



CRS Report for Congress

District of Columbia School Reform Proposals: Congress's Possible Role in the Charter Amendment Process

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Summary

On January 5, 2007, the newly elected mayor of the District of Columbia, Adrian Fenty, released his legislative proposal to transfer administrative and budgetary control of the District's public schools to the Office of the mayor from the Board of Education. The mayoral takeover would require a change in the District's home rule charter and congressional review and approval. This report will (1) outline the two legislative options (amending the charter by referendum or by an act of Congress) available to the mayor as he seeks to win approval of his public education reform proposal; and (2) identify what role Congress could play in the outcome of each option.

On January 5, 2007, Adrian Fenty, the mayor of the District Columbia, released a detailed legislative proposal that would transfer administrative, policy making, and budgetary authority for the District of Columbia's public schools from the District of Columbia Board of Education to the mayor. The proposal, "The District of Columbia Public Education Reform Amendment Act of 2007," which was introduced one day after the mayor was sworn in, would require a change in the District's home rule charter and congressional review.¹ Key elements of the proposal would

- create a new cabinet-level department for public school education to be managed by a "Chancellor of the District of Columbia Public Schools," appointed by the mayor with the advice and consent of the city council;
- reduce the authority and power of the Board of Education from an independent governing and policymaking entity to an advisory body to the mayor; and

¹ On January 5, 2007, City Council Chairman Vincent Gray, by request of the mayor, introduced the District of Columbia Public Education Reform Amendment Act of 2007 (B17-0001), available at [<http://www.dccouncil.washington.dc.us/images/00001/20070110123820.pdf>].

- transfer the current Board of Education charter-school authority to the State Education Office.²

Home Rule Congressional Authority

Congress's authority to review, amend, and approve or disapprove the mayor's education proposal is derived from the "District Clause" of the Constitution, which states that Congress has the power

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States³

In 1973, Congress passed the District of Columbia Self-Government and Governmental Reorganization Act, P.L. 93-198 (Home Rule Act),⁴ which granted the District citizens an elected form of government with limited home rule.⁵ The Home Rule Act gave District voters the right to elect a mayor, a city council, and an independent Board of Education.⁶ It also outlined a charter amendment process and retained Congress's constitutional authority to legislate within the District. This retention of constitutional authority is recognized in the Home Rule Act⁷ and the D.C. Code, which states

§ 1-206.01 **Retention of constitutional authority.** Notwithstanding any other provision of this chapter, the Congress of the United States reserves the right, at any time, to exercise its constitutional authority as legislature for the District, by enacting legislation for the District on any subject, whether within or without the scope of legislative power granted to the council by this chapter, including legislation to amend or repeal any law in force in the District prior to or after enactment of this chapter and any act passed by the city council.

The District's Charter Amendment Process

The mayor has two options he may use to win approval of his proposal to amend the District's home rule charter: (1) a charter amendment using the referendum process as outlined in the Home Rule Act;⁸ and (2) a charter amendment initiated by Congress.

Charter Amendment by Referendum. Table 1, Charter Amendment by Referendum, outlines the legislative process to be followed when seeking to amend the

² For the purpose of meeting requirements for federal education assistance, the District is defined as a state.

³ Art. 1, Sec. 8, clause 17.

⁴ 87 Stat. 774.

⁵ From 1967 to 1974, the District was governed by a presidentially appointed mayor and council.

⁶ Voters approved by referendum vote the Home Rule Act on May 7, 1974.

⁷ 87 Stat. 813.

⁸ 87 Stat. 784.

Home Rule Act by referendum. This process would require the approval of the city council, ratification by the voters, and congressional review.

Table 1. Charter Amendment by Referendum

Step 1	Introduction of the Proposal. The mayor's proposal is introduced, by request, by a member of the city council. ⁹
Step 2	City Council Consideration. The city council may consider, amend, and pass the bill, or it may reject the proposal.
Step 3	Voter Referendum. If the bill is approved by the council and signed by the mayor, the Board of Elections and Ethics is required to prepare a referendum ballot to be put before the voters of the District. The referendum must be considered by the voters within five months of the bill's enactment by the city council. The charter-amending referendum must be approved by a majority of the voting electorate.
Step 4	Certification of Referendum Vote. The results of the referendum must be certified by the Board of Elections and Ethics.
Step 5	Congressional Review. Congress has 35 legislative days (days when either House or Senate is in session) or until the date prescribed by the proposed charter amendment to pass a joint resolution of disapproval. The absence of such a resolution may be interpreted as congressional approval of the charter amendment. Alternatively, Congress may waive the congressional review period. ¹⁰

Congress's Possible Role. If the mayor won city council and voter approval to amend the home rule charter, the Home Rule Act would allow a period for congressional review and consideration. Congress would have four options:

- It could pass a resolution of disapproval within 35 legislative days of the Board of Election and Ethics certifying that the proposed charter amendment had been approved by a majority of the voting electorate. Such a resolution would have the effect of voiding the outcome of the referendum and could be considered by some observers as an affront to home rule, while others could point out that it is within Congress's constitutional authority.
- It might do nothing, allowing the 35 legislative days to pass. By its inaction, Congress would allow the outcome of the referendum to take effect.

⁹ The bill was introduced by the Chair of the City Council, Vincent Gray, by request of the mayor, and was designated B17-0001.

¹⁰ Congress still may amend or prevent implementation of the charter amendment after the 35-day review period by attaching a provision to the District's annual appropriations act.

- It could pass legislation waiving the 35 legislative days review period, thus expediting the effective date of the charter amendment. Congress passed such a waiver in 2000, after voters approved, by referendum, an amendment to the home rule charter governing the composition of the Board of Education.¹¹
- It could use the appropriations process to demonstrate its opposition to measures approved by the city council and the citizens of the District if it were unable to pass a resolution of disapproval during the 35-day congressional review period. For instance, Congress has included in general provisions sections of past District of Columbia appropriation acts language preventing the District from implementing a voter-approved medical marijuana initiative.¹²

Charter Amendment by Congress. The second option available to the mayor would allow him to bypass the District’s regular legislative process. Instead, he could seek a congressional sponsor to introduce legislation that would amend the city’s home rule charter.¹³

Table 2. Charter Amendment by Congress

Step 1	Introduction of Legislative Proposal. Mayor finds a congressional sponsor who submits proposal.
Step 2	Congressional Consideration. Congress, through its normal legislative process, considers the proposal and amends the District of Columbia Home Rule Act, P.L. 93-198.
Step 3	Enactment. Bill signed by the President and becomes law.

Congress’s Possible Role. A proposal originating in Congress to change the home rule charter would not necessarily result in an expedited process. The controversial nature of the proposal could subject it to the regular legislative process, including hearings, markups, committee reports, House and Senate votes, and a conference

¹¹ The School Governance Charter Amendment Act of 2000, D.C. Law 13-159, was adopted by the city council on February 17, 2000; signed by the mayor on March 1, 2000; and approved by District voters in a referendum ballot on June 27, 2000. The results were certified by the Board of Elections and Ethics on July 7, 2000. Congress waived its 35 legislative days review period when it passed the Congressional Waiver of the School Governance Charter Amendment Act of 2000, P.L. 106-226 (114 Stat. 459), allowing D.C. Law 13-159 to take effect immediately.

¹² 119 Stat. 2521.

¹³ Should the mayor pursue this option in an effort to expedite the process, he would risk criticism for shortchanging the principle of home rule, since neither District residents nor the District’s legislative body, the city council, would have a vote in the final decision. Some observers have commented that such an exclusion of the city council and District voters in deciding the future of a critical public service — public education — might prove awkward for the Fenty administration as it pressed Congress on other home rule issues, such as budget autonomy, voting rights, and the elimination of social riders from the District’s appropriations bills.

agreement. The approved proposal could look significantly different from the proposal introduced on behalf of the mayor.

Congressionally initiated efforts to amend the home rule charter are not without precedent. In 1995, Congress amended the home rule charter when it passed the District of Columbia School Reform Act, which was included as Title II of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, P.L. 104-134. Title II authorized the creation of public charter schools in the District.¹⁴ In 2004, Congress again considered and passed legislation amending the home rule charter when it included the DC School Choice Incentive Act of 2003 in the Consolidated Appropriations Act of 2004, P.L. 108-199. The DC School Choice Incentive Act created the private school voucher program.¹⁵ It should be noted that both of these programs were included as titles in District of Columbia appropriations acts.

¹⁴ 110 Stat. 1321-107.

¹⁵ 118 Stat. 126.