



COUNCIL OF THE DISTRICT OF COLUMBIA
WASHINGTON, D.C. 20004

THE BUDGET AUTONOMY ACT IS VALID AND BINDING LAW

Executive Summary of the Council's Legal Arguments

The Local Budget Autonomy Act gave the District the right to spend locally raised and locally kept revenue on local services within the District, a right accorded to every other home-rule jurisdiction in the country. Last week, the Mayor and CFO announced their refusal to comply with the Act and their intention to interfere with the budget process. The Mayor and the CFO took this action based on advice by the Attorney General who believes that the Act is invalid. The AG's opinion, however, does not account for several key arguments based on the Constitution's Appropriations Clause, federal budget statutes, and the Home Rule Act of 1973.

As a general matter, federal agencies cannot spend money without a prior appropriation of funds out of the U.S. Treasury by Congress. But in the 1973 Home Rule Act, Congress permanently transferred the District's local funds out of the U.S. Treasury and into the D.C. General Fund and other special funds, thus satisfying federal budget statutes that require an appropriation out of the Treasury. Each year, local taxes and fees are deposited into the D.C. General Fund, never passing through the Treasury.

Since 1973, the District had to obtain affirmative legislative approval from Congress before withdrawing any of these local dollars out of the D.C. General Fund because the District Charter required a second level of approval. But in so doing, Congress ensured that the mechanics of this local budget process would be subject to amendment because the Charter is the only part of the Home Rule Act that can be amended. In other words, Congress set default rules in the Charter but gave the District the power to amend them.

In 2012 and 2013, the District availed itself of this amendment process when it passed the Local Budget Autonomy Act, which changed the *affirmative* congressional approval requirement for local expenditures to a *passive* approval requirement, the same process long-used for ordinary legislation and Charter amendments. Pursuant to the Charter amendment process, the Budget Autonomy Act was unanimously approved by the Council, signed by Mayor Gray, ratified by 83% of District voters, and (passively) reviewed by Congress.

While Congress took great care to specify certain rules the District could not amend, the process for budgeting local funds was not among those limitations, contrary to the views of the Attorney General. One of the provisions he points to, section 603(a) of the Home Rule Act, is not a limit at all, but a rule of construction explaining that the Home Rule Act, at the time of enactment, did not alter federal roles in the District's budget process. Similarly, the Attorney General has adopted a view of section 602(a)(3), which limits the Council's legislative authority to "acts . . . restricted in [their] application exclusively in or to the District," that misunderstands the effect of the Local Budget Autonomy Act and is contrary to long-standing precedent.

The first budget season under the new law is already underway, and the Council is required by law to enact a budget by June 12, 2014. But actions of the Mayor and CFO will derail the budget process and have generated destabilizing uncertainty about the District's financial future. Fortunately, prompt judicial resolution of this intra-governmental dispute can forestall these harms.