Proposed Comments of the District of Columbia Affairs Section\(^1\) of the District of Columbia Bar in Support of the D.C. Budget Autonomy Bill

On November 15, 2002, the District of Columbia Affairs Section of the District of Columbia Bar (the "Section") completed a public statement in support of the budget autonomy portion of H.R. 2995, the "District of Columbia Fiscal Integrity Act of 2001," and its companion, S. 2316, because of the importance of Home Rule and fiscal responsibility. The legislation removes the District's budget from the federal appropriations process, directing that the city's budget take effect immediately upon transmittal to Congress apart from the lengthy review of the budgets of the various Federal agencies.

The public statement is in the form of letters addressed to Senator Richard J. Durbin (D-Illinois), Chair of the Subcommittee on Oversight of Government Management, Restructuring, and the District of Columbia of the U.S. Senate Committee on Governmental Affairs, and Representatives Connie Morella (R-Maryland), and Eleanor Holmes Norton (D-District of Columbia), Chair and Ranking member, respectively, of the Subcommittee on the District of Columbia of the U.S. House of Representatives Committee on Government Reform.

The statement was approved by the D.C. Affairs Section Steering Committee and is now being submitted to the D.C. Bar for expedited review.

The current D.C. budget process subjects decisions on how the District may spend its locally generated funds to those whom District residents have no say in electing and to events wholly unrelated to the District. The Section believes this is fiscally irresponsible, and practically and procedurally cumbersome burden on the District. The District will have to manage under a continuing resolution this year because of delays in the appropriations process which are wholly unrelated to the District.

The following members of the District of Columbia Affairs Section participated in drafting these comments: Steering Committee Member Charlotte Brookins-Hudson, Steering Committee Member James S. Bubar, University of District of Columbia David A. Clarke School of Law Dean Katherine S. Broderick, Steering Committee Member Bell Clement, Steering Committee Co-Chair Lily M. Garcia, former District of Columbia Council Member Betty Ann Kane, Legislation Committee Chair and former District of Columbia Council Member James E. Nathanson, Steering Committee Co-Chair Thorn L. Pozen, Community Outreach Committee Chair William Tayler, and former Steering Committee Co-Chair and former District of Columbia Auditor Matthew S. Watson.

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\(^1\) The views expressed herein represent only those of the District of Columbia Affairs Section and not those of the District of Columbia Bar or of its Board of Governors.
November 15, 2002

The Honorable Connie Morella
United States House of Representatives
Washington, D.C. 20515

The Honorable Eleanor Holmes Norton
United States House of Representatives
Washington, D.C. 20515

Re: Comments of the D.C. Affairs Section of the D.C. Bar in
Support of the Budget Autonomy Bill, H.R. 2995/S. 2316

Dear Congresswoman Morella and Congresswoman Norton:

On behalf of the District of Columbia Affairs Section of the District of Columbia Bar (the "Section"), we are writing to support the budget autonomy portion of H.R. 2995, the "District of Columbia Fiscal Integrity Act of 2001," and its companion, S. 2316, because of the importance of Home Rule and fiscal responsibility. ¹ The Section takes no position on the remainder of the bill. We appreciate the leadership that the two of you have shown on this legislation. The legislation removes the District’s budget from the federal appropriations process, directing that the city’s budget take effect upon transmittal to Congress.

The Section serves all attorneys who live, work, or have interest in the District of Columbia, and Bar members who practice before or work with the D.C. Council and the Executive Branch or the court system. The Section monitors legislative, judicial, and related legal developments affecting the District of Columbia. Other key missions are to provide a forum for the membership to network with key government officials and business and community leaders and to offer relevant professional development.

Despite the advent of limited Home Rule in the District of Columbia, Congress has continued direct control over the District's budget. Unlike other pieces of District legislation, which, under the Home Rule Charter, must go to Congress for a review period after which, if Congress has not acted, the bills become law, the District's budget must be affirmatively passed by Congress through its appropriations process.

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The current process subjects decisions on how the District may spend its locally generated funds to those whom District residents have no say in electing and to events wholly unrelated to the District. This is fiscally irresponsible, and is a practically and procedurally cumbersome burden on the District. It requires the District to complete its budget preparation and planning process ahead of any other jurisdiction. As you know, the District is facing a similar problem this year and will have to manage under a continuing resolution.

To address the fundamental unfairness and practical difficulties of these local budget issues, you and Representatives Chaka Fattah (D-Pennsylvania) and Diane Watson (D-California) introduced H.R. 2995, the “District of Columbia Fiscal Integrity Act of 2001,” into the 107th Congress. Among other measures, the bill would provide for budget autonomy for the District. It was referred to the House Committee on Government Reform and passed by the District of Columbia Subcommittee. As you know, a companion bill, S. 2316, the “District of Columbia Fiscal Integrity Act of 2002,” was introduced in the Senate sponsored by Senator Mary L. Landrieu (D-Louisiana) and referred to the Senate Committee on Governmental Affairs.

The Section supports the legislation as an important step in rationalizing the management of District affairs and strengthening the local/federal partnership on behalf of the Nation’s Capital. Federalizing the District’s municipal budget process has undermined the shared federal and local effort to ensure good management of the Nation’s Capital, absorbed federal resources needlessly, and is unnecessary to the furtherance of federal objectives for the city.

For your information, enclosed is a table showing specific changes to the budget process time-line and a ‘redline’ version documenting the changes proposed in Title IV of H.R. 2995 to D.C. Code Title 1, Chapter 2, “District of Columbia Home Rule.”

The following changes are highlighted:

**Local Management Would Be Encouraged**

The current budget process treats the District of Columbia as though it were a department of the federal government, subjecting the District budget -- local decisions on the spending of local tax dollars -- to the federal appropriations process.

More than three-fourths of the District's budget comes from locally raised tax dollars which fund several vital city services. The remaining one-fourth portion of the budget comes from federal funds for entitlement programs (e.g., Medicaid, TANF, school lunches) that all states receive from the federal government.

The current arrangement undermines the shared federal and local interest in effectively managing District affairs. Accommodating the federal process automatically adds six months
to the District’s budget cycle, diminishing the accuracy of revenue and expenditure projections on which the budget is based.

Most American cities finalize an annual budget months in advance of the start of the fiscal year. The present federalization of District budget process means that the District must wait weeks and even months after the October 1 fiscal year start date for an approved budget, making do in the meantime with continuing resolutions passed by Congress to permit the city to continue to operate.

Ironically, many of the delays imposed on the District have nothing to do with the District. The federalized process subjects the District budget to the vagaries of the national policy debate. During a recent budget show-down between Congress and the federal Executive, the District waited seven months for an approved budget. Again in 2001, with federal attention necessarily directed to September 11, the District budget sat in Congress’s legislative queue for over two months past the start of the District’s fiscal year. This year, the District is operating under a continuing resolution because of delays in the Congressional process. The budget is unlikely to be approved until at least January 2003, which will compromise the city’s ability to deliver public services.

**Federal Resources Would Be Conserved**

Federalization of the District’s municipal budget process places substantial and unnecessary demands on federal resources. Once approved by the D.C. Council and Mayor, the District’s budget must be transmitted to the President for transmittal to the Office of Management and Budget. After it is reviewed by the Office of Management and Budget, it is transmitted to Congress as a federal appropriations bill and reviewed and approved by the House Appropriations Subcommittee on the District, by the full House Committee on Appropriations, and by the full House. It is also reviewed and must be approved by the Senate Subcommittee on the District, by the full Senate Committee on Appropriations, and by the full Senate -- all before being submitted for approval to or veto by the President. Avoiding the full review by the federal Executive and both Houses of Congress conserves federal resources.

**Federal Objectives For The Nation’s Capital Would Be Preserved**

Article I, Section 8 of the U.S. Constitution grants Congress the power to control all District legislation. Congress is free to address District issues of concern via legislative action. Resorting to the cumbersome appropriations process is unnecessary to its control of District policy decisions. Congress has the tools for influencing District policy without burdening the budget process.

**The Uncertainty Of The Current System Would Be Avoided**

The District cannot be sure of its budget until after both Houses of Congress and the
Federal Executive have reviewed the budget. Avoiding such review allows the District to be better able to plan how it spends its own locally generated tax revenue.

The District Would Be Treated Like Other Jurisdictions

The legislation’s changes would allow the District to adopt its own budget like other jurisdictions. The District of Columbia is not an agency or department of the federal government. Yet, it is treated like a federal agency by its inclusion in the lengthy, cumbersome, and uncertain federal appropriations process. Congressional delays in passing the District’s budget not only lead to employee furloughs, but affect the delivery of daily vital services to the District’s nearly 600,000 residents such as police and fire protection, trash collection, snow removal, government subsidized child care, and other important social services.

In the past decade, the District's budget was timely passed only once. That budget, for FY 1997, was signed by the President on September 5, 1996, weeks before the start of the October 1 fiscal year. However, the FY 1997 budget was the exception, rather than the rule. The approval of other budgets have been delayed anywhere from one to six months.

Twice in the past decade the District had to endure the trauma of a government shutdown due exclusively to its entanglement in the appropriations for federal agencies. While the FY 1996 budget was being debated, a continuing resolution expired at midnight on November 13, 1995. To avoid violating the Anti-Deficiency Act, the District government prepared to shutdown by furloughing employees at agencies that were not exempt under the Anti-Deficiency Act, and by ceasing to operate vital government services. Although the government resumed normal operations on November 20, 1995, it could hardly be called “normal.” The threat of another government shutdown loomed large over the District for the next five months, until April 26, 1996, when the FY1996 budget was finally passed.

During the government shutdown, in addition to the furlough of employees, such vital city services as trash collection, snow removal, rodent abatement, government subsidized child care, and other services ceased. Although federal employees were also furloughed during this time period, the impact on every District resident was more far-reaching than its workforce.

A similar shutdown occurred in December 1995. The Fiscal Year 1996 budget was finally adopted on April 26, 1996, nearly six months into the fiscal year.

The Legislation Does Not Violate the U.S. Constitution Or The Home Rule Act

The legislation is consistent with the U.S. Constitution, and allows the District of Columbia to manage its own affairs consistent with the Home Rule Act.
The U.S. Constitution permits Congress to exercise control over the District’s finances but does not require it. The Constitution’s District of Columbia Clause, Article I, Section 8, states that “The Congress shall have Power ... To exercise exclusive Legislation in all Cases whatsoever, over such District,” thus reserving power over all District activity to the Congress, but not requiring Congress to exercise such power.

Direct Congressional control over District spending began only in the late 19th century in reaction to the excesses of the newly established Commissioners. Congress passed the Organic Act of 1878 to restrict the Commissioners “in the exercise of [their] duties, powers, and authority, ... [from making any] contract, [or] incur[ing] any obligation other than such contracts and obligations as are hereinafter provided for and shall be approved by Congress.”

Although the 1974 Home Rule Act continued Congressional appropriation controls imposed less than 100 years before, it also began a financial separation of District funds from the Federal Treasury. For the first three-quarters of the 20th century, Congress not only appropriated District funds, but the U.S. Treasury acted as the District’s banker. The Home Rule Act removed local District funds from the U.S. Treasury by establishing a “General Fund of the District of Columbia” separate from the U.S. Treasury. It provided that “All money received by any agency, officer, or employee of the District in its or his official capacity shall belong to the District government and shall be paid promptly to the Mayor for deposit in the appropriate fund.” (§450) Beginning in 1978, the District placed its deposits in private banks.

The Constitution’s appropriations clause, Article 1, Section 9, states that “No Money shall be drawn from the [United States] Treasury, but in Consequence of Appropriations made by Law,” necessitating that federal funds be appropriated by Congress. However, the Constitution does not require Congressional appropriation of funds which are not held in the U.S. Treasury.

Pursuant to the Home Rule Act, District funds over which the budget autonomy proposal would apply are already held outside the U.S. Treasury in the name of the District of Columbia in private banks, and, therefore, do not constitutionally require congressional appropriation to be expended by District officials.

Local appropriation without Congressional action would neither violate the Constitution’s appropriation clause nor the District of Columbia clause. The funds which would be locally appropriated are not “drawn from the [U.S.] Treasury,” and, thus, are not required to be appropriated by Congress.

If the appropriation authority exercised when the District was founded was resumed, the District of Columbia clause would not be violated since Congress would still maintain the
“power” granted in the Constitution to regulate expenditures by specific legislation or to reimpose appropriation requirements, just as it did in 1878.

Conclusion

For all of the above reasons, the Section supports the budget autonomy provisions of H.R. 2995, “District of Columbia Fiscal Integrity Act of 2001,” and its companion, S. 2316.

Acknowledgments

The following members of the District of Columbia Affairs Subcommittee participated in drafting these comments: Steering Committee Member Charlotte Brookins-Hudson, Steering Committee Member James S. Bubar, University of District of Columbia David A. Clarke School of Law Dean Katherine S. Broderick, Steering Committee Member Bell Clement, Steering Committee Co-Chair Lily M. Garcia, former District of Columbia Council Member Betty Ann Kane, Legislation Committee Chair and former District of Columbia Council Member James E. Nathanson, Steering Committee Co-Chair Thorn L. Pozen, Community Outreach Committee Chair William Tayler, and former Steering Committee Co-Chair and former District of Columbia Auditor Matthew S. Watson.

For further information please contact James S. Bubar at (202) 223-2060.

Respectfully submitted,

District of Columbia Affairs Section of the District of Columbia Bar

By: [Signature]

Thorn Pozen, Co-Chair

By: [Signature]

Lily M. Garcia, Co-Chair

Enclosure

CC (W/Enclosure):
All Members of the Subcommittee on the District of Columbia of the U.S. House of Representatives Committee on Government Reform
All Members of the Subcommittee on the District of Columbia of the U.S. House of Representatives Committee on Appropriations
District of Columbia Congressional (Shadow) Delegation
The Honorable Anthony A. Williams, Mayor, District of Columbia
All Members of the Council of the District of Columbia