

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**OFFICE OF THE CHIEF FINANCIAL OFFICER**



**Jeffrey S. DeWitt**  
Chief Financial Officer

April 11, 2014

The Honorable Phil Mendelson  
Chairman  
Council of the District of Columbia  
1350 Pennsylvania Avenue, NW, Suite 504  
Washington, DC 20004

**Subject: Local Budget Autonomy Act**

Dear Chairman Mendelson:

On several occasions, you and I have discussed the legal validity of the Local Budget Autonomy Act of 2012 (Act), which was approved by the voters of the District of Columbia (District) in April, 2012. As you know, the Act would change the District Home Rule Act by extending the deadline by which the Council of the District of Columbia (Council) must approve the District's annual budget. It also authorizes the Council to submit the local portion of the District's budget directly to the U.S. Congress, instead of to the Mayor who, if the Home Rule Act was not changed, is required to send the budget to the President of the United States for his transmittal to Congress. Like you and many others, I support the principle of budget autonomy for the District. I am also committed to following the rule of law in carrying out my duties as the District's Chief Financial Officer.

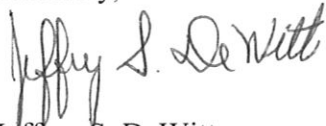
The Council's legal staff deemed the Act legally sufficient, as did opinions from private counsel for DC Appleseed. In addition, two Board members of the D.C. Board of Elections found that the Act was "not patently illegal." Conversely, the District's Attorney General, in his January 7, 2013 statement before the District Board of Elections, concluded that the Act violated our governing law, and he reiterated his conclusion in his formal Opinion of the Attorney General dated April 8, 2014. The General Counsel to the U.S. Government Accountability Office came to the same conclusion. Given the importance of this matter and the variety of legal opinions, I asked lawyers for the Office of the Chief Financial Officer (OCFO) to review the Act. After their independent and exhaustive review of relevant federal and local statutes, case law, legislative history and the competing viewpoints, OCFO lawyers have concluded that there is no legal validity to the Act.

Accordingly, I urge the Council to weigh the risks to both the District and its employees if the Council approves the District's Fiscal Year (FY) 2015 budget under the Act's provisions amending the Home Rule Act's appropriations procedures. I am very concerned that any budget approved in this manner will not be legal unless Congress decides to approve it or a court of competent jurisdiction sustains the Act's legal validity. Absent such actions, I will not make or authorize any payment pursuant to a budget that was approved in conformance with the Act. I will also direct OCFO employees not to certify contracts or make payments under this budget given the potential civil and criminal penalties to which they, as individuals, would be subject under the federal Anti-Deficiency Act. In this regard, any contracts entered into in violation of the Anti-Deficiency Act would be void ab initio such that OAG may not be able to provide legal sufficiency for and the OCFO would not be able to make payment pursuant to these contracts. Finally, I must caution that the Council's failure to approve a District budget pursuant to pre-Act Home Rule Act provisions may cause the occurrence of one or more events (such as failure to meet District government payroll, or make pension benefit or interstate compact payments) that would trigger the re-emergence of the Control Board and result in loss of the precious, limited Home Rule currently provided to District residents.

Given the potential for these serious adverse consequences to the District and its officers and employees, I strongly advise you to take all necessary steps to avoid occurrence of the events described above. Specifically, until and unless Congress affirmatively grants budget autonomy or there is a binding judicial decision finding that the Act is valid, I ask that you and your fellow Councilmembers approve the District's FY 2015 budget pursuant to the Home Rule Act's original, pre-Act procedures while we work together with the Mayor to resolve this matter. As always, I am open to further discussion with you about this matter.

If you have any questions, please feel free to call me at (202) 727-2476.

Sincerely,



Jeffrey S. DeWitt  
Chief Financial Officer

cc: Mayor Vincent C. Gray  
All Councilmembers  
Irvin B. Nathan