columbia’s city council. The House and Senate bills would prohibit the District government from passing any laws or regulations that exceed federal gun control measures or that would discourage, restrict, or prohibit private ownership and use of firearms.

Both bills would also repeal District laws that:

- ban the sale and possession of handguns and semiautomatic weapons;
- prohibit the sale or possession of firearms except for three specific types of the firearms (sawed-off shotguns, machine guns, and short-barreled rifles);
- limit the possession of handgun ammunition; and
- require all firearm registrants, except law enforcement personnel, to keep any firearm unloaded and disassembled or bound by a trigger lock or similar device unless the firearm is kept at the registrant’s place of business, or is being used for lawful recreational purposes within the District of Columbia.

In addition, the bills would repeal provisions governing the registration of firearms in the District, including those requiring gun registration applicants to be photographed and fingerprinted and to meet certain age thresholds. The bills would also repeal District laws prohibiting the possession of a firearm by persons who have been judged to be mentally or physically unfit, persons who have been convicted or are under indictment for the commission of a violent crime, and persons convicted of drug dealing.

The measures have been referred to the House Committee on Government Reform and the Senate Government Affairs Committee. Neither the House nor the Senate committees of jurisdiction have held hearings or taken any action on the respective bills. According to press reports, it was anticipated that Senator Craig would include the language of S. 1414, which was introduced by Senator Hatch, in the District’s FY2005 appropriations measure. Senator Craig noted that he would offer his amendment only if had sufficient votes in committee to secure its passage. The appropriations bill, S. 2826, which was reported by the Senate Appropriations Committee on September 21, 2004, and approved by the Senate on September 22, 2004, did not include any language repealing the city gun control laws. Representative Souder’s bill (H.R. 3193), which has 228 cosponsor, may be brought to the House floor for a vote prior to the November 2, 2004, elections, according to press reports.

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Policy Questions. Are the District’s gun control restrictions effective crime control measures? Are the restrictions and prohibitions on gun ownership an unconstitutional infringement on a resident’s Second Amendment rights? If the provisions are constitutional, should Congress defer to the home rule prerogatives of locally elected officials and District residents? For additional information on the national debate on gun control, see CRS Issue Brief IB10112, Gun Control Issues in the 108th Congress, by William Krouse.

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’s oversight responsibilities.

Reform of the city’s health care delivery system for the poor continues to be a divisive political issue. During the past two 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 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?