

CLARIFYING CONGRESSIONAL INTENT IN PROVIDING
FOR DC HOME RULE ACT OF 2016

MAY 23, 2016.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. CHAFFETZ, from the Committee on Oversight and Government
Reform, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 5233]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 5233) to repeal the Local Budget Autonomy Amendment Act of 2012, to amend the District of Columbia Home Rule Act to clarify the respective roles of the District government and Congress in the local budget process of the District government, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

H.R. 5233, the Clarifying Congressional Intent in Providing for DC Home Rule Act of 2016, repeals the Local Budget Autonomy Amendment Act of 2012 (D.C. Law 19–321). Additionally, the legislation clarifies that the Home Rule Act of 1973 should not be read as establishing a continuing appropriation for the District of Columbia and that District funds shall be appropriated annually on a federal fiscal year basis. H.R. 5233 also clarifies that the District does not have the authority to enact changes to the appropriation and budgetary process of the District government. H.R. 5233 will ensure the District’s budget process remains in compliance with the intent of Congress in passing the Home Rule Act of 1973.

BACKGROUND AND NEED FOR LEGISLATION

The Local Budget Autonomy Act (LBAA) was passed in December 2012 by the District of Columbia local government. The LBAA purports to provide the District with the authority to pass a budget for its local funds, without the need for a Congressional appropriation.¹ Instead of an active appropriation by Congress, the LBAA would provide for only a passive review of the District’s budget such that, if after 30-days Congress does not pass a joint resolution declaring the budget proposed void, the funds would be considered appropriated.² However, the proposed process is in direct contravention of the intent of the Home Rule Act, as passed by Congress in 1973, and the intent of the Founding Fathers in providing for the creation of the District of Columbia in Article 1, Section 8, Clause 17 of the U.S. Constitution.³ In addition, the LBAA contravenes the Antideficiency Act and the Budget and Accounting Act of 1921.⁴

As the result of a recent Superior Court of the District Columbia opinion on the LBAA, it is most expedient for Congress to remedy the unlawful actions taken by the District by explicitly repealing the LBAA. It is the view of this Committee that the LBAA is unlawful and null and void, regardless of any action by Congress. Further it is also this Committee’s view that the language of the Home Rule Act is clear in expressly reserving the role and authority of Congress in the District’s budget process. However, to provide greater immediate clarity, and avoid potential negative consequences for District Government employees,⁵ the Committee believes it is appropriate to exercise its legislative authority, through H.R. 5233, so as to explicitly bring the District back in compliance with Congressional intent.

¹The Local Budget Autonomy Act of 2012, D.C. Law 19–321 (2012).

²Pub. L. No. 93–198 (1973).

³U.S. Const. Art. 1, § 8, cl. 17.

⁴Letter from Susan A. Poling, General Counsel, GAO, to Ander Crenshaw, Chairman, H. Comm. on Appropriations (Jan. 30, 2014).

⁵GAO, Principles of Federal Appropriations Law 3rd, (Aug. 6, 2010), available at <http://www.gao.gov/special.pubs/d06382sp.pdf>.

Passage of the LBAA

In December 2012, the Council of the District of Columbia passed the LBAA. The LBAA passed based on what has been characterized as a new understanding of the provisions of the Home Rule Act of 1973.⁶ In his testimony before the Committee's Subcommittee on Government Operations' May 12, 2016 hearing on the LBAA, the Chairman of the Council, Phil Mendelson, stated that third party advocacy groups put forward the new interpretation, which would provide for budget autonomy.⁷ For the roughly forty years prior to the passage of the LBAA, the District made no attempt to alter its budget process absent an act of Congress. However, proponents of budget autonomy made numerous attempts to do so in Congress during that period.⁸ The efforts taken in Congress indicate that budget autonomy from Congress was a goal of the District, but one that had been understood as requiring Congressional intervention to achieve, and acknowledging that the Home Rule Act prohibits the District's unilateral actions.

Following the Council's passage of the LBAA then-Mayor Vincent Gray signed the LBAA into law.⁹ In 2013, the LBAA was placed on a referendum ballot to be voted on by District voters. In that vote, only 10 percent of the eligible voters in the District cast ballots.¹⁰ Of those that cast ballots, 83 percent voted in favor of the LBAA.¹¹ However, following this measure, Mayor Gray took the position that the LBAA was unlawful, null and void, and therefore could not be enforced by himself or the Chief Financial Officer (CFO) of the District.¹²

Mayor Gray's decision to reverse his previous support for the LBAA was the result of a legal opinion issued by then-Attorney General Irvin Nathan. In that opinion, Mr. Nathan concluded that the LBAA was not lawful under the Home Rule Act.¹³ Mr. Nathan's legal opinion, an opinion that was held by Mr. Nathan's successor as well, stated that the LBAA would improperly interfere with Constitutional and statutory roles of Congress and the Federal Government in the budget process.¹⁴ His opinion also highlighted the potential criminal and administrative liability that District government employees could face in the event funds are expended under an LBAA budget without Congressional approval.¹⁵

The Attorney General's opinion echoed a legal opinion issued by the U.S. Government Accountability Office (GAO) that determined the LBAA was unlawful under the Home Rule Act and contradicted

⁶*D.C. Home Rule: Examining the Intent of Congress in the District of Columbia Home Rule Act of 1973: Before the Subcomm. on Gov't Operations of the H. Comm. on Oversight and Gov't Reform*, 114 Cong. (May 12, 2016).

⁷*Id.* (testimony of Phil Mendelson).

⁸See e.g. Press Release by Del. Eleanor Holmes Norton, Norton Takes on Leadership Role in Economic Recovery in the 111th Cong. (Dec. 29, 2008), available at <https://norton.house.gov/media-center/press-releases/norton-takes-on-leadership-role-in-economic-recovery-in-the-111th>.

⁹Memorandum from Brian T. Yeh to H. Comm. on Oversight and Gov't Reform (Apr. 18, 2016), (on file with Comm.).

¹⁰*D.C. Home Rule: Examining the Intent of Congress in the District of Columbia Home Rule Act of 1973: Before the Subcomm. on Gov't Operations of the H. Comm. on Oversight and Gov't Reform*, 114 Cong. (May 12, 2016) (testimony of Irvin Nathan).

¹¹Memorandum from Brian T. Yeh to H. Comm. on Oversight and Gov't Reform (Apr. 18, 2016), (on file with Comm.).

¹²Letter from Vincent Gray, Mayor, District of Columbia to Phil Mendelson, Chairman, Council of the District of Columbia (Apr. 11, 2016).

¹³*Id.*

¹⁴*Id.*

¹⁵*Id.*

both the Antideficiency Act and the Budget and Accounting Act of 1921.¹⁶ GAO determined that the prohibitions included in the Home Rule Act, the legislative history of the Home Rule Act, and the Constitutional grant of plenary authority to Congress over the District all showed the LBAA to be unlawful.¹⁷ In its opinion, GAO, the agency in charge of investigating Antideficiency Act violations, also rejected several positions put forth by the Council arguing that the LBAA would not violate the Antideficiency Act.¹⁸ Specifically, GAO rejected the assertion that an appropriation by the District government would suffice for purposes of the Antideficiency Act, stating that only acts of Congress can make amounts available for expenditures or obligation by the District.¹⁹

Litigation of the LBAA

Shortly after receiving a letter sent by Mayor Gray reflecting his revised position on the LBAA, the Council initiated litigation seeking a court order to enforce the LBAA.²⁰ After removal to the U.S. District Court for the District of Columbia, District Court Judge Sullivan heard the case and issued an opinion declaring the LBAA unlawful.²¹ In that opinion, Judge Sullivan relied on the legislative history of the Home Rule Act and the language used in the Home Rule Act, particularly the prohibitions in sections 601, 602, and 603.²² Judge Sullivan stated that the limitations in these sections were clear, and found unpersuasive the argument that the limitations applied only to the first year of the Home Rule Act's passage: 1973.²³ Judge Sullivan found that the Council's position on the LBAA was "*inconsistent with the plain language of the statute, the rules of statutory construction, and the legislative history of the Home Rule Act.* Section 603(a) is a limitation that prohibits the very change the Budget Autonomy Act purports to make" (emphasis added).²⁴

Following Judge Sullivan's opinion, the Council appealed to the U.S. Court of Appeals, District of Columbia Circuit. However, during the appeals process, Mayor Gray was defeated by then-Councilwoman Muriel Bowser.²⁵ After assuming Office, Mayor Bowser reversed the Office of the Mayor's position on the LBAA.²⁶ In line with that change of position, the new Mayor then filed a motion suggesting mootness and asking the Circuit Court to reverse the District Court opinion, and remand the case to the District of Columbia Superior Court.²⁷ The Circuit Court opinion granting the reversal and remand, states only that they are granting the Mayor's motion.²⁸ Importantly, the testimony of former Attorney Gen-

¹⁶ Letter from Susan A. Poling, General Counsel, GAO, to Ander Crenshaw, Chairman, H. Comm. on Appropriations (Jan. 30, 2014).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Memorandum from Brian T. Yeh to H. Comm. on Oversight and Gov't Reform (Apr. 18, 2016), (on file with Comm.).

²¹ Council v. Gray, 42 f. supp. 3d 134 (D.D.C. May 19, 2014).

²² *Id.*

²³ *Id.* at 147.

²⁴ *Id.* at 150.

²⁵ Memorandum from Brian T. Yeh to H. Comm. on Oversight and Gov't Reform (Apr. 18, 2016), (on file with Comm.).

²⁶ *Id.*

²⁷ *Id.*

²⁸ Council v. Bowser, et al, 2015 U.S. App. LEXIS 8881 (D.C. Cir. May 27, 2015) (order granting suggestion of mootness and motion to dismiss the appeal).

eral Nathan, on May 12, 2016 asserts that the Circuit Court reversed the District Court only as a result of Mayor Bowser’s reversal in support of the LBAA.²⁹

The Superior Court of the District of Columbia, a local court, issued an opinion on the legality of the LBAA on March 23, 2016.³⁰ In that opinion, the judge rejected both the opinion of Judge Sullivan of the District Court and of GAO regarding the LBAA’s legality and consistency with the Antideficiency Act and the Budget and Accounting Act.³¹ Instead, the judge’s opinion found the LBAA was a lawful exercise of the District’s authority under the Home Rule Act, and that it would not violate the Antideficiency Act.³²

As referenced above, on May 12, 2016, the Committee’s Subcommittee on Government Operations held a hearing on the intent of Congress regarding the Home Rule Act, and how the LBAA contradicted that intent. In that hearing, multiple witnesses testified that the LBAA was a violation of the Home Rule Act and that implementing the LBAA absent affirmative Congressional approval would result in the District violating the Antideficiency Act. Notably, two of these witnesses, Mr. Irvin Nathan and Mr. Jacques DePuy—both supporters of Budget Autonomy in principle—acknowledged that the LBAA violated the Home Rule Act’s grant of authority to the District.³³

As of May 19, 2016, there is ongoing litigation before the District Court of the District of Columbia on the LBAA. This action is being brought by a private citizen against the Council.³⁴

Need for legislation

The LBAA is unlawful and null and void because the District exceeded the legislative authority delegated to it under the Home Rule Act. Congress is granted plenary and exclusive legislative authority of the District of Columbia by Article 1, Section 8, Clause 17 of the U.S. Constitution.³⁵ Congress’ grant of exclusive and complete legislative authority over the District therefore requires that Congress delegate those powers to the District in order for it to exercise any legislative power. To that end, in the Home Rule Act of 1973 Congress delegated to the District a limited number of legislative powers.³⁶ The powers delegated to the District provided the District government the ability to legislate over solely local matters, such as zoning.³⁷ However, Congress expressly removed from legislative authority it delegated to the District, the ability to alter the budget process. In section 446 of the Home Rule Act, Congress laid out the express procedure for the budget process of the District. Namely, that the process requires a presentation of the budg-

²⁹ D.C. *Home Rule: Examining the Intent of Congress in the District of Columbia Home Rule Act of 1973: Before the Subcomm. On Gov’t Operations of the H. Comm. on Oversight and Gov’t Reform*, 114 Cong. (May 12, 2016) (testimony of Irvin Nathan).

³⁰ Council, et al v. Dewitt, Case No. 2014 CA 2371 B (D.C. Super. Ct. Mar. 23, 2016).

³¹ *Id.*

³² *Id.*

³³ D.C. *Home Rule: Examining the Intent of Congress in the District of Columbia Home Rule Act of 1973: Before the Subcomm. On Gov’t Operations of the H. Comm. on Oversight and Gov’t Reform*, 114 Cong. (May 12, 2016)

³⁴ See *MAN v BOWSER et al.* https://www.pacermonitor.com/public/case/9888230/FELDMAN_v_BOWSER_et_al.

³⁵ U.S. Const. Art. I, 8, cl. 17.

³⁶ Jason I. Newman and Jacques B. DePuy, *Bringing Democracy to the Nation’s Last Colony: The District of Columbia Self-Government Act*, 24 *American L. Rev.* 3 538 (1975).

³⁷ *Id.*

et by the Mayor to the President for transmission to the Congress, and for Congress to approve the budget by the federal appropriations process.³⁸

The District's unilateral action in passing the LBAA, however, purported to change the budget process in its entirety. Under the LBAA, the District would instead pass its own budget for local funds, without going through the full appropriations review process. Instead, Congress's role, contrary to the intent of the Home Rule Act, is relegated to a passive 30-day review procedure. To remedy the statutorily impermissible LBAA, H.R. 5233 would restore the original intent of the Home Rule Act by reasserting the procedure outlined in the original version of section 446 of the Home Rule Act.

Additionally, H.R. 5233 rectifies the District's unlawful actions in passing the LBAA in violation of the limitations contained in section 603(a) of the Home Rule Act. That section provides that nothing in the Home Rule Act changed in any way the budget process, or the role of Congress and the federal government in the District's budget process.³⁹ To justify ignoring a plain reading of statute, the District asserted that the LBAA complied with the Home Rule Act because section 603(a) only applied to the state of affairs at the time the Home Rule Act was passed in 1973. However, as noted by Mr. Nathan, such a reading violates common sense.⁴⁰ Further, as noted by Mr. DePuy, the express reversion of the role of Congress in the budget process put forth in section 603 was not temporary, but rather a permanent reservation of authority.⁴¹

Importantly, H.R. 5233 will reassert the intent of Congress in section 603(a) of the Home Rule Act. First, H.R. 5233 reestablishes and strengthens Congressional intent in preserving the original role of Congress and the federal government in the budget process for the District. H.R. 5233 accomplishes this by repealing the attempted amendments to the Home Rule Act found in the LBAA. In doing so, the Home Rule Act, and the District will be brought back into compliance with the required budget process as required by Congress. Second, H.R. 5233 ensures that going forward the limitations in section 603(a) cannot be misinterpreted to provide the District with authority to alter the budget process. Specifically, H.R. 5233 clarifies that the Home Rule Act shall not be read to change any process related to the appropriation and budget procedure for the District. Furthermore, H.R. 5233 includes the addition of an express prohibition on the District of Columbia government from attempting to alter the budget and appropriations process as it relates to the District.

In addition to violating the intent of the Home Rule Act, the LBAA is also contrary to the Antideficiency Act. The Antideficiency Act prohibits federal employees, which is defined to include employees of the District of Columbia, from expending or obligating funds absent a Congressional appropriation. As stated by GAO in

³⁸*Id.*

³⁹Pub. L. No. 93-198 (1973).

⁴⁰*D.C. Home Rule: Examining the Intent of Congress in the District of Columbia Home Rule Act of 1973: Before the Subcomm. On Gov't Operations of the H. Comm. on Oversight and Gov't Reform*, 114 Cong. (May 12, 2016) (testimony of Irvin Nathan).

⁴¹*D.C. Home Rule: Examining the Intent of Congress in the District of Columbia Home Rule Act of 1973: Before the Subcomm. On Gov't Operations of the H. Comm. on Oversight and Gov't Reform*, 114 Cong. (May 12, 2016) (testimony of Jacques DePuy).

their legal opinion on the LBAA, the Antideficiency Act applies to the District of Columbia. Notably, the Antideficiency Act applies to the District through provisions in both the Home Rule Act and the Antideficiency Act.⁴² As the agency tasked with investigating Antideficiency Act violations, GAO has considerable experience with that Act.⁴³ In its legal opinion, GAO has stated that the case law on the Antideficiency Act clearly requires an act of Congress to satisfy the appropriations requirement to obligate and expend funds without being in violation of the Act. Under the LBAA, the District would be potentially be obligating and expending funds without a Congressional appropriation.⁴⁴ Therefore, the District's obligation and expenditure of funds absent a Congressional appropriation would result in a violation of the Antideficiency Act. GAO rejected the District's argument that the "general fund" was a permanent appropriation, exempting a possible Antideficiency Act violation in their opinion.⁴⁵

This potential violation of the Antideficiency Act should the LBAA be implemented places District government employees at risk for possible administrative and criminal penalties. Under the Antideficiency Act, violations can result in administrative penalties that range from letters of reprimand to dismissal. Violations can also trigger criminal sanctions, provided the violation was done knowingly and willfully, that may range from fines to imprisonment, or both. These penalties apply to all employees, not just managers, supervisors, or elected officials. As GAO continues to believe that obligation or expenditure of funds under the LBAA would violate the Antideficiency Act, employees of the District Government remain at risk for penalties and sanctions. To address this situation, H.R. 5233 removes the potential for Antideficiency Act violations to District government employees expending or obligating funds under the LBAA, by repealing the LBAA.

H.R. 5233 further ensures that the intent of Congress in the passage of the Home Rule Act is not misconstrued in the future by strengthening the application of the Antideficiency Act under the Home Rule Act. H.R. 5233 would clarify that the "general fund" listed in section 450 of the Home Rule Act shall not be construed as a permanent appropriation and that all District funds are to be appropriated by Congress each year and subject to the relevant appropriation laws. This clarification would ensure that the District's budget remains in compliance with the process intended and required by Congress, and the Antideficiency Act. As with the other provisions of H.R. 5233, this amendment is done merely to reinforce and clarify what the Home Rule Act already states; it is not a change in the intent of the original act.

LEGISLATIVE HISTORY

The Committee on Oversight and Government Reform Subcommittee on Government Operations held a hearing on May 12, 2016 titled, "D.C. Home Rule: Examining the Intent of Congress in the District of Columbia Home Rule Act of 1973".

⁴² Letter from Susan A. Poling, General Counsel, GAO, to Ander Crenshaw, Chairman, H. Comm. on Appropriations (Jan. 30, 2014).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

After the hearing, on May 13, 2016, Congressman Mark Meadows (R-NC) introduced H.R. 5233, the Clarifying Congressional Intent in Providing for DC Home Rule Act of 2016. The bill was referred to the Committee on Oversight and Government Reform.

On May 17, 2016, the Committee on Oversight and Government Reform ordered the legislation favorably reported by a record vote of 22 to 14.

SECTION-BY-SECTION

Section 1. Short title

Designates the short title of the bill as the Clarifying Congressional Intent in Providing for DC Home Rule Act of 2016.

Section 2. Repeal of Local Budget Autonomy Amendment Act of 2012

This section would repeal the Local Budget Autonomy Act in its entirety, effective Fiscal Year 2013.

Section 3. Clarification of roles of District Government and Congress in local budget process

This section clarifies that “the General Fund” specified in section 450 of the Home Rule Act is not to be interpreted as a continuing appropriation. Further it clarifies that these funds are to be appropriated each fiscal year by Congress and that the District is subject to all applicable laws, including the Antideficiency Act, and restrictions to the appropriation in the relevant fiscal year.

This section also amends section 603 of the Home Rule Act by removing the word “existing” to clarify that nothing in the Home Rule Act shall be interpreted to make changes to any law regarding the budget roles of Congress or the Federal Government. Section 603 is further amended by adding a provision clarifying that the District shall have no authority to make any changes to the role of the Federal Government in the District’s budget process.

EXPLANATION OF AMENDMENTS

During Full Committee consideration of the bill, Delegate Eleanor Holmes Norton (D-DC) offered an amendment to repeal the Local Budget Autonomy Act as passed by the District. The amendment would have instead codified the Local Budget Autonomy Act’s language as a Congressional action amending the Home Rule Act. The amendment would also have added clarifications to Sec. 603 of the Home Rule Act that would have strengthened the prohibition on the District’s authority to make any changes to the role of the federal government in the District’s budget process. The Norton amendment was not adopted by a roll call vote of 12 to 22.

COMMITTEE CONSIDERATION

On May 17, 2016, the Committee met in open session and ordered reported favorably the bill, H.R. 5233, by roll call vote, a quorum being present.

ROLL CALL VOTES

There were two roll call votes during consideration of H.R. 5233:

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

114TH CONGRESS

ROLL CALL

Vote #: 1

Vote on: H.R. 5233 – Norton Amendment Date: 5-17-16

Republicans	Aye	No	Present	Democrats	Aye	No	Present
MR. CHAFFETZ (UT) <i>(Chairman)</i>		X		MR. CUMMINGS (MD) <i>(Ranking)</i>	X		
MR. MICA (FL)		X		MRS. MALONEY (NY)			
MR. TURNER (OH)		X		MS. NORTON (DC)	X		
MR. DUNCAN (TN)		X		MR. CLAY (MO)	X		
MR. JORDAN (OH)		X		MR. LYNCH (MA)			
MR. WALBERG (MI)		X		MR. COOPER (TN)			
MR. AMASH (MI)		X		MR. CONNOLLY (VA)	X		
MR. GOSAR (AZ)				MR. CARTWRIGHT (PA)	X		
MR. DesJARLAIS (TN)		X		MS. DUCKWORTH (IL)	X		
MR. GOWDY (SC)		X		MS. KELLY (IL)			
MR. FARENTHOLD (TX)		X		MS. LAWRENCE (MI)	X		
MRS. LUMMIS (WY)		X		MR. LIEU (CA)			
MR. MASSIE (KY)		X		MRS. WATSON COLEMAN (NJ)	X		
MR. MEADOWS (NC)		X		MS. PLASKETT (VI)			
MR. DeSANTIS (FL)		X		MR. DeSAULNIER (CA)	X		
MR. MULVANEY (SC)		X		MR. BOYLE (PA)	X		
MR. BUCK (CO)		X		MR. WELCH (VT)	X		
MR. WALKER (NC)		X		MS. LUJAN GRISHAM (NM)	X		
MR. BLUM (IA)		X					
MR. HICE (GA)							
MR. RUSSELL (OK)		X					
MR. CARTER (GA)		X					
MR. GROTHMAN (WI)		X					
MR. HURD (TX)		X					
MR. PALMER (AL)							

Roll Call Totals: Ayes: 12 Nays: 22 Present:

Passed: _____ Failed: X

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

114TH CONGRESS

ROLL CALL

Vote #: 2

Vote on: H.R. 5233 – Report to House Favorably Date: 5-17-16

Republicans	Aye	No	Present	Democrats	Aye	No	Present
MR. CHAFFETZ (UT) <i>(Chairman)</i>	X			MR. CUMMINGS (MD) <i>(Ranking)</i>		X	
MR. MICA (FL)	X			MRS. MALONEY (NY)		X	
MR. TURNER (OH)	X			MS. NORTON (DC)		X	
MR. DUNCAN (TN)	X			MR. CLAY (MO)		X	
MR. JORDAN (OH)	X			MR. LYNCH (MA)			
MR. WALBERG (MI)	X			MR. COOPER (TN)		X	
MR. AMASH (MI)	X			MR. CONNOLLY (VA)		X	
MR. GOSAR (AZ)				MR. CARTWRIGHT (PA)		X	
MR. DesJARLAIS (TN)	X			MS. DUCKWORTH (IL)		X	
MR. GOWDY (SC)	X			MS. KELLY (IL)			
MR. FARENTHOLD (TX)	X			MS. LAWRENCE (MI)		X	
MRS. LUMMIS (WY)	X			MR. LIEU (CA)			
MR. MASSIE (KY)	X			MRS. WATSON COLEMAN (NJ)		X	
MR. MEADOWS (NC)	X			MS. PLASKETT (VI)			
MR. DeSANTIS (FL)	X			MR. DeSAULNIER (CA)		X	
MR. MULVANEY (SC)	X			MR. BOYLE (PA)		X	
MR. BUCK (CO)	X			MR. WELCH (VT)		X	
MR. WALKER (NC)	X			MS. LUJAN GRISHAM (NM)		X	
MR. BLUM (IA)	X						
MR. HICE (GA)							
MR. RUSSELL (OK)	X						
MR. CARTER (GA)	X						
MR. GROTHMAN (WI)	X						
MR. HURD (TX)	X						
MR. PALMER (AL)							

Roll Call Totals: Ayes: 22 Nays: 14 Present:

Passed: X Failed: _____

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill repeals the Local Budget Autonomy Amendment Act of 2012 and amends the District of Columbia Home Rule Act to clarify the respective roles of the District government and Congress in the local budget process of the District government. As such this bill does not relate to employment or access to public services and accommodations.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goal or objective of the bill is to repeal the Local Budget Autonomy Amendment Act of 2012 and amend the District of Columbia Home Rule Act to clarify the respective roles of the District government and Congress in the local budget process of the District government.

DUPLICATION OF FEDERAL PROGRAMS

No provision of this bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting this bill does direct the completion of specific rule makings within the meaning of 5 U.S.C. 551 as follows.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104–4) requires a statement as to whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

This bill does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of Rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 23, 2016.

Hon. JASON CHAFFETZ,
*Chairman, Committee on Oversight and Government Reform,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5233, the Clarifying Congressional Intent in Providing for D.C. Home Rule Act of 2016.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

KEITH HALL.

Enclosure.

*H.R. 5233—Clarifying Congressional Intent in Providing for D.C.
Home Rule Act of 2016*

H.R. 5233 would repeal the Local Budget Autonomy Amendment Act of 2012 (the Act), a law enacted by the District of Columbia that allows the District to spend local revenues without a Congressional appropriation. In particular, the bill would clarify that all funds provided for the District of Columbia must be appropriated by the Congress. Implementing the legislation would have no effect on the federal budget because any costs would be attributed to future appropriation acts.

Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting H.R. 5233 would not increase direct spending or on-

budget deficits in any of the four consecutive 10-year periods beginning in 2027.

Because preemptions limit the authority of state and local governments, they are considered intergovernmental mandates under the Unfunded Mandates Reform Act (UMRA). H.R. 5233 would impose such a mandate by repealing a law of the District of Columbia. Repeal of the Act would reduce the District's control over the nonfederal portion of its budget. However, even in the absence of the bill, CBO expects that the Congress would continue to exert considerable authority over the budget of the District. Enacting H.R. 5233 would invalidate any budget developed by the District's government under the Act and could impose administrative costs on the District associated with submitting a new budget. However, based on feedback from budget officials in the District, CBO estimates that the cost of the mandate would fall well below the annual threshold established in UMRA for intergovernmental mandates (\$77 million in 2016, adjusted annually for inflation). The bill contains no private-sector mandates as defined in UMRA.

The CBO staff contacts for this estimate are Matthew Pickford (for federal costs) and Jon Sperl (for state and local mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman).

LOCAL BUDGET AUTONOMY AMENDMENT ACT OF 2012

An Act To amend the District of Columbia Home Rule Act to provide for local budget autonomy.

Be It Enacted by the Council of the District of Columbia, [That this act may be cited as the "Local Budget Autonomy Amendment Act of 2012".

[SEC. 2. The District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 777; D.C. Official Code § 1–201.01 *et seq.*), is amended as follows:

[(a) The table of contents is amended by striking the phrase "Sec. 446. Enactment of Appropriations by Congress" and inserting the phrase "Sec. 446. Enactment of local budget by Council" in its place.

[(b) Section 404(f) (D.C. Official Code § 1–204.04(f) is amended by striking the phrase "transmitted by the Chairman to the President of the United States" both times it appears and inserting the phrase "incorporated in the budget act and become law subject to the provisions of section 602(c)" in its place.

[(c) Section 412 (D.C. Official Code § 1–204.12) is amended by striking the phrase 14. "(other than an act to which section 446 applies)".

[(d) Section 441(a) (D.C. Official Code § 1–204.41(a) is amended—by striking the phrase "budget and accounting year." and inserting the phrase "budget and accounting year. The District may

change the fiscal year of the District by an act of the Council. If a change occurs, such fiscal year shall also constitute the budget and accounting year.” in its place.

[(e) Section 446 (D.C. Official Code § 1-204.46) is amended to read as follows:

["ENACTMENT OF LOCAL BUDGET BY COUNCIL.

["SEC. 446. (a) ADOPTION OF BUDGETS AND SUPPLEMENTS.—The Council, within 70 calendar days, or as otherwise provided by law, after receipt of the budget proposal from the Mayor, and after public hearing, and by a vote of a majority of the members present and voting, shall by act adopt the annual budget for the District of Columbia government. The federal portion of the annual budget shall be submitted by the Mayor to the President for transmission to Congress. The local portion of the annual budget shall be submitted by the Chairman of the Council to the Speaker of the House of Representatives pursuant to the procedure set forth in section 602(c). Any supplements to the annual budget shall also be adopted by act of the Council, after public hearing, by a vote of a majority of the members present and voting.

["(b) TRANSMISSION TO PRESIDENT DURING CONTROL YEARS.—In the case of a budget for a fiscal year which is a control year, the budget so adopted shall be submitted by the Mayor to the President for transmission by the President to the Congress; except, that the Mayor shall not transmit any such budget, or amendments or supplements to the budget, to the President until the completion of the budget procedures contained in this Act and the District of Columbia Financial Responsibility and Management Assistance Act of 1995.

["(c) PROHIBITING OBLIGATIONS AND EXPENDITURES NOT AUTHORIZED UNDER BUDGET.—Except as provided in section 445A(b), section 446B, section 467(d), section 471(c), section 472(d)(2), section 475(e)(2), section 483(d), and subsections (f), (g), (h)(3), and (i)(3) of section 490, no amount may be obligated or expended by any officer or employee of the District of Columbia government unless—

["(1) such amount has been approved by an act of the Council (and then only in accordance with such authorization) and such act has been transmitted by the Chairman to the Congress and has completed the review process under section 602(c)(3); or

["(2) in the case of an amount obligated or expended during a control year, such amount has been approved by an Act of Congress (and then only in accordance with such authorization).

["(d) RESTRICTIONS ON REPROGRAMMING OF AMOUNTS.—After the adoption of the annual budget or 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 and only if any additional expenditures provided under such request for an activity are offset by reductions in expenditures for another activity.

["(e) DEFINITION.—In this part, the term “control year” has the meaning given such term in section 305(4) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995.”

[(f) Section 446B(a) (D.C., Official Code § 1–204.46b(a)) is amended as follows:

[(1) Strike the phrase “the fourth sentence of section 446” and insert the phrase “section 446(c)” in its place.

[(2) Strike the phrase “approved by Act of Congress”.

[(g) Section 447 (D.C. Official Code § 1–204.47) is amended as follows:

[(1) Strike the phrase. “Act of Congress” each time it appears and insert the phrase “act of the Council (or Act of Congress, in the case of a year which is a control year)” in its place.

[(2) Strike the phrase “Acts of Congress” each time it appears and insert the phrase “acts of the Council (or Acts of Congress, in the case of a year which is a control year)” in its place.

[(h) Sections 467(d), 471(c), 472(d)(2), 475(e)(2), and 483(d), and 490(f), (g)(3), (h)(3), and (i)(3) are amended by striking the phrase “The fourth sentence of section 446” and inserting the phrase “Section 446(c)” in its place.

[SEC. 3. Applicability.

[Section 2 shall apply as of January 1, 2014.

[SEC. 4. Fiscal impact statement.

[The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1–206.02(c)(3)).

[SEC. 5. Effective date.

[This act shall take effect as provided in section 303 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 784; D.C. Official Code § 1–203.03).]

DISTRICT OF COLUMBIA HOME RULE ACT

* * * * *

TITLE IV—THE DISTRICT CHARTER

* * * * *

PART D—DISTRICT BUDGET AND FINANCIAL MANAGEMENT

Subpart 1—Budget and Financial Management

* * * * *

GENERAL AND SPECIAL FUNDS

SEC. 450. [The General Fund] (a) *IN GENERAL.*—*The General Fund* of the District shall be composed of those District revenues which on the effective date of this title are paid into the Treasury of the United States and credited either to the General Fund of the District or its miscellaneous receipts, but shall not include any revenues which are applied by law to any special fund existing on the date of enactment of this title. The Council may from time to time establish such additional special funds as may be necessary for the efficient operation of the government of the District. 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, except that all money received by the District of Columbia Courts shall be deposited in the Treasury of the United States or the Crime Victims Fund.

(b) *APPLICATION OF FEDERAL APPROPRIATIONS PROCESS.*—*Nothing in this Act shall be construed as creating a continuing appropriation of the General Fund described in subsection (a). All funds provided for the District of Columbia shall be appropriated on an annual fiscal year basis through the Federal appropriations process. For each fiscal year, the District shall be subject to all applicable requirements of subchapter III of chapter 13 and subchapter II of chapter 15 of title 31, United States Code (commonly known as the “Anti-Deficiency Act”), the Budget and Accounting Act of 1921, and all other requirements and restrictions applicable to appropriations for such fiscal year.*

* * * * *

TITLE VI—RESERVATION OF CONGRESSIONAL AUTHORITY

* * * * *

BUDGET PROCESS; LIMITATIONS ON BORROWING AND SPENDING

SEC. 603. (a) 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, examination, authorization, and appropriation of the total budget of the District of Columbia government[.], or as authorizing the District of Columbia to make any such change.

(b)(1) No general obligation bonds (other than bonds to refund outstanding indebtedness) or Treasury capital project loans shall be issued during any fiscal year in an amount which would cause the amount of principal and interest required to be paid both serially and into a sinking fund in any fiscal year on the aggregate amounts of all outstanding general obligation bonds and such Treasury loans, to exceed 17 percent of the District revenues (less any fees or revenues directed to servicing revenue bonds, any revenues, charges, or fees dedicated for the purposes of water and sewer facilities described in section 490(a) (including fees or revenues directed to servicing or securing revenue bonds issued for such purposes), retirement contributions, revenues from retirement systems, and revenues derived from such Treasury loans and the sale or general obligation or revenue bonds) which the Mayor estimates, and the District of Columbia Auditor certifies, will be credited to the District during the fiscal year in which the bonds will be issued. Treasury capital project loans include all borrowing from the United States Treasury, except those funds advanced to the District by the Secretary of the Treasury under the provisions of title VI of the District of Columbia Revenue Act of 1939.

(2) Obligations incurred pursuant to the authority contained in the District of Columbia Stadium Act of 1957 (71 Stat. 619; D.C. Code title 2, chapter 17, subchapter II), obligations incurred by the agencies transferred or established by sections 201 and 202, wheth-

er incurred before or after such transfer or establishment, and obligations incurred pursuant to general obligation bonds of the District of Columbia issued prior to October 1, 1996, for the financing of Department of Public Works, Water and Sewer Utility Administration capital projects, shall not be included in determining the aggregate amount of all outstanding obligations subject to the limitation specified in the preceding subsection.

(3) The 17 percent limitation specified in paragraph (1) shall be calculated in the following manner:

(A) Determine the dollar amount equivalent to 14 percent of the District revenues (less any fees or revenues directed to servicing revenue bonds, any revenues, charges, or fees dedicated for the purposes of water and sewer facilities described in section 490(a) (including fees or revenues directed to servicing or securing revenue bonds issued for such purposes), retirement, contributions, revenues from retirement systems, and revenues derived from such Treasury loans and the sale of general obligation or revenue bonds) which the Mayor estimates, and the District of Columbia Auditor certifies, will be credited to the District during the fiscal year for which the bonds will be issued.

(B) Determine the actual total amount of principal and interest to be paid in each fiscal year for all outstanding general obligation bonds (less the allocable portion of principal and interest to be paid during the year on general obligation bonds of the District of Columbia issued prior to October 1, 1996, for the financing of Department of Public Works, Water and Sewer Utility Administration capital projects) and such Treasury loans.

(C) Determine the amount of principal and interest to be paid during each fiscal year over the term of the proposed general obligation bond or such Treasury loan to be issued.

(D) If in any one fiscal year the sum arrived at by adding subparagraphs (B) and (C) exceeds the amount determined under subparagraph (A), then the proposed general obligation bond or such Treasury loan in subparagraph (C) cannot be issued.

(c) Except as provided in subsection (f), 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 from all funds available to the District for such fiscal year. The budget shall identify any tax increases which shall be required in order to balance the budget as submitted. The Council shall be required to adopt such tax increases to the extent its budget is approved.

(d) Except as provided in subsection (f), the Mayor shall not forward to the President for submission to Congress a budget which is not balanced according to the provision of subsection 603(c).

(e) Nothing in this Act shall be construed as affecting the applicability to the District government of the provisions of section 3679 of the Revised Statutes of the United States (31 U.S.C. 665), the so-called Anti-Deficiency Act.

(f) In the case of a fiscal year which is a control year (as defined in section 305(4) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995), the Council may

not approve, and the Mayor may not forward to the President, any budget which is not consistent with the financial plan and budget established for the fiscal year under subtitle A of title II of such Act.

* * * * *

MINORITY VIEWS

Committee Democrats strongly oppose H.R. 5233. The bill would impose the most significant limitation on the District of Columbia's legislative authority since passage of the Home Rule Act in 1973.¹ The bill also would harm the District's financial position and operations.

Reasonable lawyers and judges have reached different conclusions about the validity of the Local Budget Autonomy Amendment Act of 2012 (BAA). There is no doubt, however, that the BAA is the law of the District. The only court opinion in effect upheld the BAA.² Indeed, the court ordered all District employees to enforce the BAA.

Budget autonomy has practical benefits for both the District and federal governments. For the District government, it means lower borrowing costs; more accurate revenue and expenditure forecasts; improved agency operations; and the removal of the threat that federal government shutdowns can also shut down the District government. For Congress, it means not wasting valuable time on budget line items that it never amends. For federal agencies, it means that the D.C. municipal services they rely on to function will not cease during a federal shutdown.

There has been bipartisan support for budget autonomy. The Committee's last four chairmen, including Republicans Tom Davis and Darrell Issa, worked to give the District budget autonomy.

On May 12, 2016, the Subcommittee on Government Operations held a hearing on the validity of the BAA during which two of the Republicans' own witnesses provided testimony in support of budget autonomy. Irvin B. Nathan, a former D.C. Attorney General, stated:

I believe that budget autonomy for the locally raised revenues of the District is sound and appropriate public policy and should be enacted by the Congress and signed by the President. . . . I believe that the best thing that can come from this hearing is support in Congress for the passage of federal legislation providing to the District budget autonomy for its locally raised funds.³

In addition, Jacques DePuy, a former Counsel for the House Subcommittee on Government Operations and Reorganization of the Committee on the District of Columbia, stated:

¹Pub. L. No. 93-198 (1973).

²*Council of the District of Columbia v. Bowser*, Case No. 2014 CA 2371 B (D.C. Super. Ct. 2016).

³House Committee on Oversight and Government Reform, *Hearing on D.C. Home Rule: Examining the Intent of Congress in the District of Columbia Home Rule Act of 1973*, 114th Cong. (May 12, 2016).

[I] agree with the parties that, as a matter of public policy and of the fundamental values of a democracy, it is the duly elected representatives of the citizens of the District of Columbia who should determine how D.C. tax-payer money is spent.⁴

Congress loses no authority under budget autonomy. Under the BAA, the local portion of the D.C. budget will be transmitted to Congress for a review period like all other D.C. legislation. During the review period, Congress can use expedited procedures to disapprove of the budget. Moreover, under the U.S. Constitution, Congress has the authority to legislate on any District matter, including its local budget, at any time, notwithstanding the BAA.

The District's financial position is stronger than that of most cities and states. The District has a positive fund balance, or reserves, of \$2.17 billion relative to a total budget of \$13.4 billion.

There is little risk that the District will lose its financial discipline under the BAA because all the federal financial mandates on the District remain in place. These include an independent Chief Financial Officer, a borrowing cap, and emergency and contingency reserve accounts. Moreover, the D.C. Financial Responsibility and Management Assistance Authority, which Congress put in place in 1995 to address the District's financial crisis, automatically comes back into existence if the District fails to meet any of seven financial conditions.

We strongly oppose H.R. 5233, and urge the Committee to codify the BAA in federal law.

ELIJAH E. CUMMINGS,
*Ranking Member, Committee
on Oversight and Govern-
ment Reform.*

ELEANOR HOLMES NORTON,
Member of Congress.

GERALD E. CONNELLY,
*Ranking Member, Sub-
committee on Government
Operations.*

○

⁴*Id.*