



FY2013 Appropriations: District of Columbia

Eugene Boyd

Analyst in Federalism and Economic Development Policy

August 10, 2012

Congressional Research Service

7-5700

www.crs.gov

R42657

CRS Report for Congress

Prepared for Members and Committees of Congress

Summary

On February 13, 2012, the Obama Administration released its detailed budget request for FY2013. The Administration's proposed budget includes \$677.8 million in special federal payments to the District of Columbia, which is \$12.2 million more than the District's FY2012 appropriation of \$665.6 million in special federal payments. Approximately 78% (\$526.7 million) of the President's proposed budget request for the District would be targeted to the courts and criminal justice system. The President's budget request also includes \$95.6 million in support of education initiatives. This represents 14% of the Administration's federal payment budget request for the District of Columbia.

On May 15, 2012, the District of Columbia Council approved a FY2013 budget that included \$11.4 billion in operating funds and \$1.1 billion in capital outlays. The mayor signed the measure (A19-0381) on June 15, 2012. Included in the act was a provision that would grant the District some level of budget autonomy in the expenditure of local funds, if Congress failed to pass and the President failed sign a District of Columbia appropriations act before the beginning of the 2013 fiscal year.

On June 14, 2012, the Senate Appropriations Committee reported S. 3301, its version of the Financial Services and General Government Appropriations Act for FY2013, with an accompanying report (S.Rept. 112-177). As reported, the bill recommended \$676.2 million in special federal payments to the District. This is \$10.6 million more than appropriated for FY2012, and \$1.6 million less than requested by the Administration. On June 26, 2012, a House Appropriations Committee approved its version of the Financial Services and General Government Appropriations Act of 2013, H.R. 6020, with an accompanying report (H.Rept. 112-550). The bill includes \$673.7 million in special federal payments to the District. This is \$8.1 million more than appropriated for FY2012, \$4.1 million less than requested by the Administration, and \$2.5 million less than recommended by the Senate bill.

The Senate bill, S. 3301, includes changes in two provisions that city officials have sought to eliminate or modify. The bill would lift the prohibition on the use of District funds to provide abortion services, but would continue the prohibition against the use of federal funds. The House bill would restrict the use of District and federal funds for abortion services to instances involving rape, incest, or a health threat to the life of the pregnant woman. Both the House and Senate bills would continue to prohibit the use of federal funds to regulate and decriminalize the medical use of marijuana. Both the House and the Senate bills would provide funding for a school voucher program, which was not funded in FY2012. The private school voucher program is opposed by some city leaders, but supported by others. The Administration did not include funding for school vouchers in its budget submission to Congress. This report will be updated as events warrant.

Contents

FY2013 Budget Request.....	1
The President’s Budget Request.....	2
District’s Budget.....	3
Senate Bill, S. 3301	3
House Bill H.R. 6020	4
Special Federal Payments.....	5
Local Operating Budget	7
General Provisions: Key Policy Issues	8
Needle Exchange	8
Medical Marijuana.....	9
Abortion Provision	11
District of Columbia Opportunity Scholarship Program	12

Tables

Table 1. Status of FSGG and District of Columbia Appropriations, FY2013.....	1
Table 2. District of Columbia Appropriations, FY2012-FY2013: Special Federal Payments.....	6
Table 3. Division of Expenses: District of Columbia Funds: FY2013	7

Contacts

Author Contact Information.....	13
---------------------------------	----

The authority for congressional review and approval of the District of Columbia’s budget is derived from the Constitution and the District of Columbia Self-Government and Government Reorganization Act of 1973 (Home Rule Act).¹ The Constitution gives Congress the power to “exercise exclusive Legislation in all Cases whatsoever” pertaining to the District of Columbia. In 1973, Congress granted the city limited home rule authority and empowered citizens of the District to elect a mayor and city council. However, Congress retained the authority to review and approve all District laws, including the District’s annual budget. As required by the Home Rule Act, the city council must approve a budget within 56 days after receiving a budget proposal from the mayor.² The approved budget must then be transmitted to the President, who forwards it to Congress for its review, modification, and approval through the annual appropriations process.³ The District of Columbia’s budget is included in the Financial Services and General Government (FSGG) Appropriations bill.

FY2013 Budget Request

Congress not only appropriates federal payments to the District to fund certain activities, but also reviews, and may modify, the District’s entire budget, including the expenditure of local funds as outlined in the District’s Home Rule Act. Since FY2006, the District’s appropriations act has been included in a multi-agency appropriations bill; before FY2006 the District budget was considered by the House and the Senate as a stand-alone bill. It is currently included in the Financial Services and General Government Appropriations Act (FSGG).

Table I. Status of FSGG and District of Columbia Appropriations, FY2013

Markup		House Report	House Passage	Senate Report	Senate Passage	Conf. Report	Conference Report Approval		Public Law
House	Senate						House	Senate	
6/26/2012	6/14/2012	6/26/2012		6/14/2012					
H.R. 6020	S. 3301	H.Rept. 112-550		S.Rept. 112-177					

District of Columbia appropriations acts typically include the following three components:

1. *Special federal payments* appropriated by Congress to be used to fund particular initiatives or activities of interest to Congress or the Administration.
2. The *District’s operating budget*, which includes funds to cover the day-to-day functions, activities, and responsibilities of the government, enterprise funds that provide for the operation and maintenance of government facilities or services that are entirely or primarily supported by user-based fees, and long-term capital outlays such as road improvements. District operating budget expenditures are

¹ See Article I, Sec. 8, clause 17 of the U.S. Constitution and Section 446 of P.L. 93-198, 87 Stat. 801.

² 120 Stat. 2028.

³ 87 Stat. 801.

paid for by revenues generated through local taxes (sales and income), federal funds for which the District qualifies, and fees and other sources of funds.

3. *General provisions* are typically the third component of the District's budget reviewed and approved by Congress. These provisions can be grouped into several distinct but overlapping categories with the most predominant being provisions relating to fiscal and budgetary directives and controls. Other provisions include administrative directives and controls, limitations on lobbying for statehood or congressional voting representation, congressional oversight, and congressionally imposed restrictions and prohibitions related to social policy.

The President's Budget Request

On February 13, 2012, the Obama Administration released its detailed budget request for FY2013. The Administration's proposed budget includes \$677.8 million in special federal payments to the District of Columbia, which is \$12.2 million more than the District's FY2012 appropriation of \$665.6 million. Approximately 78% (\$526.7 million) of the President's proposed budget request for the District would be targeted to the courts and criminal justice system. This includes:

- \$219.6 million in support of court operations;
- \$49.9 million for Defender Services;⁴
- \$215.5 million for the Court Services and Offender Supervision Agency for the District of Columbia, an independent federal agency responsible for the District's pretrial services, adult probation, and parole supervision functions;
- \$1.8 million for the Criminal Justice Coordinating Council;
- \$39.4 million for the public defender's office;⁵ and
- \$500,000 to cover costs associated with investigating judicial misconduct complaints and recommending candidates to the President for vacancies to the District of Columbia Court of Appeals and the District of Columbia Superior Court.⁶

The President's budget request also includes \$95.6 million in support of education initiatives, including \$60 million to support elementary and secondary education, \$500,000 to support the

⁴ Funds are administered by the Joint Committee on Judicial Administration in the District of Columbia and may be used to provide court appointed attorneys and other services for (1) indigent persons charged with a criminal offense; (2) family proceedings in which child neglect is alleged, or where the termination of the parent-child relationship is under consideration; and (3) the representation and protection of mentally incapacitated individuals and minors whose parents are deceased. Funds may also be used to provide guardian training and payments for counsel appointed in adoption proceedings, and for services such as transcripts of court proceedings, expert witness testimony, foreign and sign language interpretation, and investigations and genetic testing.

⁵ The Public Defender Service for the District of Columbia is a federal funded, independent organization governed by an eleven-member Board of Trustee. Created by federal statute (P.L. 91-358, D.C. Code Sec. 2-1601), the Public Defender Service implements the constitutional mandate to provide criminal defense counsel for indigent individuals. The organization also provides legal representation for individuals facing involuntary civil commitment in the District's mental health system or parole revocation for D.C. Code offenses.

⁶ This includes \$295,000 to the Commission on Judicial Disabilities and Tenure and \$205,000 to the Judicial Nomination Commission.

D.C. National Guard college access program, and \$35.1 million for college tuition assistance. This represents 14% of the Administration's federal payment budget request for the District of Columbia.

District's Budget

On March 23, 2012, the mayor of the District of Columbia submitted a proposed budget to the District of Columbia Council. On May 15, 2012, the council approved an FY2013 budget that included \$11.4 billion in operating funds and \$1.1 billion in capital outlays. The mayor signed the measure (A19-0381) on June 15, 2012. Included in the act was a provision that would grant the District some level of budget autonomy in the expenditure of local funds if Congress failed to pass and the President failed sign a District of Columbia appropriations act before the beginning of the 2013 fiscal year. The provision would allow the District to obligate and expend local funds at the rate set forth in the act during the period in which there is an absence of a federal appropriations act authorizing the expenditure of local funds. Similar language was included in the bill, S. 3301, reported by the Senate Appropriations Committee.⁷ The provision is also supported by the Administration.⁸ Both the House and Senate FSGG bills (H.R. 6020 and S. 3301) include language that reference the District's FY2013 budget submission for purposes of congressional review and approval.

Senate Bill, S. 3301

On June 14, 2012, the Senate Appropriations Committee reported S. 3301, its version of the Financial Services and General Government Appropriations Act for FY2013, with an accompanying report (S.Rept. 112-177). As reported, the bill recommended \$676.2 million in special federal payments to the District. This was \$10.6 million more than appropriated for FY2012, and \$1.6 million more than requested by the Administration. The bill includes \$5.7 million more in funding for court operations than requested by the Administration, but \$7.4 million less than appropriated in FY2012. It would appropriate \$6.5 million less than the President's FY2013 request or the FY2012 appropriated amount for elementary and secondary education initiatives. These funds would be allocated among three specific initiatives: public school improvements, support for public charter schools, and funding a private school voucher program. The Administration's budget request did not include funding the school voucher program. As noted above, S. 3301 includes the provision that would allow the District to obligate and expend locally raised funds in the absence of congressional approval of a District of Columbia appropriations act.

General Provisions

The Senate bill's general provisions mirror some of the language included in the House bill. Like the House bill, S. 3301 includes provisions governing budgetary and fiscal operations and controls. It also includes provisions restricting or prohibiting the use of federal funds to support

⁷ S. 3301, Title VIII, § 815.

⁸ Executive Office of the President, U.S. President (Obama), "Statement of Administration Policy: H.R. 6020 – Financial Services and General Government Appropriations Act, 2013," June 28, 2012, p. 4, http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/112/saphr6020r_20120628.pdf.

District statehood or congressional voting representation, including provisions that would continue prohibiting the use of *federal funds* to:

- support or defeat any legislation being considered by Congress or a state legislature;
- cover salaries expenses and other costs associated with the office of Statehood Representative and Statehood Senator for the District of Columbia; and
- support efforts by the District of Columbia Attorney General or any other officer of the District government to provide assistance for any petition drive or civil action seeking voting representation in Congress for citizens of the District.

The bill also included changes in three provisions that city officials have sought to eliminate or modify. The bill would:

- lift the prohibition on the use of District funds to provide abortion services, but would continue the prohibition against the use of federal funds;
- prohibit the use of federal funds to regulate and decriminalize the medical use of marijuana; and
- maintain the current prohibition on the use of federal funds to support a needle exchange program.

House Bill H.R. 6020

On June 26, 2012, a House Appropriations Committee approved the Financial Services and General Government Appropriations Act of 2013, H.R. 6020, with an accompanying report (H.Rept. 112-550). The bill includes \$673.7 million in special federal payments to the District. This is \$12.2 million more than appropriated for FY2012, \$4.1 million less than requested by the Administration, and \$2.5 million less than recommended by the Senate bill. The bill includes a substantial increase (\$12.5 million) in the amount requested by the Administration for court operations, and a \$5.1 million reduction in the amount that would be appropriated for the Resident Tuition Support (college access) program. The bill also would direct \$60 million in funding to support the District of Columbia Public Schools (\$20 million), public charter schools (\$20 million), and private school vouchers (\$20 million).

General Provisions

Like its Senate counterpart, the House bill includes several general provisions governing budgetary and fiscal operations and controls including prohibiting deficit spending within budget accounts, establishing restrictions on the reprogramming of funds, and allowing the transfer of local funds to capital and enterprise fund accounts. In addition, the bill would require the city's Chief Financial Officer to submit a revised operating budget for all District government agencies and the District public schools within 30 days after the passage of the bill.

The House bill also includes several general provisions relating to statehood or congressional representation for the District, including provisions that would continue prohibiting the use of *federal funds* to:

- support or defeat any legislation being considered by Congress or a state legislature;
- cover salaries, expenses, and other costs associated with the office of Statehood Representative and Statehood Senator for the District of Columbia; and
- support efforts by the District of Columbia Attorney General or any other officer of the District government to provide assistance for any petition drive or civil action seeking voting representation in Congress for citizens of the District.

Unlike the Senate bill, H.R. 6020 would prohibit the use of both District and federal funds for abortion service. In addition, the bill would continue to prohibit the use of federal funds to administer needle exchange or to decriminalize or regulate the medical use of marijuana. Despite the federal prohibition, on June 12, 2012, the city announced the certification of four privately operated medical marijuana dispensaries.⁹ The dispensaries are set to open in the fall 2012.

The Obama Administration issued a Statement of Administration Policy (SAP) on H.R. 6020, on June 28, 2012.¹⁰ The SAP urged the House to include language that would allow the District to expend its own funds should Congress fail to approve the District budget before the beginning of the fiscal year. The Statement also included language objecting to the provision that would prohibit the use of federal funds to support the District's needle exchange program, noting that the restriction "is contrary to current law and the Administration's policy to allow funds to be used in locations where local authorities deem needle exchange programs to be effective and appropriate." The Statement also objected to a provision that would prohibit the use of District funds for abortion services, noting that the restriction undermines the principle of home rule.

Special Federal Payments

Both the President and Congress may propose financial assistance to the District in the form of special federal payments in support of specific activities or priorities. As noted in the sections above, the Obama Administration budget proposal for FY2013 includes a request for \$677.8 million in special federal payments for the District of Columbia. The Financial Services and General Government Appropriations Act for FY2013, H.R. 6020, as reported by the House Appropriations Committee on June 26, 2012, included \$673.7 million in special federal payments to the District of Columbia. Weeks earlier, on June 14, 2012, the Senate Appropriations Committee reported its version of the Financial Services and General Government Appropriations Act, S. 3301. The Senate bill recommended \$676.2 million in special federal payments for the District of Columbia.

⁹ District of Columbia Department of Health, "DC Department of Health Notifies Applicants Eligible to Register for Medical Marijuana Dispensaries," press release, June 12, 2012, <http://newsroom.dc.gov/show.aspx/agency/doh/section/2/release/23453/year/2012>.

¹⁰ Executive Office of the President, U.S. President (Obama), "Statement of Administration Policy: H.R. 6020 – Financial Services and General Government Appropriations Act, 2013," June 28, 2012, p. 4, http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/112/saphr6020r_20120628.pdf.

Table 2 shows details of the District's federal payments, including the FY2012 enacted amounts, the amounts included in the President's FY2013 budget request, and the amounts recommended by the House and Senate Appropriations Committees.

Table 2. District of Columbia Appropriations, FY2012-FY2013: Special Federal Payments

(in millions of dollars)

	FY2012 Enacted	FY2013 Request	FY2013 District Request	FY2013 House Committee	FY2013 Senate Committee	FY2013 Enacted
Resident Tuition Support	30.000	35.100	35.100	30.000	35.100	
Emergency Planning and Security	14.900	24.700	24.700	24.700	24.700	
District of Columbia Courts	232.841	219.651	219.651	232.181	225.370	
Defender Services	55.000	49.890	49.890	49.890	50.000	
Court Services and Offender Supervision Agency	212.983	215.506	215.506	214.200	215.506	
Public Defender Service	37.241	39.376	39.376	38.282	39.376	
Criminal Justice Coordinating Council	1.800	1.800	1.800	1.800	1.800	
Judicial Commissions	0.500	0.500	0.500	0.500	0.500	
Water and Sewer Authority	15.000	11.500	11.500	11.500	15.000	
School Improvement	60.000	60.000	60.000	60.000	53.500	
<i>Public Schools</i>	36.600	36.600	36.600	20.000	20.000	
<i>Public Charter Schools</i>	23.400	23.400	23.400	20.000	20.000	
<i>Education Vouchers</i>	0.000	0.000	0.000	20.000	13.500	
<i>Community College</i>	0.000	0.000	0.000	0.000	0.000	
D.C. National Guard	0.375	0.500	0.500	0.375	0.500	
D.C. Comm. on Arts and Hum.	0.000	2.500	2.500	0.000	0.000	
Job Training Program	0.000	2.000	2.000	0.000	0.000	
St. Elizabeth Hospital Campus Redevelopment	0.000	9.800	9.565	9.800	9.800	
HIV/AIDS Prevention	5.000	5.000	5.000	0.500	5.000	
Special Federal Payments (total)	665.640	677.823	677.588	673.728	676.152	

Sources: FY2012 Enacted, FY2013 Request, and FY2013 committee recommendations are taken from the H.Rept. 112-550 accompanying H.R. 6020, the Financial Services and General Government Appropriations Act for FY2013, and S.Rept. 112-550, accompanying S. 3301, the Financial Services and General Government Appropriations Act, FY2013. Columns may not equal the total due to rounding.

Local Operating Budget

As noted previously, the District's General Fund Budget for FY2013, which was signed by the mayor on June 15, 2012, as A19-0381, was incorporated in both the House and Senate bills (H.R. 6020 and S. 3301) by reference for the purpose of congressional review and approval. The District's FY2013 General Fund Budget totaled \$11.4 billion, including \$9.4 billion for operating expenses and \$1.9 billion for enterprise funds (**Table 3**). Of the \$11.4 billion budgeted for operating expenses, \$998.2 million is projected to be derived from federal grants and \$1.672 billion from Medicaid payments.

Table 3. Division of Expenses: District of Columbia Funds: FY2013

(in millions of dollars)

	District	House	Senate	Final
General Fund				
Gov. Dir. & Support	631.986	—	—	
Econ. Dev. and Reg.	393.538	—	—	
Public Safety and Justice	1,112.704	—	—	
Public Education	1,956.869	—	—	
Human Support Services	3,767.381	—	—	
Public Works	601.757	—	—	
Financing and Other	951.575	—	—	
Gen. Oper. Exp.	9,415.810	9,415.810	9,415.810	
Enterprise Funds				
WASA	456.775	—	—	
Wash. Aqueduct	63.041	—	—	
Lottery	250.000	—	—	
Retirement Board	30.338	—	—	
Convention Center	115.711	—	—	
Housing Fin. Agency	8.735	—	—	
Univ. D.C.	169.270	—	—	
Library Trust Fund	0.017	—	—	
Unemploy. Ins. Trust Fund	480.000	—	—	
Housing Prod. Trust Fund	84.453	—	—	
Tax Increment Fin.	60.468	—	—	

Baseball Fund	83.961	—	—
Repayment of PILOT	15.993	—	—
Not-for-Profit Hospital Corp.	132.477	—	—
Tot. Enterp. Fund	1,951.239	—	—
Tot. Oper. Exp.	11,367.049	11,367.049	11,367.049
Capital Outlay			
Cap. Construction	1,702.797		
—Rescissions	609.739		
Tot. Cap. Outlay	1,093.058	1,093.058	1,093.058

General Provisions: Key Policy Issues

Needle Exchange

Whether to continue a needle exchange program or whether to use federal or District funds to address the spread of HIV and AIDS among intravenous drug abusers is one of several key policy issues that Congress faced in reviewing the District's appropriations for FY2013. The controversy surrounding funding a needle exchange program touches on issues of home rule, public health policy, and government sanctioning and facilitating the use of illegal drugs. Proponents of a needle exchange program contend that such programs reduce the spread of HIV among illegal drug users by reducing the incidence of shared needles. Opponents of these efforts contend that such programs amount to the government sanctioning illegal drugs by supplying drug-addicted persons with the tools to use them. In addition, opponents contend that public health concerns raised about the spread of HIV and AIDS through shared contaminated needles should be addressed through drug treatment and rehabilitation programs. Another view in the debate focuses on the issue of home rule and the city's ability to use local funds to institute such programs free from congressional restrictions.

The prohibition on the use of federal and District funds for a needle exchange program was first approved by Congress as Section 170 of the District of Columbia Appropriations Act for FY1999, P.L. 105-277. The 1999 act did allow private funding of needle exchange programs. The District of Columbia Appropriations Act for FY2001, P.L. 106-522, continued the prohibition on the use of federal and District funds for a needle exchange program; it also restricted the location of privately funded needle exchange activities. Section 150 of the District of Columbia Appropriations Act for FY2001 made it unlawful to distribute any needle or syringe for the hypodermic injection of any illegal drug in any area in the city that is within 1,000 feet of a public elementary or secondary school, including any public charter school. The provision was deleted during congressional consideration and thus from the District of Columbia Appropriations Act of FY2002, P.L. 107-96. The act also included a provision that allowed the use of private funds for a needle exchange program, but it prohibited the use of both District and federal funds for such activities. At present, one entity, Prevention Works, a private nonprofit AIDS awareness and education program, operates a needle exchange program. The FY2002 District of Columbia Appropriations Act required such entities to track and account for the use of public and private funds.

During consideration of the FY2004 District of Columbia Appropriations Act, District officials unsuccessfully sought to lift the prohibition on the use of District funds for needle exchange programs. A Senate provision, which was not adopted, proposed prohibiting only the use of federal funds for a needle exchange program and allowing the use of District funds. The House and final conference versions of the FY2004 bill allowed the use of private funds for needle exchange programs and required private and public entities that receive federal or District funds in support of other activities or programs to account for the needle exchange funds separately.

The Financial Services and General Government Appropriations Act for FY2008, P.L. 110-161, contained language that modified the needle exchange provision included in previous appropriations acts. The act allowed the use of District funds for a needle exchange program aimed at reducing the spread of HIV and AIDS among users of illegal drugs. The provision was a departure from previous appropriations acts which prohibited the use of both District and federal funds in support of a needle exchange program. In addition, the explanatory statement accompanying the act encouraged the George W. Bush Administration to include federal funding to help the city address its HIV/AIDS health crisis.

The President's budget proposal for FY2013 and House and Senate bills include language that would retain language included in the FY2012 appropriations act that allowed the use of District funds, but prohibited the use of federal funds, in support of a needle exchange program. However, the Obama Administration, in a Statement of Administration Policy issued on June 28, 2012, included language that urged the House to remove language prohibiting the use of federal funds in support of a needle exchange program arguing that current federal law allows the use of federal funds for such programs to prevent or limit the spread of HIV/AIDS among intravenous drug users.¹¹ The Senate bill includes a similar provision prohibiting the use of federal funds for a needle exchange program in the District.

Medical Marijuana

The city's medical marijuana initiative is another issue that engenders controversy. The District of Columbia Appropriations Act for FY1999, P.L. 105-277 (112 Stat. 2681-150), included a provision that prohibited the city from counting ballots of a 1998 voter-approved initiative that would have allowed the medical use of marijuana to assist persons suffering from debilitating health conditions and diseases, including cancer and HIV infection.

Congress's power to prohibit the counting of a medical marijuana ballot initiative was challenged in a suit filed by the D.C. Chapter of the American Civil Liberties Union (ACLU). On September 17, 1999, District Court Judge Richard Roberts ruled that Congress, despite its legislative responsibility for the District under Article I, Section 8, of the Constitution, did not possess the power to stifle or prevent political speech, which included the ballot initiative.¹² This ruling allowed the city to tally the votes from the November 1998 ballot initiative.

¹¹ Executive Office of the President, U.S. President (Obama), "Statement of Administration Policy: H.R. 6020 – Financial Services and General Government Appropriations Act, 2013," June 28, 2012, p. 4, http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/112/saphr6020r_20120628.pdf.

¹² Turner v. District of Columbia Board of Elections and Ethics, No. 98-2634 Civ. (D.D.C. Sept. 17, 1999; memorandum opinion).

To prevent the implementation of the initiative, Congress had 30 days to pass a resolution of disapproval from the date the medical marijuana ballot initiative (Initiative 59) was certified by the Board of Elections and Ethics. Language prohibiting the implementation of the initiative was included in P.L. 106-113 (113 Stat. 1530), the District of Columbia Appropriations Act for FY2000. Opponents of the provision contend that such congressional actions undercut the concept of home rule.

The District of Columbia Appropriations Act for FY2002, P.L. 107-96 (115 Stat. 953), included a provision that continued to prohibit the District government from implementing the initiative. Congress's power to block the implementation of the initiative was again challenged in the courts. On December 18, 2001, two groups, the Marijuana Policy Project and the Medical Marijuana Initiative Committee, filed suit in U.S. District Court, seeking injunctive relief in an effort to put another medical marijuana initiative on the November 2002 ballot. The District's Board of Elections and Ethics ruled that a congressional rider that has been included in the general provisions of each District appropriations act since 1998 prohibits it from using public funds to do preliminary work that would put the initiative on the ballot. On March 28, 2002, a U.S. district court judge ruled that the congressional ban on the use of public funds to put such a ballot initiative before the voters was unconstitutional.¹³ The judge stated that the effect of the amendment was to restrict the plaintiff's First Amendment right to engage in political speech. The decision was appealed by the Justice Department, and on September 19, 2002, the U.S. Court of Appeals for the District of Columbia Circuit reversed the ruling of the lower court without comment. The appeals court issued its ruling on September 19, 2002, which was the deadline for printing ballots for the November 2002 general election. On June 6, 2005, the Supreme Court, in a six-to-three decision, ruled that Congress possessed the constitutional authority under the Commerce clause to regulate or prohibit the interstate marketing of both legal and illegal drugs. This includes banning the possession of drugs in states¹⁴ and the District of Columbia that have decriminalized or permitted the use of marijuana for medical or therapeutic purposes.¹⁵

Since the passage of District of Columbia Appropriations Act for FY2010, subsequent appropriations acts have not included language prohibiting the use of District funds to regulate the medical use of marijuana. In 2010, the District of Columbia Council approved legislation (A18-0429) regulating the medical use of marijuana. Although the legislation was subject to 30-day congressional review period, which would have allowed it to pass a resolution of disapproval, Congress took no action to block its implementation. The legislation directed the city's Health Department to license up to five facilities to dispense medical marijuana to authorized patients. The first of those dispensaries is set to begin operations in the fall of 2012.

Both the House and Senate bills (H.R. 6020 and S. 3301) would continue to prohibit the use of federal funds to carry out any law or regulation that would legalize or reduce federal penalties associated with the use or distribution of any controlled substance, including the medical use of marijuana.

¹³ Marijuana Policy Project v. District of Columbia Board of Elections and Ethics, No. 01-2595 Civ. (D.D.C. Mar. 28, 2002; memorandum opinion, order and judgment).

¹⁴ Eleven states allow medical marijuana usage or limit the penalty for such use: Alaska, California, Colorado, Hawaii, Maine, Maryland, Montana, Nevada, Oregon, Vermont, and Washington.

¹⁵ *Gonzales v. Raich* 545 U.S. (2005). For additional information, see CRS Report RS22167, *Gonzales v. Raich: Congress's Power Under the Commerce Clause to Regulate Medical Marijuana*, by Todd B. Tatelman.

Abortion Provision

The public funding of abortion services for District of Columbia residents is a perennial issue debated by Congress during its annual deliberations on District of Columbia appropriations. District officials have cited the prohibition on the use of District funds as another example of congressional intrusion into local matters. Since 1979, with the passage of the District of Columbia Appropriations Act of 1980, P.L. 96-93 (93 Stat. 719), Congress has placed some limitation or prohibition on the use of public funds for abortion services for District residents. From 1979 to 1988, Congress restricted the use of federal funds for abortion services to cases where the woman's life was endangered or the pregnancy resulted from rape or incest. The District was free to use District funds for abortion services. When Congress passed the District of Columbia Appropriations Act for FY1989, P.L. 100-462 (102 Stat. 2269-9), it restricted the use of District and federal funds for abortion services to cases where the woman's life would be endangered if the pregnancy were taken to term. The inclusion of District funds, and the elimination of rape or incest as qualifying conditions for public funding of abortion services, was endorsed by President Reagan, who threatened to veto the District's appropriations act if the abortion provision was not modified.¹⁶ In 1989, President George H.W. Bush twice vetoed the District's FY1990 appropriations act over the abortion issue. He signed P.L. 101-168 (103 Stat. 1278) after insisting that Congress include language prohibiting the use of District revenues to pay for abortion services except in cases where the woman's life was endangered.¹⁷

The District successfully sought the removal of the provision limiting District funding of abortion services when Congress considered and passed the District of Columbia Appropriations Act for FY1994, P.L. 103-127 (107 Stat. 1350). The FY1994 act also reinstated rape and incest as qualifying circumstances allowing for the public funding of abortion services. The District's success was short-lived, however. The District of Columbia Appropriations Act for FY1996, P.L. 104-134 (110 Stat. 1321-91), and subsequent District of Columbia appropriations acts, limited the use of District and federal funds for abortion services to cases where the woman's life was endangered or cases where the pregnancy was the result of rape or incest.

In FY2010, with the passage of P.L. 111-117, Congress lifted the prohibition on the use of District funds for abortion services, but maintained the restriction on the use of federal funds for such services except in cases of rape, incest, or a threat to the life of the woman. The position was reversed with the passage of the appropriations acts for FY2011 (P.L. 112-10) and FY2012 (P.L. 112-74). Those acts included provisions restricting the use of both federal and District funds for abortion services, except in instances of rape, incest, or the woman's life was endangered if the pregnancy was carried to term.

The Obama Administration's FY2013 budget request includes a provision that would prohibit the use of federal funds for abortion services except in cases of rape, incest, or when the mother's life would be endangered if the pregnancy were carried to term, but did not include language that would restrict the use of District funds for abortion services. The Senate bill, S. 3301, supports the Administration position restricting the use of federal funds. The House bill, H.R. 6020,

¹⁶ "District Policies Hit Hard in Spending Bill," *Congressional Quarterly Almanac*, vol. XLIV (Washington: Congressional Quarterly, Inc., 1988), p. 713.

¹⁷ "D.C. Bill Vetoed Twice Over Abortion Funding," *Congressional Quarterly Almanac*, vol. XLV (Washington: Congressional Quarterly, Inc., 1989), p. 757.

includes language that would restrict the use of both federal and District funds for abortion services, except in instances of rape, incest, or the woman's life is endangered.

Two bills have advanced in the House that would ban or restrict the provision of abortion services in the District of Columbia. On May 4, 2012, the House passed H.R. 3, the No Taxpayer Funding for Abortions Act. The measure includes a provision, Section 309, that would permanently prohibit the use of federal and District funds for abortion services, except in instances of rape, incest, or a threat to the life of the woman.

On June 17, 2012, the House Judiciary Committee ordered reported H.R. 3803, the District of Columbia Pain-Capable Unborn Child Protection Act. The bill would permanently ban doctors and health facilities from performing abortions in the District after the 20th week of pregnancy, except when the pregnancy will result in the woman suffering from a physical disorder, injury, or illness that endangers her life. It would impose fines and imprisonment on doctors who violated the act and would allow the pregnant woman, the father of the unborn child, or maternal grandparents of a pregnant minor to bring a civil action against any person who performed an abortion after the 20th week of pregnancy. The act would require any physician that performs an abortion to report specific information to the relevant health agency in the District., including post-fertilization age of the fetus and the abortion method used. The District health agency is required to compile such information and issued an annual report to the public. The District's delegate to Congress, Eleanor Holmes Norton, though not allowed to testify before the Committee, spoke out against the measures as infringements on home rule.¹⁸

District of Columbia Opportunity Scholarship Program¹⁹

The Consolidated Appropriations Act for FY2004, P.L. 108-199, which combined six appropriations bills—including the FY2004 District of Columbia Appropriations Act—authorized and appropriated funding for the Opportunity Scholarship program, a federally funded school voucher program for the District of Columbia. The program provides scholarships (also known as vouchers) to students in the District of Columbia to attend participating private elementary and secondary schools, including religiously affiliated private schools. P.L. 108-199 also provided funding for the District of Columbia Public Schools (DCPS) for the improvement of public education and for the State Education Office for public charter schools. The provision of federal funds for DCPS, public charter schools, and vouchers is commonly referred to as the “three-prong approach” to supporting elementary and secondary education in the District of Columbia.

The Opportunity Scholarship program was subsequently reauthorized through the Scholarship for Opportunity and Results Act (division C of the Department of Defense and Full-Year Continuing Appropriations Act, 2011; P.L. 112-10). Appropriations for the program were authorized for FY2012 through FY2016 at \$60 million each year. P.L. 112-10 requires that appropriations provided for the program be divided evenly among DCPS for the improvement of public education, public charter schools to improve and expand quality public charter schools, and the Opportunity Scholarship program, regardless of the actual amount appropriated. Thus, the

¹⁸ Representative Eleanor Holmes Norton, “District of Columbia Pain-Capable Unborn Child Protection Act, H.R. 3803,” House debate, *Congressional Record*, July 31, 2012, p. H5445.

¹⁹ This section was authored by Rebecca Skinner and Erin Lomax. For more information on the DC Opportunity Scholarship Program, see CRS Report R40574, *District of Columbia Opportunity Scholarship Program: Implementation Status and Policy Issues*, by Rebecca R. Skinner and Erin D. Lomax.

reauthorized Opportunity Scholarship program continues to be included in a broader approach to supporting elementary and secondary education in the District of Columbia.

The Obama Administration's proposed budget for FY2013 included funds only for DCPS and public charter schools. No funds were requested to support the Opportunity Scholarship program.²⁰ S. 3301, as reported, would provide a total of \$53.5 million for a federal payment for school improvement. Rather than dividing these funds equally between the aforementioned three prongs, funds would be provided as follows: \$20 million for DCPS, \$20 million for public charter schools, and \$13.5 million for the Opportunity Scholarship program. H.R. 6020, as reported, would provide \$60 million for a federal payment for school improvement with \$20 million provided to each of the three prongs.

Author Contact Information

Eugene Boyd
Analyst in Federalism and Economic Development
Policy
eboyd@crs.loc.gov, 7-8689

²⁰ The request included \$36.6 million for DCPS and \$23.4 million for public charter schools to support facilities and other unmet needs. The Administration indicated that funds were not needed for the Opportunity Scholarship program as funds remaining from prior fiscal years were sufficient to support voucher recipients through the 2013-2014 school year and to make new awards to replace spaces that become available due to attrition. (Office of Management and Budget, *Fiscal Year 2013 Appendix, Budget of the U.S. Government*, 2012, pp. 1317-1318, <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2013/assets/appendix.pdf>.)