Recent events have drawn attention to the cumbersome and inefficient process that the District of Columbia must follow before it can implement its budget. Notably, the District was forced to prepare for a shut down this past spring – which included informing District residents that it would not be able to pick up their trash – when congressional leaders and the White House could not reach agreement on the Fiscal Year 2011 budget for the federal government. This memo examines one legal option available to District leaders who wish to improve this process.

Specifically, it examines how the District can use the District Charter referendum process set forth in the 1973 Home Rule Act to amend its budget process. Under the Home Rule Act, most legislation passed by the D.C. Council and signed by the Mayor automatically goes into effect if Congress does not overturn the law during a 30-day review period. The District’s budget, however, is subject to a more complex process which requires that Congress affirmatively approve it as part of the congressional appropriations process. This is true for both the federal and local portions of the District’s budget even though the local portion is derived entirely from local revenue.

This memorandum shows how the District can amend its Charter in a way that would allow the District to implement its local budget if Congress does not overturn it during the 30-day review period. Specifically, the District can pass a referendum amending section 446 of the Charter, which prohibits the District from obligating or expending any funds until such amount...
has been affirmatively approved by Act of Congress. The District could amend this provision to specify that this limitation is applicable only to the obligation or expenditure of federal funds.

The benefits of amending the District’s budget procedure in this way are explored in Part I of this memo. Part II discusses the District’s authority to amend its Charter through referenda. Part III examines potential legal obstacles to the changes showing (a) how this process is available for the District to change the procedure for enacting its local budget, and (b) how the District could enact this change without violating the federal Anti-Deficiency Act. It also discusses how the District could amend section 441 of the Charter to change its fiscal year. The memo finishes with a discussion of some practical mechanics of implementing the changes contemplated in this memorandum.

I. The Benefits of Streamlining the District’s Local Budget Process

The District would benefit in three major ways if it could implement its local budget as soon as the 30-day congressional review period expires. First, it would save the District money. The linkage of local tax dollars to the federal appropriations process adds an average of three months to the District’s budget process. These delays result in congressional continuing resolutions, which cause hiring delays, lost revenues, untimely procurements, and extensive additional staff time. It also causes cash shortages for the District, forcing the District to borrow more money than it otherwise would. As a result, the District incurs approximately $3 million in additional interest expenses each year.

Second, the District would be able to rely on more accurate data to formulate its budget. The current lag time between the District’s approval of its budget and the start of the fiscal year

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3 Id.

caused by the congressional appropriations process undermines the District’s ability to accurately estimate its revenue and expenditure needs. As explained by D.C. Chief Financial Officer Dr. Natwar Gandhi during a recent hearing before a House of Representatives committee, “[t]he more time that elapses between the formulation of a budget and its execution, the more likely the operating assumptions underlying that budget will not hold true.” The change contemplated in this memorandum would significantly reduce this lag time thereby ensuring that the District can rely on more accurate data to formulate its budget.

Third, it would free the District from being inadvertently ensnared in federal budget battles and allow the District to remain open in the event of a federal government shutdown. For example, in April 2011, the District found itself in just such a predicament. It was forced to expend substantial resources to prepare for a shut down when congressional leaders and the White House could not reach agreement on a Fiscal Year 2011 budget for the federal government – a debate over purely federal issues. If the federal government had shut down (as it had previously), District residents would have been left without trash collection, access to public recreation facilities and libraries, and social services for needy families with children.

In addition to these practical benefits, the District’s recent fiscal track record demonstrates that the District is capable of managing its local budget without first subjecting it to the congressional appropriations process. While local and state jurisdictions across the country have struggled with fiscal crises in recent years, the District has produced balanced budgets every year since the District regained control of its fiscal affairs from the D.C. Control Board in 2001. Since 2001, the District has also built up a large fund balance and cash reserves and improved its credit rating dramatically.

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5 Subcommittee Hearing on District’s Fiscal Year 2012 Budget (statement of Dr. Natwar Gandhi, Chief Financial Officer, District of Columbia). Indeed, just last month, the House of Representatives delayed consideration of the appropriations bill that contains the District’s budget, the Financial Services and General Government Appropriations Bill. The bill was removed from the House’s schedule due to a jurisdictional dispute between two congressional committees. It appears that the House will not consider the bill until September at the earliest. This makes it highly unlikely that the District will have a budget in place before the start of its fiscal year on October 1st.

6 Id. (statement of Dr. Natwar Gandhi).

7 In 1995, Congress appointed a five-member board to oversee District finances, the District of Columbia Financial Control Board. The Control Board suspended its activities in 2001 when the District achieved its fourth consecutive balanced budget.
Further, the majority of the District’s budget, about 98%, is derived from local revenue and federal grants that are available to all jurisdictions – revenue sources for which Congress has no unique oversight responsibility. Specifically, revenue raised through local taxes, fees, fines, and user charges comprises approximately 71% of the District’s Fiscal Year 2012 budget. Another 27% comes from Medicaid and federal grants, which are mostly formula based and available to all jurisdictions. The remaining 2% is derived from federal payments specifically requested for programs and projects unique to the District of Columbia.

For these and other reasons, the past two presidents and congressional leaders from both parties have advocated separating the District’s local budget from the congressional appropriations process. Recently, Representative Darrell Issa (R-CA), Chairman of the House of Representatives committee tasked with oversight of the District, endorsed separation of the

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8 Id. (statement of Dr. Alice Rivlin, The Brookings Institution).

9 Id. (statement of Natwar Gandhi).

10 $6.34 billion of the District’s proposed $8.99 billion.

11 $2.45 billion of the District’s proposed $8.99 billion.

12 Id.

13 $174.3 million of the District’s proposed $8.99 billion.

14 Id.

15 In his FY 2012 budget, President Obama stated: “Consistent with the principle of home rule, it is the Administration’s view that the District’s local budget should be authorized to take effect without a separate annual Federal appropriations bill.” Office of Mgmt. & Budget, Executive Office of the President, Budget of the United States Government: Fiscal Year 2012 app. at 1212 (2011). Similarly, President George W. Bush wrote in 2005: “[T]he Administration continues to support enactment by the Congress of a law to allow the D.C. government’s proposed local budget to take effect without a separate annual appropriations bill, subject to limitations imposed by the Congress by law.” Office of Mgmt. & Budget, Executive Office of the President, Budget of the United States Government: Fiscal Year 2006 328 (2005).
District’s local budget from the congressional appropriations process.\(^\text{16}\) According to Rep. Issa: “I think there’s a justification to let the [D]istrict do what a city does. A city plans its own budget, uses its own funds and typically goes to a state capital hoping to get more.”\(^\text{17}\) President Obama also recently reaffirmed his support for budget autonomy in a July 15, 2011 interview with a Washington, D.C. news reporter: “I’ve said before and I’ll say it again . . . I’m fully supportive of making sure that the Washington, D.C. government has its own budget authority. I’m supportive of folks in D.C. being treated like people everywhere else in the country – in Maryland or Virginia.”\(^\text{18}\)

As explained below, the District does not have to wait for congressional action to streamline its budget approval process. The District can do so on its own through the Charter referendum process provided for in the 1973 Home Rule Act.

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\(^{16}\) Specifically, during a May 2011 congressional hearing on the District’s budget, Representative Issa announced his intent to propose bifurcating the local portion of the District’s budget from the federal portion. Ben Pershing, *D.C. Officials Get Cordial Hearing on Hill*, Wash. Post, May 13, 2011, at B03. Under this proposal, Congress would vote on the local portion before it votes on the federal portion, which would allow the District to implement its local budget before Congress passes its District appropriations bill. *Id*. According to Rep. Issa, “by bifurcating them . . . we can do it early on in every Congress and do it separate from a sometimes-difficult [federal] budget process.” *Id*. To date, Rep. Issa has not proposed any legislation in this regard.


II. The Home Rule Act Gives the District Substantial Authority to Amend Its Charter Through Referenda

Congress enacted the Home Rule Act in 1973 to relieve itself of “the burden of legislating upon essentially local District matters.”\(^1\) The District Charter, which is set forth in Title IV of the Home Rule Act, establishes the structure, responsibilities, and authority of the District government.\(^2\) It is analogous to a state’s constitution.

Section 303 of the Home Rule Act details the procedure for amending the Charter.\(^3\) Most Charter provisions may be amended through a referendum process set forth in that section. To amend the Charter through this process, the D.C. Council must first pass legislation proposing the amendment.\(^4\) The measure is then placed on the ballot by the D.C. Board of Elections and Ethics.\(^5\) If approved by voters, the measure is transmitted to Congress for a 35-day review period.\(^6\) Congress may overturn the referendum through a joint resolution of disapproval passed by the House of Representatives and Senate, and signed by the President.\(^7\) If Congress does not overturn it during this review period, the amendment goes into effect.

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The Home Rule Act and Congress’s amendments to this Act are codified in D.C. Code §§ 1-201.01 to 1-207.62 (2006). Home Rule Act provisions are referenced in the text of this memorandum. The corresponding D.C. Code citations are provided in the footnotes.

\(^{2}\) D.C. Code §§ 1-204.01 to 1-204.115.

\(^{3}\) D.C. Code § 1-203.03.

\(^{4}\) Id. § 1-203.03(a).

\(^{5}\) Id.

\(^{6}\) Id. § 1-203.03(b).

\(^{7}\) Id.
A subset of Charter provisions, though, may not be amended through this procedure. Section 303(a) lists three such provisions. These are the Charter provisions creating the District Council, the Office of the Mayor, and the District’s judiciary branch. Section 303(d) additionally excepts from the referendum process any “act, resolution, or rule under the limitations” on the Council’s authority set forth in sections 601 through 603 of the Home Rule Act. The section 601, 602, and 603 “limitations” include, among other things, a prohibition on the imposition of any commuter tax, a requirement that the District pass a balanced budget, and restrictions on the District’s authority to issue bonds. As detailed below, these limitations include nothing that prevents the District from amending the process for enactment of its local budget.

III. The District May Use Its Referenda Authority to Amend Key Charter Provisions Related to the District’s Budget

The District may use its referenda authority to enact two key changes to its budget process. First, the District can change the process for enactment of its local budget so that its local budget goes into effect after the congressional layover period (if not overridden). Second, the District can amend its Charter to change its fiscal year from an October-September schedule to a July-June schedule (as most states utilize).

26 D.C. Code § 1-203.03(a).
27 Home Rule Act (HRA) § 401(a), D.C. Code § 1-204.01(a).
28 HRA § 421(a), D.C. Code § 1-204.21(a).
29 HRA §§ 431-434, D.C. Code §§ 1-204.31 to 1-204.34.
30 Specifically, D.C. Code § 1-203.03(d) provides: “The amending procedure provided in this section may not be used to enact any law, or affect any law with respect to which the Council may enact any act, resolution, or rule under the limitations specified in §§ 1-206.01 to 1-206.03.”
31 HRA § 602(a)(5), D.C. Code § 1-206.02(a)(5).
32 HRA §§ 603(c)-(d), D.C. Code §§ 1-206.03(c)-(d).
33 HRA § 603(b), D.C. Code § 1-206.03(b).

RPP/493408.2
A. *The District May Change The Process for Enactment of its Local Budget so that it goes into Effect Once it Completes the Congressional Review Period*

Under the Home Rule Act, most District legislation becomes effective automatically if Congress does not affirmatively disapprove the legislation during a 30-day review period. The District’s Charter establishes a different process for passage of the District’s budget. Specifically, section 446 of the Charter provides, in relevant part:

The Council, within 56 calendar days after receipt of the budget proposal from the Mayor, and after public hearing, shall by act adopt the annual budget for the District of Columbia government. . . . Such budget so adopted shall be submitted by the Mayor to the President for transmission by him to Congress. . . . [N]o amount may be obligated or expended by any officer or employee of the District of Columbia government unless such amount has been approved by Act of Congress, and then only according to such Act.

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34 HRA § 602(c), D.C. Code § 1-206.02(c). The 30-day period excludes “Saturdays, Sundays, and holidays, and any day on which neither House is in session because of an adjournment sine die [for an indefinite period], a recess of more than 3 days, or an adjournment of more than 3 days.” *Id.*

35 HRA § 446, D.C. Code § 1-204.46, reads in its entirety:

The Council, within 56 calendar days after receipt of the budget proposal from the Mayor, and after public hearing, shall by act adopt the annual budget for the District of Columbia government. Any supplements thereto shall also be adopted by act by Council after public hearing. Such budget so adopted shall be submitted by the Mayor to the President for transmission by him to Congress. Except as provided in §§ 1-204.45a(b), 1-204.46a, 1-204.46b, 1-204.67(d), 1-204.71(c), 1-204.72(d)(2), 1-204.75(e)(2), 1-204.83(d), and 1-204.90(f), (g), (h)(3), and (i)(3), no amount may be obligated or expended by any officer or employee of the District of Columbia government unless such amount has been approved by Act of Congress, and then only according to such Act. Notwithstanding any other provisions of this chapter, the Mayor shall not transmit any annual budget or amendments or supplements thereto, to the President of the United States until the completion of the budget procedures contained in this chapter. After the adoption of the annual budget for a fiscal year (beginning with the annual budget for fiscal year 1995), no reprogramming of amounts in the budget may occur unless the Mayor submits to the Council a request for such reprogramming and the Council
Pursuant to section 446, the D.C. Council passes a budget request with separate sections detailing proposed expenditures using federal funds that the District will receive and proposed expenditures using the District’s locally-raised revenue. The Mayor submits the District’s budget request to the President, who submits it to Congress. The District’s budget request then goes through the congressional appropriations process as though it is an appropriations request for a federal agency.

The District could amend section 446 of the Charter so that only the federal portion of the District’s budget would be subject to the federal appropriations process. Specifically, it could amend the relevant portions of section 446 in the following way (modifications in bold):

The Council, within 56 calendar days after receipt of the budget proposal from the Mayor, and after public hearing, shall by act adopt the annual budget for the District of Columbia government. . . . The federal portion of such budget so adopted shall be submitted by the Mayor to the President for transmission by him to Congress. The local portion so adopted shall be submitted by the Chairman of the Council to the Speaker of the House of Representatives pursuant to the procedure set forth in D.C. Code § 1-206.02(c). . . . No amount of federal funds may be obligated or expended by any officer or employee of the District of Columbia government unless such amount has been approved by Act of Congress, and then only according to such Act.

The District can amend section 446 in this way via a referendum under the authority given to it by Congress in section 303 of the Home Rule Act because none of the “limitations” on the Council’s authority in sections 601, 602, or 603 of the Home Rule Act prevent the District from taking this action. In addition, the District can make this change without running afoul of the Anti-Deficiency Act.

approves the request, but only if any additional expenditures provided under such request for an activity are offset by reductions in expenditures for another activity.

RPP/493408.2
1. None of the Limitations on the District’s Referenda Authority Prevent the District From Implementing Changes to the Process for Enactment of Its Local Budget

As noted above, section 303(d) provides that the referendum process is unavailable for any “act, resolution, or rule under the limitations” on the Council’s authority set forth in sections 601 through 603 of the Home Rule Act. This restriction incorporates most of the provisions in sections 601 to 603 because most of those provisions impose limits on the Council’s authority.

Section 601, for example, provides:

Notwithstanding any other provision of this chapter, the Congress of the United States reserves the right, at any time, to exercise its constitutional authority as legislature for the District, by enacting legislation for the District on any subject, whether within or without the scope of legislative power granted to the Council by this chapter, including legislation to amend or repeal any law in force in the District prior to or after enactment of this chapter and any act passed by the Council.36

This section reaffirms that, even though Congress delegated to the District some of its constitutional authority to legislate for the District, the District Council’s power remains limited by Congress’s ultimate authority to legislate on District matters.37

Section 602(a) provides that “[t]he Council shall have no authority to pass any act contrary to the provisions of this chapter” or to pass acts related to ten enumerated subjects, which include taxation of commuters, taxation of United States property, and height limits on District buildings.38 Section 602(c) provides that, with certain exceptions, the “Chairman of the Council shall transmit” to Congress all legislation passed by the District, which is then subject to a 30-day review period by Congress.39 These sections limit the Council’s authority to legislate in

36 Id. § 1-206.01.

37 See U.S. Const., Art. I, § 8 (“The Congress shall have Power . . . [t]o exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States . . .”).

38 Id. § 1-206.02(a).

39 Id. § 1-206.02(c).
certain areas and to implement any legislation without first giving Congress the opportunity to review and veto it.

Section 603(b) provides that “[n]o general obligation bonds . . . shall be issued during any fiscal year in an amount which would cause the amount of principle and interest required to be paid . . . to exceed 17% of the District revenues.”\footnote{\textit{Id.} \S 1-206.03(b).} This section limits the Council’s authority to issue bonds.

Section 603(c) provides that “the Council shall not approve any budget which would result in expenditures being made by the District government, during any fiscal year, in excess of all resources which the Mayor estimates will be available to the District for such fiscal year.”\footnote{\textit{Id.} \S 1-206.03(c).} Section 603(d) provides that “the Mayor shall not forward to the President for submission to Congress a budget which is not balanced according to the provision of subsection (c) of this section.”\footnote{\textit{Id.} \S 1-206.03(d).} These sections limit the Council’s authority to pass a budget that is not balanced. Section 603(f) provides that, in a control year, “the Council may not approve, and the Mayor may not forward to the President, any budget which is not consistent with [a control year] financial plan and budget.”\footnote{\textit{Id.} \S 1-206.03(f).} This section limits the Council’s authority to act in a control year.

While these provisions may limit the District’s ability to amend its Charter, none of these provisions relate to the District’s budget process. Section 603(a) is the most relevant provision contained in sections 601 to 603 regarding the District’s budget process. It provides:

Nothing in this Act shall be construed as making any change in existing law, regulation, or basic procedure and practice relating to the respective roles of the Congress, the President, the federal Office of Management and Budget, and the Comptroller General of the United States in the preparation, review, submission,

\footnote{\textit{Id.} \S 1-206.03(b).}

\footnote{\textit{Id.} \S 1-206.03(c).}

\footnote{\textit{Id.} \S 1-206.03(d).}

\footnote{\textit{Id.} \S 1-206.03(f).} The procedures for the establishment and enforcement of a control year financial plan are set forth in D.C. Code §§ 47-392.01 to 47-392.09.
examination, authorization, and appropriation of the total budget of the District of Columbia government.\textsuperscript{44}

One could argue that section 603(a)’s command that “this Act” will not be construed to change the pre-1973 “procedure and practice” under which the President and Congress controlled the District’s budget facially prohibits any amendments to section 446 that would affect such a change. In addition, one could argue that sections 303(d) and 603(a) together prohibit the District from amending the Charter to change its local budget process by referendum. While these arguments must be considered, they do not withstand scrutiny.

a. **The Text of the Home Rule Act Demonstrates that Section 603(a) Does Not Preclude the District From Amending its Local Budget Process**

As for the first argument outlined above, section 603(a) would only nullify the effect of an amendment to section 446 if “this Act” that shall not be construed as making any change in existing law, regulation, or basic procedure and practice is the Home Rule Act as it may later be amended. This is certainly a possible reading of the language as Congress often uses the term “act” to refer broadly to legislation in its current or later-amended form. For two reasons, though, the better reading of section 603(a) is that “this Act” means only the legislation originally enacted.

First, section 603(a) uses the present tense and is most reasonably read to speak to the intended interpretation of “the Act” as then-written. If Congress intended to prohibit the District in the future from changing the local budget process, it presumably would have provided expressly in section 603(a) that the local budget process cannot be altered rather than taking the circuitous and illogical route of prescribing a rule of interpretation for future statutory language. For instance, Congress could have expressly prohibited future amendments by providing in section 603(a) that: “Nothing in this Act shall be construed as permitting any change...”\textsuperscript{45}


\footnote{\textsuperscript{45} The D.C. Court of Appeals considered a somewhat analogous situation in District of Columbia v. Greater Washington Central Labor Council, 442 A.2d 110 (D.C. 1982). In Greater Washington, the court held that the District could amend the workmen’s compensation regime for private sector employees that had been in place before passage of the Home Rule Act. The court rejected the plaintiffs’ argument that the District did not have the authority to do so because, under the Home Rule Act, Congress expressly provided for the transfer of the RPP/493408.2}
Second, the Home Rule Act’s definitional provisions counsel against reading section 603(a)’s reference to “the Act” to include later amendments effected through referenda. Section 103(7) of the Home Rule Act states: “The term ‘Act’ includes any legislation passed by the Council, except where the term ‘Act’ is used to refer to this Act or other Acts of Congress herein specified.” That provision suggests that references to “this Act” exclude later amendments passed by the Council, including amendments enacted through section 303(a), which are passed by the Council and ratified by a majority of District voters. For these reasons, section 603(a) is best read as a conclusive interpretive instruction about the original legislation, not as a limitation on the Council’s authority to enact any change to the District’s budget process.

The second potential argument, that section 303(d) and section 603(a) together prohibit the District from amending section 446 to change the local budget process, does not withstand scrutiny for similar reasons. Section 303(d) restricts the District from using the referendum process to amend the Charter in any way that conflicts with the provisions in sections 601 to 603 that impose limitations on the Council’s authority. In other words, section 303(d) does not apply to all provisions in sections 601 to 603. Instead, section 303(d) applies to only those provisions in sections 601 to 603 that impose limitations on the Council’s authority.

As outlined above, most of the provisions in sections 601 to 603 impose limitations on the Council’s authority. Section 603(a), however, does not. Instead, it is an interpretive administration of public sector employment services to the District, but failed to do so for private sector employees. According to the court:

The express transfer by Congress of certain public employment services from the United States Department of Labor to the District government, in the absence of a concurrent transfer of private employment workmen’s compensation . . . does not reflect a congressional intent to prohibit the local government from legislating with respect to private workmen’s compensation.

Id. at 115. In other words, if Congress wanted to retain authority over the District’s administration of private sector workmen’s compensation issues, it could have spoken to the issue directly. In light of Congress’ failure to do so, the court held that the District had the authority to legislate over this purely local matter. Id.

46 Id. § 1-202.

47 Id. § 1-206.03(a).
Applying this principle, together, the only construction of is often clarified by the remainder of the statutory scheme in section 603(a) gives rise to a.

Russello v. United States

United Savings Assn. of Texas v. Timbers of Inwood Forest Assoc.

The conclusion that section 603(a) does not fall within the purview of section 303(d) is further supported by three additional statutory interpretation principles. First, because a statute is passed as a whole, no single provision of a statute should be read in isolation. Rather, every section of a statute must be read in connection with every other part or section so that it produces a harmonious whole. Thus, section 603(a) should not be read in isolation; instead it must be read in conjunction with sections 303(d) and 446. When read together, the only construction of

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48 Russello v. United States, 464 U.S. 16, 23 (1983) (internal quotation marks omitted); see also Abbott v. Abbott, 130 S. Ct. 1983, 2003 (2010) (Stevens, J., dissenting) (“In interpreting statutory text, we ordinarily presume that the use of different words is purposeful and evinces an intention to convey a different meaning.”).

49 See United Savings Assn. of Texas v. Timbers of Inwood Forest Assoc., 484 U.S. 365, 371 (1988) (“Statutory construction . . . is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme—because the same terminology is used elsewhere in a context that makes its meaning clear, . . . or because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law. . . .” (internal citations omitted)).
section 603(a) that is compatible with section 303(d)’s exclusion of section 446 from the list of those provisions the District cannot amend through a Charter referendum is that section 603(a) does not limit the District’s ability to amend its Charter.

Second, specific statutory exceptions to a general statutory rule must be strictly construed.\(^{50}\) This principle is relevant to construction of sections 303 and 603(a). Section 303(a) sets out a general rule that the District can amend its Charter through a referendum. This general rule is then limited by section 303(d), which carves out an exception for the “limitations” on the Council’s authority in sections 601 through 603. Because section 603(a) does not expressly limit the Council’s authority to act, a court would have to ignore this interpretive rule to find that section 603(a) is one of those “limitations.”

Finally, “[t]he D.C. Council’s interpretation of its responsibilities under the Home Rule Act is entitled to great deference” by a reviewing court.\(^{51}\) This deference to the Council’s interpretation of the Home Rule Act is analogous to the deference that a court affords an agency when interpreting ambiguity in the statute that the agency has been tasked with enforcing.\(^{52}\) This rule of statutory interpretation, known as \textit{Chevron} deference, requires a court to defer to an agency’s \textit{reasonable} interpretation of the statute in question.\(^{53}\) If the District were to pass legislation authorizing the amendment suggested in this memorandum, the District would be on solid ground in arguing that it is reasonable to interpret section 603(a) as not precluding the District from amending section 446. Under the principles of \textit{Chevron} deference, the District would thus have a strong argument that a reviewing court must defer to this interpretation.

\(^{50}\) See, e.g., \textit{Commissioner v. Clark}, 489 U.S. 726, 738-39 (1989) (statutory exceptions qualifying a general statement of policy are construed narrowly); \textit{Nussle v. Willette}, 224 F.3d 95, 99 (2d Cir. 2000) (interpreting a statutory exception in the Prison Litigation Reform Act “in light of the interpretive principle that statutory exceptions are to be construed narrowly in order to preserve the primary operation of the general rule” (internal quotation marks and alterations omitted)); \textit{United States v. Marzani}, 71 F. Supp. 615, 620 (D.C. Cir. 1947) (“According to rules of construction, a proviso containing exceptions to a general policy is to be strictly construed.”).


\(^{53}\) \textit{Id.} at 844-45 (emphasis added).
b. **The Home Rule Act’s Legislative History Further Supports the Conclusion That the District Can Amend its Local Budget Process**

The Home Rule Act’s legislative history reinforces the conclusion that the District can pass a referendum amending section 446 to change the process for enactment of its local budget and its fiscal year. The Home Rule Act provisions related to the District’s budget process and the District’s ability to amend its Charter were the product of extensive congressional deliberation. The House and Senate passed competing versions of District self-government bills. The Senate version granted the District substantial autonomy over its fiscal affairs, including the ability to enact its own budget.\(^{54}\) The House version included sections 446 and 603(a).\(^{55}\) The House-Senate conference committee accepted the provisions in the House bill, which ultimately passed Congress.\(^{56}\)

Similarly, the House’s and Senate’s bills differed on whether the District would have the authority to amend its Charter. The House’s version gave the District the authority to amend its Charter through a referendum process.\(^{57}\) The Senate’s bill did not permit the District to amend the Charter at all.\(^{58}\) The House-Senate conference committee accepted the House’s provisions on this subject.\(^{59}\)

Despite the fact that these provisions were the subject of extensive congressional debate, it does not appear that a single Member of Congress expressed any intent that sections 303(d) and 603(a) would prevent the District from using the Charter referendum process to amend section 446. While this is admittedly far from conclusive evidence that Congress intended to give the District the authority to amend its local budget process through the Charter referendum process, there are two inferences that can be drawn from this history. The first inference is that, while the House intended that Congress would retain control over the District’s budget, the absence of congressional intent contradicting the plain text that section 446 does not fall within...


\(^{56}\) Pub. L. No. 93-198.

\(^{57}\) H.R. 9682.

\(^{58}\) S. 1435.

\(^{59}\) Pub. L. No. 93-198.

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the list of provisions in section 303(d) that are off limits to a Charter amendment indicates that the House intended that the District would be able amend the budget process in the future. The second inference is that, after passing a home rule bill that granted the District budget autonomy, the Senate acceded to the House language retaining congressional control of the budget because it understood that the District had the authority to amend this process in the future.

In sum, the text of sections 303, 446, and 603(a) when read together, and in light of various canons of statutory interpretation and the Home Rule Act’s legislative history, demonstrate the following about these sections. Section 603(a) is an interpretive direction about the Home Rule Act. It is not a limitation on the District’s authority to amend its local budget process through future legislation. Accordingly, section 603(a) does not preclude the District from amending the budget process set forth in section 446. Section 303’s incorporation of section 603 also does not preclude the District from amending section 446. Section 303(a) gives the District substantial authority to amend its Charter through referenda. Section 303(d) restricts this authority by prohibiting the District from amending its Charter in any way that is inconsistent with the “limitations” on the Council’s authority set forth in sections 601 to 603. While section 603(a) relates to the District’s budget and is one of the sections facially referenced in section 303(d), section 603(a) is not covered by section 303(d) because it is not a limitation on the Council’s authority within the meaning of section 303(d).

2. The District Can Amend Section 446 Without Running Afool of the Anti-Deficiency Act

The federal Anti-Deficiency Act prohibits officers and employees of the federal and District of Columbia governments from making or authorizing “an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation.”\(^\text{60}\) Congress expressly made this Act applicable to the District of Columbia in the Home Rule Act and in the 1982 re-codification of the Anti-Deficiency Act.

One could argue that the terms of this Act effectively preclude the District from amending section 446 of the Charter to give itself greater budget autonomy. More specifically, one could argue that the Charter Amendment would run afoul of the Anti-Deficiency Act requirement that there be “an appropriation or fund” from which the D.C. Council could spend local revenues pursuant to the local D.C. budget. As explained below, however, District officials and employees would not violate the Anti-Deficiency Act if they obligated and spent funds pursuant to a local budget that was adopted pursuant to the proposed Charter Amendment.

\(^{60}\) 31 U.S.C. § 1341. The Anti-Deficiency Act also provides criminal penalties for criminal penalties for “knowingly and willfully” violating its provisions. Id. § 1350.
There are three reasons this is so. First, the District’s expenditure and obligation of local funds pursuant to its local budget would fully meet the plain meaning and intent of the Anti-Deficiency Act. Second, Congress has indicated that the Anti-Deficiency Act effectively applies to the District through the Home Rule Act. The District could therefore comply with the Anti-Deficiency Act provided that it acts pursuant to the Charter as amended. Third, and most important, Congress enacted legislation in 2006 and 2009 making clear that the District has authority to expend revenues in certain circumstances where no specific “appropriation or fund” had been affirmatively enacted by Congress for those expenditures. Congress has thereby confirmed that the District’s expenditure and obligation of its local revenue without a congressional appropriation does not violate the Anti-Deficiency Act.

Taken together, these three points demonstrate that the proposed section 446 Charter Amendment would not violate the Anti-Deficiency Act. We discuss each point in turn.

a. The Purpose of the Anti-Deficiency Act

The Anti-Deficiency Act’s purpose is to ensure that government officials and employees obligate and expend public funds pursuant to appropriate legislative authorization. The language of the Act does not designate specifically what that legislative authorization should be, or even which legislature must act in a given case. It says only that there must be an “appropriation or fund” to stand behind whatever obligation or expenditure is undertaken by the government officials in question. We therefore start with the proposition that this purpose would be fully served by the proposed amendment to section 446. As amended, section 446 would require that the D.C. Council appropriate funds and/or establish a fund comprised of local revenue for obligations or expenditures made pursuant to its approved local budget.

Of course, in nearly all cases other than those affecting the District of Columbia, one would expect the “appropriation or fund” required by the Anti-Deficiency Act to be a congressional appropriation or fund for federal agencies. But as explained below, Congress contemplated that the Anti-Deficiency Act would work differently in the case of the District of Columbia. In addition, Congress enacted legislation in 2006 and 2009 confirming that the

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61 The Anti-Deficiency Act was enacted in 1870 to address the problem of “coercive deficiencies” that resulted when executive agencies contracting in advance of legislative appropriations. Kate Stith, Congress’ Power of the Purse, 97 Yale L.J. 1343, 1374 (1988). The Anti-Deficiency Act addressed this problem by “stat[ing] a general requirement of legislative control over appropriations—that the Executive spend only in the amounts and only for the objects legislatively authorized.” Id.
District may obligate and expend excess revenue pursuant to its own “appropriation or fund” and may do so consistent with the Anti-Deficiency Act.

b. The Effect of the Home Rule Act on the Anti-Deficiency Act

The Anti-Deficiency Act in effect in 1973 when Congress passed the Home Rule Act provided: “No officer or employee of the United States shall make or authorize expenditure from or create or authorize an obligation under any appropriation or fund in excess of the amount available therein.” § 603(a). Congress included the following interpretative direction in the Home Rule Act: “Nothing in [the Home Rule Act] shall be construed as affecting the applicability to the District government of the [Anti-Deficiency Act].”

It also added an additional restriction in section 446 that “no amount may be obligated or expended” by the District unless approved “by Act of Congress.”

Sections 446 and 603(e) function in a similar manner as sections 446 and 603(a). Section 446 is the operable provision that prohibits the District from obligating or expending funds unless such funds are approved by an Act of Congress. Like section 603(a), section 603(e) is an interpretive direction that supplements section 446. Its purpose is to clarify that, at the time of passage, nothing could be construed to affect the applicability of the Anti-Deficiency Act. It did not determine how the Anti-Deficiency Act would apply to the District.

As explained in Part III.A.1 above, section 303 gives the District the ability to amend section 446 through a referendum. Section 303(d) excepts from the referendum process any “act, resolution, or rule under the limitations” on the Council’s authority set forth in sections 601 through 603 of the Home Rule Act. Section 603(e) is not a “limitation” on the District’s authority. This section, therefore, does not prevent the District from amending section 446 to change its process for enacting its local budget and do so in a way that is consistent with the Anti-Deficiency Act. Like the section 303-section 446-section 603(a) construction outlined in Part III.A.1, this construction of sections 303, 446, and 603(e) follows from a plain reading of the provisions and application of the same statutory interpretation principles.


63 D.C. Code § 1-206.03(e).

64 These statutory interpretation principles include the principle that every section of a statute must be read in connection with every other part or section so that it produces a harmonious whole. United Savings Assn. of Texas v. Timbers of Inwood Forest Assoc., 484 U.S. 365, 371 (1988). Applying this principle, the only construction of section 603(e) that is compatible with the fact that section 303(d) does not list section 446 as provision that the District cannot amend RPP/493408.2
In 1982, the Anti-Deficiency Act for the first time expressly covered the District when it was re-codified by Congress along with other laws related to money and finance in Title 31 of the United States Code. According to the House Report that accompanied this legislation: “The purpose of the bill [was] to restate in comprehensive form, without substantive change, certain general and permanent laws related to money and finance. . .”\(^{65}\) Section 1341 of Title 31 “restated” the Anti-Deficiency Act in the following way: “An officer or employee of the United States Government or of the District of Columbia government may not . . . make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation.”

The legislative history of the 1982 re-codification makes clear that the inclusion of the “District of Columbia government” in Title 31 was not meant “to be interpreted as construing the extent to which the District of Columbia Self-Government and Government Reorganizational Act (Pub. L. 93-198, 87 Stat. 774) [the Home Rule Act] supersedes the provisions codified in this title.”\(^{66}\) In other words, in making the Anti-Deficiency Act applicable to the District, Congress expressly recognized that that Act might apply differently in the District, owing to the terms of the Home Rule Act.

In fact, section 446 of the Home Rule Act provides the means for implementing the Act in the District and adds additional requirements that are not in the Anti-Deficiency Act itself. The Anti-Deficiency Act and section 446 both establish the general rule that obligations or expenditures not exceed the amount available in an appropriation or fund. Section 446, however, goes further as it also provides that the District (1) may only expend or obligate funds that have been approved by Act of Congress and (2) can only obligate or expend these funds according to that Act. The latter two requirements do not appear in the Anti-Deficiency Act.

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through a Charter referendum is that section 603(e) does not limit the District’s ability to amend its Charter.

The principle that specific statutory exceptions to a general statutory rule must be strictly construed is also applicable. *Commissioner v. Clark*, 489 U.S. 726, 738-39 (1989). Section 303(a) sets out a general rule that the District can amend its Charter through a referendum. This general rule is then limited by section 303(d), which carves out an exception for the “limitations” on the Council’s authority set forth in sections 601 through 603. Because section 603(e) does not expressly “limit” the Council’s authority, a court would have to ignore this anon of statutory interpretation to find that it limits the District’s authority to amend section 446 via a referendum.\(^{65}\) H.R. Rep. No. 97-651, at 1 (1982) (emphasis added).

The result is that while Congress intended the Anti-Deficiency Act to apply in the District, it intended that the Act effectively apply through the more stringent requirements of section 446. But Congress also authorized the District to amend section 446, provided it do so in ways that did not undercut the less stringent requirements of the Anti-Deficiency Act.

That is what the contemplated Charter amendment would do. Through that Amendment, the District could reform its budget process and provide for the obligation and expenditure of local revenue to be fully backed by an “appropriation or fund” that is established by the District government itself. This result is fully consistent with the Anti-Deficiency Act, as confirmed by recent legislation adopted by the Congress in 2006 and 2009.

c. Congress’s Confirming Legislation

In 2006 and 2009, Congress granted the District supplemental budget autonomy by authorizing the District to spend its excess local revenue without waiting for Congress to appropriate these funds. In prior years, if the District raised excess revenue, it was required to submit a supplemental budget request to Congress and could not obligate or expend those excess funds until Congress enacted a supplemental appropriations bill. As Congresswoman Eleanor Holmes Norton stated, the District’s new supplemental budget autonomy “has freed the District from the extra costs, onerous operation strains, and burdensome delays that the supplemental process causes, forcing D.C. to trot over to the Congress just to get permission to spend money that is already in the bank.”

67 See United States v. Stewart, 311 U.S. 60, 64 (1940) (“acts in pari material are to be taken together, as if they were one law” (internal quotation marks omitted)); see also Great Northern R. Co. v. United States, 315 U.S. 262, 276-77 (1942) (“subsequent legislation may be considered to assist in the interpretation of prior legislation upon the same subject” (internal quotation marks omitted)).


Rather than appropriating the funds itself, Congress authorized the Council to “oblige and expend” excess revenue under certain circumstances in the 2006 and 2009 laws. Specifically, the 2006 law permitted “the amount appropriated as District of Columbia funds under budget approved by Act of Congress as provided in such section [to] be increased.”70 While Congress’s reference to the “budget approved by Act of Congress” could be interpreted as incorporating an appropriation (as the budget includes appropriations), the 2009 law permitted “the amount appropriated as District of Columbia funds [to] be increased” without referencing the “budget approved by Act of Congress.”71 The 2009 law thus removed any doubt that Congress authorized the Council to spend its own local excess revenues without an express congressional appropriation.

Such an “authorization” is distinct from an appropriation because “[t]he mere authorization of an appropriation does not authorize expenditures on the faith thereof or the making of contracts obligating the money authorized to be appropriated.”72 “A law may be construed [as] an appropriation . . . only if the law specifically states that an appropriation is made or that such a contract may be made.”73 Because the 2006 and 2009 laws did not specifically “appropriate” funds, these laws merely “authorized” the expenditure of funds.74


71 Financial Services and General Government Appropriations Act, Pub. L. No. 111-8, § 817(a), 123 Stat. 524, 699 (codified at D.C. Code § 47-369.02(a)).


This authorization-appropriation distinction is important because it means that Congress has twice given the District the authority to expend its own revenue without appropriating those revenues. And Congress did so without providing an exception to the Anti-Deficiency Act’s “appropriation or fund” requirement or conforming the District’s new budget authority to the Anti-Deficiency Act by, for example, designating the excess revenues as a “fund.” Indeed, the Anti-Deficiency Act did not even come up during the congressional debate on the 2006 and 2009 legislation.

The only way to harmonize the 2006 and 2009 legislation with the Anti-Deficiency Act is to read the legislation as authorizing District expenditures of local funds pursuant to a District appropriation or fund. Stated differently, unless the 2006 and 2009 legislation is to be rendered null and void by the Anti-Deficiency Act, Congress must have contemplated that the Act’s “appropriation or fund” requirement could be met through a District-created “appropriation or fund.”

This legislation demonstrates that the District can indeed obligate and spend its local revenue without a congressional appropriation, and do so without violating the Anti-Deficiency Act. Like the 2006 and 2009 laws, the contemplated Charter amendment authorizes the Council to obligate and expend local revenue without a prior congressional appropriation. If the proposed amendment violates the Anti-Deficiency Act, these two laws also violate this Act. This outcome would ignore three basic interpretive canons: (1) Congress is presumed to have been aware of the Anti-Deficiency Act when it adopted these laws; (2) since Congress knew how to require a congressional appropriation, as evidenced by that requirement appearing in section...
446, a similar requirement should not be read into the Anti-Deficiency Act where it does not appear;\(^{78}\) and (3) Congress cannot be presumed to have enacted nullities in 2006 and 2009.\(^{79}\)

For these reasons, the contemplated amendment would not cause District officials and employees to violate the Anti-Deficiency Act. Rather, as was the case with the 2006 and 2009 legislation, that Act’s purpose would continue to be served so long as District employees and officials remain prohibited from obligating or expending local funds without prior authorization from the local District government, which would be the case under the proposed Charter Amendment.\(^{80}\)

And, of course, none of these local expenditures could occur until Congress reviews the proposed Charter Amendment and thereafter reviews the proposed local budget enacted pursuant to that Amendment.\(^{81}\)

\(^{78}\) Cf. Russello v. United States, 464 U.S. 16, 23 (1983) (“[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.” (internal quotation marks omitted)).

\(^{79}\) See Corley v. United States, 556 U.S. 303, 454 (2009) (“[O]ne of the most basic interpretive canons[] is that ‘[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant . . . .’” (quoting Hibbs v. Winn, 542 U.S. 88, 101 (2004))).

\(^{80}\) To make clear that that is the District’s understanding of the proposed Amendment, a provision to that effect could be added to the Amendment itself. The District could do so by adding the following language to Section 446: “The obligation or expenditure of non-federal funds by a District of Columbia officer or employee will not violate the Anti-Deficiency Act, 31 U.S.C. § 1341, provided that those funds have been duly appropriated by the District of Columbia government.”

\(^{81}\) The District could also arguably obligate or expend its locally raised funds without running afoul of the Anti-Deficiency Act by establishing a separate “fund” for these monies. See 31 U.S.C. § 1341 (prohibiting District of Columbia officers or employees from making or authorizing “an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation” (emphasis added)). In fact, the Home Rule Act gives the Council the express authority to “establish such additional special funds as may be necessary for the efficient operation of the government of the District.” D.C. Code § 1-204.50.
B. The District May Also Amend Its Charter to Change Its Fiscal Year

Section 441 of the Home Rule Act sets the District’s fiscal year. Unlike most cities and states whose fiscal years run from July to June, the District’s general government fiscal year runs from October to September to correspond with the federal government’s fiscal year. The District’s October to September fiscal year makes it impossible for the District to have a budget in place before the start of the school year, the second largest cost in the District’s budget. This severely hinders the District’s ability to plan and coordinate its budget.

The District can amend section 441 to change its fiscal year through a section 303 referendum. As discussed above, section 303(d) excepts “limitations” on the Council’s authority set forth in section 601 to 603 from the Charter referendum process. The only section 601, 602, or 603 provision that would arguably restrict the District from amending section 441 to change its fiscal year is section 603(a) (i.e., “Nothing in [the Home Rule Act] shall be construed . . .” to change the law regarding the District’s budget as it existed when Congress passed the Home Rule Act in 1973). But, for the reasons discussed in Part III.A.1 above, section 603(a) does not fall within the purview of section 303(d). The District can thus amend section 441 so that its general government fiscal year is from July to June.

Further, the District could also make a compelling argument that if Congress’s failure to disapprove the proposed Charter Amendment would amount to “tacit approval” of the District’s position that the Anti-Deficiency Act does not limit the District from amending its local budget process. See Techworld Dev. Corp. v. D.C. Pres. League, 648 F. Supp. 106, 114 (D.D.C. 1986), vacated on other grounds, No. 86-5630, 1987 WL 1367570 (D.C. Cir. June 2, 1987) (noting that Congress expressed its “tacit approval” that the D.C. Council acted within its authority to close a street when it had passed legislation doing so and Congress did not object); see also United States v. Rutherford, 442 U.S. 544, 554 n.10 (1979) (“[O]nce an agency’s statutory construction has been fully brought to the attention of the public and Congress, and the latter has not sought to alter the interpretation although it has amended the statute in other respects, then presumably the legislative intent has been correctly discerned.” (internal quotation marks omitted)).
IV. The District Could Enact the Contemplated Amendments By the End of 2012

This section details the mechanics of implementing the amendments contemplated in this memorandum. It first outlines the text of the potential amendments. It then explains the timeframe for enacting the amendments. Finally, it offers guidance on how the District can change its budget process to implement the amendments.

A. The Text of the Potential Amendments

If the District were to submit a referendum to District voters based on the guidance of this memorandum, the referendum would propose the following amendments to D.C. Code §§ 1-204.41 and 1-204.46 (Home Rule Act §§ 441 and 446):

§ 1-204.41. Fiscal year.

<table>
<thead>
<tr>
<th>Current Language</th>
<th>Potential Amendment</th>
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<tbody>
<tr>
<td>(a) In general. – Except as provided in subsection (b) of this section, the fiscal year of the District shall, beginning on October 1, 1976, commence on the first day of October of each year and shall end on the 30th day of September of the succeeding calendar year. Such fiscal year shall also constitute the budget and accounting year.</td>
<td>The fiscal year of the District shall, beginning on July 1, 2013, commence on the first day of July of each year and shall end on the thirtieth day of June of the succeeding calendar year. Such fiscal year shall also constitute the budget and accounting year.</td>
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<tr>
<td>(b) Exceptions. –</td>
<td></td>
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<tr>
<td>(1) Armory Board. – The fiscal year for the Armory Board shall begin on the first day of January and shall end on the thirty-first day of December of each calendar year.</td>
<td>(1) Armory Board. – The fiscal year for the Armory Board shall begin on the first day of January and shall end on the thirty-first day of December of each calendar year.</td>
</tr>
<tr>
<td>(2) Schools. – Effective with respect to fiscal year 2007 and each succeeding fiscal year, the fiscal year for the District of Columbia Public Schools (including public charter schools) and the University of the District of Columbia shall begin on the first day of July and end on the thirtieth day of June of each calendar year.</td>
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RPP/493408.2
§ 1-204.46. Enactment of appropriations by Congress.

<table>
<thead>
<tr>
<th>Current Language</th>
<th>Potential Amendment</th>
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<tr>
<td>The Council, within 56 calendar days after receipt of the budget proposal from the Mayor, and after public hearing, shall by act adopt the annual budget for the District of Columbia government. Any supplements thereto shall also be adopted by act by Council after public hearing. Such budget so adopted shall be submitted by the Mayor to the President for transmission by him to Congress. Except as provided in §§ 1-204.45a(b), 1-204.46a, 1-204.46b, 1-204.67(d), 1-204.71(c), 1-204.72(d)(2), 1-204.75(e)(2), 1-204.83(d), and 1-204.90(f), (g), (h)(3), and (i)(3), no amount may be obligated or expended by any officer or employee of the District of Columbia government unless such amount has been approved by Act of Congress, and then only according to such Act. Notwithstanding any other provisions of this chapter, the Mayor shall not transmit any annual budget or amendments or supplements thereto, to the President of the United States until the completion of the budget procedures contained in this chapter. After the adoption of the annual budget for a fiscal year (beginning with the annual budget for fiscal year 1995), no reprogramming of amounts in the budget may occur unless the Mayor submits to the Council a request for such reprogramming and the Council approves the request, but only if any additional expenditures provided under such request for an activity are offset by reductions in expenditures for another activity.</td>
<td>The Council, within 56 calendar days after receipt of the budget proposal from the Mayor, and after public hearing, shall by act adopt the annual budget for the District of Columbia government. Any supplements thereto shall also be adopted by act by Council after public hearing. The <strong>federal portion of</strong> such budget so adopted shall be submitted by the Mayor to the President for transmission by him to Congress. <strong>The local portion so adopted shall be submitted by the Chairman of the Council to the Speaker of the House of Representatives pursuant to the procedure set forth in D.C. Code § 1-206.02(c).</strong> Except as provided in §§ 1-204.45a(b), 1-204.46a, 1-204.46b, 1-204.67(d), 1-204.71(c), 1-204.72(d)(2), 1-204.75(e)(2), 1-204.83(d), and 1-204.90(f), (g), (h)(3), and (i)(3), no amount of <strong>federal funds</strong> may be obligated or expended by any officer or employee of the District of Columbia government unless such amount has been approved by Act of Congress, and then only according to such Act. Notwithstanding any other provisions of this chapter, the Mayor shall not transmit any annual budget or amendments or supplements thereto, to the President of the United States until the completion of the budget procedures contained in this chapter. After the adoption of the annual budget for a fiscal year (beginning with the annual budget for fiscal year 1995), no reprogramming of amounts in the budget may occur unless the Mayor submits to the Council a request for such reprogramming and the Council approves the request, but only if any additional expenditures provided under such request for an activity are offset by reductions in expenditures for another activity.</td>
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B. The Timeframe for Passage of the Charter Amendments

If the Mayor and Council pass legislation authorizing a Charter amendment referendum in the fall of 2011, the District could hold a special election on April 3, 2012, the date of the District’s primary election. If it passed on April 3rd, it would become law by the end of 2012 so long as: (1) Congress is in session for 35 days between April 3, 2012 and December 31, 2012; and (2) Congress does not overturn it during that 35-day legislative period.

The first step in passing a referendum is for the Council to pass legislation authorizing a referendum. While most legislation passed by the D.C. Council is transmitted directly to Congress, legislation authorizing a Charter amendment referendum is transmitted to the D.C. Board of Elections and Ethics (BOEE). This chart summarizes the process from the point the Council submits a Charter amendment proposal to the BOEE:

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 calendar days from receipt of the act</td>
<td>Publish a Notice of Public Hearing: The BOEE must submit for</td>
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<tr>
<td>(maximum)</td>
<td>publication a “Notice of Public Hearing: Receipt and Intent to</td>
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<tr>
<td></td>
<td>Formulate Proposed Ballot Language” to the D.C. Register within 5</td>
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<td>days of receiving the act from the Council. The publication must</td>
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<td>include the proposed Charter amendment act in its entirety.</td>
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<tr>
<td>20 calendar days from receipt of the act</td>
<td>Conduct a Public Meeting on Title and Summary: The BOEE must</td>
</tr>
<tr>
<td>(maximum)</td>
<td>conduct a public meeting to formulate a short title of no more than</td>
</tr>
<tr>
<td></td>
<td>20 words and an impartial summary statement of no more than 150 words</td>
</tr>
<tr>
<td></td>
<td>to include on the ballot within 20 days of its receipt of the</td>
</tr>
<tr>
<td></td>
<td>proposed Charter amendment act from the Council.</td>
</tr>
</tbody>
</table>

82 D.C. Mun. Regs. tit. 3, § 1801.2.

83 Id. § 1801.6.

84 Id. § 1803.2.
### Time | Event
--- | ---
5 working days from public meeting (maximum) | Submit to *D.C. Register* for Publication: The BOEE must submit the proposed Charter amendment act, short title, and summary statement to the *D.C. Register* within five working days of formulating the short title and summary statement.

Notify the Mayor and the Council: The BOEE must notify the Mayor and the Chairman of the Council of the proposed short title and summary statement within the same five working days.  

10 calendar days from submission to *D.C. Register* (maximum) | Publish in the *D.C. Register*: The proposed Charter amendment must be published in the *D.C. Register* within ten days after its submission thereto.

10 calendar days from publication (minimum) | Wait Ten Days for Elector Review: The BOEE must wait 10 days after publication in the *D.C. Register* for any objections and requests for a hearing to be submitted by qualified District electors to the proposed short title and summary statement. If no hearing is requested within ten days, the short title and summary statement are considered final.

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85 *Id.* §§ 1802.4-1802.5.

86 *Id.*

87 *Id.* § 1803.1

88 *Id.* § 1803.2.

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### Time | Event
--- | ---
Timing not specified | **Certify at Public Meeting:** Following the expiration of the ten day elector review period, the BOEE must hold a public meeting to certify the short title and summary statement and announce the election.\(^{89}\)

30 calendar days from certification (maximum) | **Publicize Act and Election:** Within 30 days of the public certification meeting, the BOEE must publish the Charter amendment act, short title, summary statement, and a statement announcing the referendum in the *D.C. Register* and at least two generally circulated newspapers.\(^{90}\)

54 calendar days (minimum) | **Hold Election:** The proposed Charter amendment may not appear on a ballot within 54 days of the certification of the Charter amendment language.\(^{91}\)

35 calendar days\(^{92}\) | If approved by District voters, the Charter Amendment is then transmitted to Congress for a 35 day review period. Congress may overturn the Amendment by passing a resolution of disapproval in both the House of Representative and the Senate, and signed by the President.

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\(^{89}\) *Id.* § 1804.1.

\(^{90}\) *Id.* § 1804.3.

\(^{91}\) *Id.* § 1805.1-.2

\(^{92}\) Excluding Saturdays, Sundays, holidays, and days on which either House of Congress is not in session. D.C. Code § 1-203.03(b).

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C. Changes to the District’s Budget Process After Passage of the Amendments

The District’s budget process begins when the Mayor submits his proposed budget, called the Budget Request Act, to the Council for review and adoption. The Budget Request Act is typically comprised of three parts. The first part contains federal spending for the D.C. courts, pensions, and certain national security programs. The second part, which comprises approximately 68% of D.C.’s gross budget, funds local government agencies using locally-raised District revenue. The third part contains general provisions governing various aspects of District government operations. The Budget Request Act outlines funding at the agency level, but does not detail funding at the programmatic level. The Council does this through separate legislation, the Budget Support Act.

If the District passed the amendment contemplated in this memorandum, the Council could pass one bill, a “D.C. Local Budget Act,” containing the provisions related to the local budget that are now passed as part of the Budget Request Act and the Budget Support Act. The federal portion could be passed as separate legislation, the “Federal Budget Request Act.”

Once the Council passes the D.C. Local Budget Act and the Mayor signs it, the Chair of the Council would submit it to Congress for congressional review. If Congress does not overturn the D.C. Local Budget Act by the end of the 30-day review period, the D.C. Local Budget Act would become law (the Federal Budget Request Act would still go through the congressional appropriations process). The District could enact the local budget in April or May so that it would go into effect before the beginning of a fiscal year starting on July 1 (unless Congress overturns the Act during the normal layover period).

The following chart compares the legislative processes for (1) the Budget Request Act as it currently stands, (2) ordinary legislation that goes into effect after the 30-day congressional review period, and (3) the Amendment contemplated in this memorandum:

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### Table: Budget Request Act (Current Process) vs. Non-Budget Legislation vs. Contemplated Amendment

<table>
<thead>
<tr>
<th>Budget Request Act (Current Process)</th>
<th>Non-Budget Legislation</th>
<th>Contemplated Amendment</th>
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</thead>
</table>

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94 *Id.* § 1-204.46.

95 *Id.* § 1-204.04.

96 *Id.* § 1-204.12(a).

97 *Id.*

98 If the District Council passed the Amendment proposed in this memorandum and submitted it to District voters, the District government may wish to consider additional technical amendments to the District Charter and D.C. Code.

For example, the District may wish to subject the Local Budget Act to two readings by the District Council. Unlike all other legislation which is subject to two readings by the District Council, the District’s budget is only subject to one reading. *See* D.C. Code § 1-204.12(a) (“Each proposed act (other than an act to which § 1-204.46 applies) shall be read twice in substantially the same form, with at least 13 days intervening between each reading.”). While the Amendment suggested in this memorandum would not change this procedure, the District may wish to consider subjecting its local budget to two readings to ensure greater scrutiny of the District’s local budget.

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<table>
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<tr>
<th><strong>Budget Request Act (Current Process)</strong></th>
<th><strong>Non-Budget Legislation</strong></th>
<th><strong>Contemplated Amendment</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Mayor signs Budget Request Act and transmits it to the President.</td>
<td>Mayor signs act and chairman transmits it to Congress for passive review.</td>
<td>D.C. Local Budget Act Mayor signs Local Budget Act and chairman transmits it to Congress for passive review. Federal Budget Request Act Mayor signs Budget Request Act and transmits it to the President.</td>
</tr>
<tr>
<td>President transmits D.C. Budget Request to Congress.</td>
<td>N/A</td>
<td>D.C. Local Budget Act Congress has opportunity to pass resolution of disapproval during 30-day review period. Federal Budget Request Act President transmits D.C. Budget Request to Congress.</td>
</tr>
<tr>
<td>Congress adopts the Budget Request Act as part of budget process.</td>
<td>N/A</td>
<td>D.C. Local Budget Act N/A Federal Budget Request Act Congress considers Federal Budget Request Act as part of budget process.</td>
</tr>
</tbody>
</table>

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99 *Id.* § 1-204.46.

100 *Id.* § 1-204.04(e).

101 *Id.* § 1-204.46.
V. Conclusion

As detailed in this memorandum, the 1973 Home Rule Act gives the District substantial authority to amend its Charter through referenda. The District could use this authority to improve its budget process in important ways. Specifically, the District could amend its Charter so that (1) its local budget becomes effective as soon as it goes through the 30-day congressional review period and (2) its fiscal year runs from July to June. These amendments would save the District money, improve its ability to accurately forecast budgets, and protect the District from becoming ensnared in federal budget battles.

<table>
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</thead>
<tbody>
<tr>
<td>President signs D.C. appropriations act and it becomes law.</td>
<td>If act survives passive review, it becomes law.(^1)</td>
<td>D.C. Local Budget Act If Local Budget Act survives passive review, it becomes law.</td>
</tr>
</tbody>
</table>

\(^1\) Id.

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