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Item Veto and Expanded Impoundment Proposals: History and Current Status

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Summary

Conflicting budget priorities of the President and Congress accentuate the institutional tensions between the executive and legislative branches inherent in the federal budget process. Impoundment, whereby a President withholds or delays the spending of funds appropriated by Congress, provides an important mechanism for budgetary control during budget implementation in the executive branch; but Congress retains oversight responsibilities at this stage as well. Many Presidents have called for an item veto, or possibly expanded impoundment authority, to provide them with greater control over federal spending.

The Impoundment Control Act of 1974 (Title X of P.L. 93-344), established two categories of impoundments: deferrals, or temporary delays in funding availability; and rescissions, or permanent cancellation of budget authority. With a rescission, the funds must be made available for obligation unless both houses of Congress take action to approve the President's rescission request within 45 days of "continuous session."

Consideration of impoundment reform increasingly became joined with that of an item veto for the President. While Constitutional amendment proposals have not disappeared (see H.J.Res. 15 and S.J.Res. 22), many who originally favored an item veto constitutional amendment turned to expanded rescission authority for the President as a functionally similar mechanism achievable more easily by statutory change.

The Line Item Veto Act was signed into law on April 9, 1996 (P.L. 104-130), and it became effective January 1, 1997. Key provisions allowed the President to cancel any dollar amount of discretionary budget authority, any item of new direct spending, or certain limited tax benefits contained in any law, unless disapproved by Congress. On June 25, 1998, the Supreme Court, in the case of *Clinton v. City of New York,* held the law unconstitutional on the grounds that it violated the presentment clause; in order to grant the President true item veto authority, a constitutional amendment would be needed (according to the majority opinion).

Measures seeking to provide a constitutional alternative to the 1996 law have been introduced in each subsequent Congress. In the 109th Congress, the House passed H.R. 4890, the Legislative Line Item Veto Act of 2006, by a vote of 247-172, but no further action on the measure occurred before the 109th Congress adjourned.

Several measures have been introduced in the 111th Congress that would establish expedited rescission procedures, including H.R. 1294, H.R. 1390, H.R. 4921, S. 524, S. 640, S. 907, and S. 3423. Other proposals would provide for expedited rescission along with various other budget process reforms, such as increased earmark accountability or spending controls. In the 111th Congress, H.R. 3268, H.R. 3964, S. 1808, and S. 3026 provide examples of such omnibus budget process bills. Two Constitutional amendment proposals have been introduced, H.J.Res. 15 and S.J.Res. 22. The Obama Administration has endorsed an expedited process for congressional consideration of rescission requests and announced on May 24, 2010, the transmittal of a proposal to Congress, titled Reduce Unnecessary Spending Act of 2010. The Administration bill has been introduced as H.R. 5454 and S. 3474. In the 111th Congress, three committees have held hearings on expedited rescission measures, the most recent being on June 17, 2010, by the House Budget Committee. This report will be updated as events warrant.

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Background

Debate about the appropriate relationship between the branches in the federal budget process seems inevitable, given the constitutional necessity of shared power in this sphere. Under the Constitution, Congress possesses the "power of the purse" ("No money shall be drawn from the Treasury but in consequence of appropriations made by law"), but the President enjoys broad authority as the chief executive who "shall take care that the laws be faithfully executed."

The Constitution is silent concerning the specifics of a budget system for the federal government. Informal procedures sufficed for many years. The Budget and Accounting Act of 1921 (P.L. 67-14) for the first time required the President to submit a consolidated budget recommendation to Congress. To assist in this task, the act also created a new agency, the Bureau of the Budget, "to assemble, correlate, revise, reduce, or increase the estimates of the several departments or establishments." In 1970, the budget agency was reconstituted as the Office of Management and Budget (OMB).[1] OMB also plays an important role later in the budget process when funds are actually spent as appropriations laws are implemented. Impoundment of funds by the President represents an important component in this stage of budget execution.

Presidential impoundment actions have sometimes been controversial. The subject of granting the President item veto authority, akin to that exercised by 43 governors, also has elicited considerable debate. With an item veto, the executive can delete specific provisions in a piece of legislation presented for signature, and then proceed to sign the measure into law.[2]

Brief History of Impoundment

Impoundment includes any executive action to withhold or delay the spending of appropriated funds. One useful distinction among impoundment actions, which received statutory recognition in the 1974 Impoundment Control Act, focuses on duration: whether the President's intent is permanent cancellation of the funds in question (rescission) or merely a temporary delay in availability (deferral).

Another useful contrast distinguishes presidential deferrals for routine administrative reasons from deferrals for policy purposes. Virtually all Presidents have impounded funds in a routine manner as an exercise of executive discretion to accomplish efficiency in management. The creation of budgetary reserves as a part of the apportionment process required by the Antideficiency Acts (31 U.S.C. 1511-1519) provided formal structure for such routine impoundments, which originated with an administrative regulation issued in 1921 by the Bureau of the Budget and then received a statutory base in 1950.[3] Impoundments for policy reasons, such as opposition to a particular program or a general desire to reduce spending, whether short-term or permanent, have proved far more controversial.

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[1] For background on the 1921 law, the Bureau of the Budget, and the creation of OMB, see Larry Berman, *The Office of Management and Budget and the Presidency, 1921-1979* (Princeton, NJ: Princeton University Press, 1979); and Frederick C. Mosher, *A Tale of Two Agencies* (Baton Rouge, LA: Louisiana State University Press, 1984). For a brief introduction to OMB at present, see CRS Report RS21665, *Office of Management and Budget (OMB): A Brief Overview*, by Clinton T. Brass.

[2] Various statutory alternatives such as expedited rescission are sometimes referred to as giving the President a "line item veto." This usage is not technically correct, but serves to call attention to some functional similarities between the two mechanisms.

[3] See Budget and Accounting Procedures Act of 1950, P.L. 81-784, 64 Stat. 2317.

Controversies Increase

Instances of presidential impoundment date back to the early nineteenth century, but Presidents typically sought accommodation rather than confrontation with Congress.[4] In the 1950s and 1960s, disputes over the impoundment authority resulted from the refusal of successive Presidents to fund certain weapons systems to the full extent authorized by Congress. These confrontations between the President and Congress revolved around the constitutional role of commander-in-chief and tended to focus on relatively narrow issues of weapons procurement. President Johnson made broader use of his power to impound by ordering the deferral of billions of dollars of spending during the Vietnam war in an effort to restrain inflationary pressures in the economy. While some impoundments during these periods were motivated by policy concerns, they typically involved temporary spending delays, with the President acting in consultation with congressional leaders, so that a protracted confrontation between the branches was avoided.

Conflict over the use of impoundments greatly increased during the Nixon Administration and eventually involved the courts as well as Congress and the President. In the 92nd and 93rd Congresses (1971-1974), the confrontation intensified as the President sought to employ the tool of impoundment to reorder national priorities and alter programs previously approved by Congress. Following President Nixon's reelection in 1972, the Administration announced major new impoundment actions affecting a variety of domestic programs. For example, a moratorium was imposed on subsidized housing programs, community development activities were suspended, and disaster assistance was reduced. Several farm programs were likewise targeted for elimination. Perhaps the most controversial of the Nixon impoundments involved the Clean Water Act funds. Court challenges eventually reached the Supreme Court, which in early 1975 decided the case on narrower grounds than the extent of the President's impoundment authority.[5]

Impoundment Control Act of 1974

During these impoundment conflicts of the Nixon years, Congress responded not only with ad hoc efforts to restore individual programs, but also with gradually more restrictive appropriations language. Arguably, the most authoritative response was the enactment of the Impoundment Control Act (ICA), Title X of the Congressional Budget and Impoundment Control Act of 1974.[6] As a result of a compromise in conference, the ICA differentiated deferrals, or temporary delays in funding availability, from rescissions, or permanent cancellations of designated budget authority, with different procedures for congressional review and control of the two types of impoundment.[7] The 1974 law also required the President to inform Congress of all proposed rescissions and deferrals and to submit specified information regarding each. The ICA further

[4] For a history of presidential impoundment before 1974, see Louis Fisher, *Presidential Spending Power* (Princeton, NJ: Princeton University Press, 1975), pp. 147-201; and Ralph S. Abscal and John R. Kramer, "Presidential Impoundment Part I: Historical Genesis and Constitutional Framework," *Georgetown Law Journal*, vol. 62 (July 1974), pp. 1549-1618.

[5] *Train* v. *City of New York*, 420 U.S. 35 (1975). For further discussion regarding the role of the courts in the impoundment disputes during the Nixon Administration, see James P. Pfiffner, *The President, the Budget, and Congress: Impoundment and the 1974 Budget Act* (Boulder, CO: Westview Press, 1979), pp. 77-108.

[6] P.L. 93-344, 88 Stat. 332. The ICA became effective upon signing of the law on July 12, 1974 . For further discussion of the impoundment conflicts and the legislative history of the 1974 law, see Allen Schick, *Congress and Money* (Washington, DC: The Urban Institute, 1980), pp. 17-81.

[7] According to one account, "Written by the staff members who put together the final version of budget reform, Title X was a novel combination of the House and Senate versions of the impoundment control bills." See Joel Havemann, *Congress and the Budget* (Bloomington, IN: Indiana University Press, 1978), pp. 178-179.

required the Comptroller General to oversee executive compliance with the law and to notify Congress if the President failed to report an impoundment or improperly classified an action.

The original language allowed a deferral to remain in effect for the period proposed by the President (not to exceed beyond the end of the fiscal year so as to become a de facto rescission) unless either the House or the Senate took action to disapprove it. Such a procedure, known as a one-house legislative veto, was found unconstitutional by the Supreme Court in *INS v. Chadha* (462 U.S. 919 (1983)). In May 1986 a federal district court ruled that the President's deferral authority under the ICA was inseverable from the one-house veto provision and hence was null; the lower court decision was affirmed on appeal in *City of New Haven v. United States* (809 F.2d 900 (D.C.C. 1987)).

In the case of a rescission, the ICA provided that the funds must be made available for obligation unless both houses of Congress take action to approve the rescission request within 45 days of "continuous session" (recesses of more than three days not counted). In practice, this usually means that funds proposed for rescission not approved by Congress must be made available for obligation after about 60 calendar days, although the period can extend to 75 days or longer. Congress may approve all or only a portion of the rescission request. Congress may also choose after the 45-day period to rescind funds previously requested for rescission by the President. Congress does rescind funds never proposed for rescission by the President, but such action is not subject to the ICA procedures.

The ICA establishes no procedures for congressional disapproval of a rescission request during the 45-day period. However, some administrations have voluntarily followed a policy of releasing funds before the expiration of the review period, if either the House or the Senate authoritatively indicates that it does not intend to approve the rescission.

In the fall of 1987, as a component of legislation to raise the limit on the public debt (P.L. 100-119), Congress enacted several budget process reforms. Section 207 prohibited the practice, sometimes used by Presidents when Congress failed to act on a rescission proposal within the allotted period, of submitting a new rescission proposal covering identical or very similar matter. By using such resubmissions, the President might continue to tie up funds even though Congress, by its inaction, had already rejected virtually the same proposal. The prohibition against such seriatim rescission proposals contained in the 1987 law applies for the duration of the appropriation, so that it may remain in effect for two or more fiscal years. Section 206 of P.L. 100-119 served to codify the decision in the *New Haven* case, allowing deferrals to provide for contingencies, to achieve savings made possible through changes in requirements or efficiency of operations, or as provided in statute. The ICA as amended no longer sanctions policy deferrals.[8]

Alternative to an Item Veto

The U.S. Constitution provides that the President may either sign a measure into law or veto it in its entirety. However, constitutions in 43 states provide for an item veto (usually confined to appropriation bills), allowing the governor to eliminate discrete provisions in legislation presented for signature. Ten states allow the governor to reduce amounts as well as eliminate items, and seven states have an "amendatory" veto, permitting the governor to return legislation with specific suggestions for change.[9]

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[8] "Conference Report on House Joint. Resolution 324," (H.Rept. 100-313), *Congressional Record*, vol. 133, Sept. 21, 1987, p. 24655.

[9] See U.S. Congress, House Committee on Rules, *Item Veto: State Experience and its Application to the Federal*

The first proposal to provide the President with an item veto was introduced in 1876. President Grant endorsed the mechanism, in response to the growing practice in Congress of attaching "riders," or provisions altering permanent law, to appropriations bills. Over the years many bills and resolutions (mainly proposed constitutional amendments) have been introduced, but action in Congress on item veto proposals, beyond an occasional hearing, has been limited. In 1938 the House approved an item veto amendment to the independent offices appropriations bill by voice vote, but the Senate rejected the amendment. Contemporary proposals for item veto are usually confined to bills containing spending authority, although not necessarily limited to items of appropriation.

In the 101st Congress, the Senate Judiciary Subcommittee on the Constitution held a hearing on proposed constitutional amendments permitting an item veto on April 11, 1989, and reported two such amendments, without recommendation, on June 8. S.J.Res. 14 would have allowed the President to veto only selected items in an appropriations bill, while S.J.Res. 23 would have authorized him to disapprove or reduce any item of appropriation, excluding legislative branch items. On April 26, 1990, the full Judiciary Committee voted 8-6 to report both measures favorably, but the report was not filed until September 19, 1990.[10]

In the 102nd Congress, the House voted on language providing item veto authority for the President. On June 11, 1992, during debate on H.J.Res. 290, proposing a constitutional amendment requiring a balanced budget, the House rejected by vote of 170-258 an amendment by Representative Kyl (H.Amdt. 602). The Kyl proposal sought to allow the President to exercise item veto authority in signing any measure containing spending authority (broadly defined), limit total outlays for a fiscal year to 19% of the gross national product of that year, and require a three-fifths vote of the Congress to approve any additional funds.[11]

Some contended that the President already had item veto authority as a part of his constitutional powers. An article by Stephen Glazier, appearing in the *Wall Street Journal* on December 4, 1987, advocated this position. While a minority interpretation, this view claims some notable supporters.[12] The Senate Judiciary Committee's Subcommittee on the Constitution held a hearing on June 15, 1994, to receive testimony on the subject.

Some continue to believe that a statutory framework (different from the Line Item Veto Act of 1996) may yet be devised to give the President authority akin to an item veto without the necessity of a constitutional amendment. One statutory alternative entails bills incorporating the separate enrollment approach, which stipulate that each item of an appropriations bill be enrolled as a separate bill. Since 1985 such separate enrollment measures have been introduced repeatedly in the Senate. The Dole amendment to S. 4 in the 104th Congress, as passed by the Senate in March 1995 (S.Amdt. 347), incorporated the separate enrollment approach. In the 109th Congress, H.R. 4889 likewise reflects this approach.

Situation, committee print, 99th Cong., 2nd sess., Dec. 1986 (Washington: GPO, 1986), pp. 47-49. Since that compilation was printed, the Maine Constitution has been amended to grant the governor item veto authority.

[10] U.S. Congress, Senate Committee on the Judiciary, Subcommittee on the Constitution, *Line Item Veto*, hearing on S.J.Res. 14, S.J.Res. 23, and S.J.Res. 31, 101st Cong., 1st sess., Apr. 11, 1989 (Washington: GPO, 1991); and *Line-Item Veto*, report to accompany S.J.Res. 14 and S.J.Res. 23, 101st Cong., 1st sess., S.Rept. 101-466 (Washington: GPO, 1990).

[11] See CRS Report RL30223, *Presidential Rescission Authority: Efforts to Modify the 1974 Framework*, by Virginia A. McMurtry.

[12] This interpretation was explored at a symposium held in 1988. See *Pork Barrels and Principles: the Politics of the Presidential Veto*, by Charles J. Cooper et al. (Washington: National Legal Center, 1988).

Evolution of Expanded Rescission Proposals

Consideration of impoundment reform became increasingly joined with the idea of an item veto. During the Ford and Carter Administrations, the provisions of the ICA proved relatively noncontroversial. Dissatisfaction increased during the Reagan Administration. President Reagan, in his 1984 State of the Union message, specifically called for a constitutional amendment to grant item veto authority, which he considered to be a "powerful tool" while governor of California. In his last two budget messages, President Reagan included enhanced rescission authority among his budget process reform proposals. President George H. W. Bush also endorsed the idea of expanded rescission authority and an item veto for the President. During the 1992 campaign, then-Governor Bill Clinton advocated a presidential item veto, and he subsequently endorsed enhanced rescission authority. During the 2000 campaign George W. Bush went on record in support of expanded rescission authority, and as President, he has repeatedly called for some kind of item veto authority.[13]

Instead of granting true item veto authority to the President via a constitutional amendment, efforts came to focus on modifying the framework for congressional review of rescissions by the President. Legislative activity directed toward granting the President expanded rescission authority extended over several years. Such statutory alternatives sometimes have been referred to as giving the President a "line item veto"; while the nomenclature is not technically correct, it does call attention to some functional similarities.

In examining impoundment reform legislation, the distinction often has been drawn between "enhanced" and "expedited" rescission proposals. With enhanced rescission, the intent is to reverse the "burden of action" and thereby create a presumption favoring the President. Such proposals usually stipulate that budget authority identified in a rescission message from the President is to be permanently canceled unless Congress acts to disapprove the request within a prescribed period. In contrast, the expedited rescission approach focuses on procedural changes in Congress to require an up or down vote on certain rescission requests from the President. Such measures contain expedited procedures to ensure prompt introduction of a measure to approve the rescission, fast report by committee or automatic discharge, special limits on floor amendments and debate, and so on. Under expedited rescission, congressional approval would still be necessary to cancel the funding, but it would become difficult to ignore proposed rescissions and hence to reject them by inaction.

Some bills are "hybrids," reflecting a combination of item veto and rescission language and sometimes features of both expedited and enhanced approaches to rescission reform as well. H.R. 2 in the 104th Congress (and ultimately, P.L. 104-130) represented such hybrids.

Toward the end of the 102nd Congress, H.R. 2164, characterized by its supporters as a compromise rescission reform measure agreeable to most sponsors of the other measures as well, had over 220 cosponsors. For the first time an expanded rescission measure received favorable floor action, when H.R. 2164 gained House approval on October 3, 1992, by vote of 312-97. The measure would have established procedures for expedited congressional consideration of certain rescission proposals from the President submitted not later than three days after signing an appropriations act. Under the measure, the proposed rescission could not reduce a program below

[13] For an examination of ICA rescission proposed by the respective Presidents, see CRS Report RL33869, *Rescission Actions Since 1974: Review and Assessment of the Record*, by Virginia A. McMurtry.

the budget level of the previous year or by more than 25% for new programs. Funds would have become available after a vote in Congress to reject the proposed rescission.[14]

Consideration of expanded rescission bills resumed in the 103rd Congress. On two separate occasions, the House passed expedited rescission measures. Meanwhile, on March 25, 1993, the Senate adopted two sense of the Senate amendments relating to rescission reform as a part of the Budget Resolution for FY1994. The conference version retained a single sense of the Senate provision in this regard, stating the "President should be granted line-item veto authority over items of appropriations and tax expenditures" to expire at the end of the 103rd Congress. H.Con.Res. 218, the Budget Resolution for FY1995, as adopted in May 1994, also contained sense-of-the-House provisions regarding enactment of certain budget process legislation, including expedited rescission authority for the President.[15]

Enactment of the Line Item Veto Act of 1996

Action on an expanded rescission measure commenced early in the 104th Congress. This reflected the results of the November midterm elections, which returned a Republican majority to both the House and Senate. On September 28, 1994, many House Republican Members and candidates signed the *Republican Contract with America*, which pledged action on a number of measures, including a "legislative line item veto," within the first 100 days, should a Republican majority be elected.

Hearings began on January 12, 1995, when the Senate Committee on Governmental Affairs and the House Committee on Government Reform and Oversight held a joint hearing on H.R. 2, to give the President legislative line item veto authority. On January 18, the Senate Budget Committee held a hearing on related measures (S. 4, S. 14, and S. 206). The Senate Judiciary Subcommittee on the Constitution held a hearing on January 24 to consider constitutional amendment proposals. On January 25, the House Committee on Government Reform and Oversight ordered H.R. 2 reported, as amended, and the next day the House Rules Committee likewise reported a further amended version of H.R. 2.[16]

House floor consideration of H.R. 2 commenced on February 2, 1995, on the version of H.R. 2 reported as an amendment in the nature of a substitute, with an open rule and over 30 amendments pending. The House debated the measure for three days during which time six amendments were approved and 11 amendments were rejected, along with a motion to recommit with instructions. On February 6, 1995, the House passed H.R. 2, as amended, by vote of 294-134. The date of passage had special meaning, as it was the 84th birthday of former President Ronald Reagan, long a supporter of an item veto for the President.

On February 14, 1995, the Senate Budget Committee held markup on pending rescission measures. The committee ordered S. 4, as amended, reported without recommendation, by vote of 12-10. S. 14 was also ordered reported without recommendation, with an amendment in the nature of a substitute further amended, by vote of 13-8.[17] The committee failed to order reported

[14] CRS Report RL30223, *Presidential Rescission Authority: Efforts to Modify the 1974 Framework*, by Virginia A. McMurtry, p. 8.

[15] Ibid., pp. 9-10.

[16] U.S. Congress, House Committee on Government Reform and Oversight, *Line Item Veto Act*, report to accompany H.R. 2, 104th Cong., 1st sess., H.Rept. 104-11, part 2 (Washington: GPO, 1995); and House Committee on Rules, *Line Item Veto Act*, report to accompany H.R. 2, 104th Cong., 1st sess., H.Rept. 104-11, part 1 (Washington: GPO, 1995).

[17] U.S. Senate, Committee on the Budget, *Legislative Line Item Veto Act of 1995*, report to accompany S. 4, 104th

proposed legislation to create a legislative item veto by requiring separate enrollment of items in appropriations bills and targeted tax benefits in revenue bills.

On February 23, 1995, the Senate Governmental Affairs Committee held a hearing on S. 4 and S. 14. There had been a joint hearing with the House Government Reform and Oversight Committee on January 12, but some Senators on the committee, including the ranking minority member, maintained that the additional hearing day was needed because they had been unable to attend in January, due to competing duties that day on the Senate floor. On March 2, 1995, the Governmental Affairs Committee held markup, with similar results as occurred in the Budget Committee: both bills were ordered reported without recommendation.[18] S. 4 was ordered reported by voice vote; previously the Stevens amendment to the Glenn motion to report carried by vote of 9-6. During markup of S. 14, the Pryor amendment to exempt budget authority for the operations of the Social Security Administration from expedited rescission was adopted by voice vote. S. 14 was then ordered reported by vote of 13-2.

In the Senate, general debate on the subject of item veto began on March 16; it continued on March 17 and on March 20 until late in the afternoon, when floor consideration of S. 4 began. The Republican leaders in the Senate reportedly delayed consideration of legislative line item veto bills in hopes of developing a compromise measure that supporters of S. 4 and S. 14 could all embrace. The "Republican compromise" substitute appeared as Dole Amendment No. 347 on March 20; this substitute amendment incorporated the separate enrollment approach, which seeks to confer item veto authority by statutory means. During consideration of S. 4 on March 20, two perfecting amendments added by the Budget Committee were withdrawn; the provisions so deleted related to procedures for deficit reduction and to a sunset date for the enhanced rescission authority (both are still found in S. 14).

Floor debate on S. 4 continued on March 21-23. Eight amendments were adopted by voice vote, including the Dole Amendment itself, providing for separate enrollment for presentation to the President of each item of any appropriation and authorization bill or resolution providing direct spending or targeted tax benefits. The Senate ultimately passed S. 4, with the Dole Amendment in the nature of a substitute and additional amendments, on March 23, 1995, by vote of 69-29.

The significant differences between the House-passed H.R. 2 (enhanced rescission approach), and the Senate-passed S. 4 (separate enrollment approach), needed to be resolved in conference. On May 17, 1995, the House passed S. 4, after agreeing to strike all after the enacting clause of Senate-passed S. 4 and insert in lieu the language of the House-passed H.R. 2. The Senate agreed to a conference and named eighteen conferees on June 20. On August 1, the Senate approved (83-14) a Dorgan Amendment to H.R. 1905, FY1996 Energy and Water Appropriations, to express the sense of the Senate that the House Speaker should move immediately to appoint conferees on S. 4. On September 7, 1995, the Speaker appointed eight House conferees, after a motion to instruct conferees to make the bill applicable to current and subsequent fiscal year appropriation measures was agreed to by voice vote.

The conference committee held an initial meeting on September 27, 1995, at which opening statements were presented, and Representative Clinger was chosen as conference chairman. The Members present then instructed staff to explore alternatives for reconciling the two versions. On

Cong., 1st sess., S.Rept. 104-9 (Washington: GPO, 1995); and Senate Committee on the Budget, *Legislative Line Item Veto Act of 1995*, report to accompany S. 14, 104th Cong., 1st sess., S.Rept. 104-10 (Washington: GPO, 1995).

[18] U.S. Congress, Senate Committee on Governmental Affairs, *Legislative Line Item Veto Act of 1995*, report to accompany S. 4, 104th Cong., 1st sess., S.Rept. 104-13 (Washington: GPO, 1995); and Senate Committee on Governmental Affairs, *Legislative Line Item Veto Act of 1995*, report to accompany S. 14, 104th Cong., 1st sess., S.Rept. 104-14 (Washington: GPO, 1995).

October 25, 1995, the House agreed to a motion to instruct the House conferees on S. 4 to insist upon the inclusion of provisions to require that the bill apply to the targeted tax benefit provisions of any revenue or reconciliation bill enacted into law during or after FY1995, by vote of 381-44. The conferees met again on November 8, 1996, at which time the House Republicans on the committee offered a compromise package. Some key elements included accepting the House approach of enhanced rescission, using the Senate definition of "item" for possible veto, using compromise language approved by the Joint Committee on Taxation for defining "targeted tax benefits," including new direct spending, accepting Senate "lockbox" language (designed to ensure that any savings from cancellations could be used only for deficit reduction), and dropping the Senate sunset proposal.

In his State of the Union message on January 23, 1996, President Clinton urged Congress to complete action on a line item veto measure, stating "I also appeal to Congress to pass the line item veto you promised the American people,"[19] but negotiations apparently remained stalled. Following return from the congressional recess in February, the pace of conference activity appeared to pick up considerably. On March 14, 1996, Republican negotiators on the conference committee reported that they had reached agreement on a compromise version of S. 4, and the conference report was filed on March 21, 1996.[20] Although there was no public conference meeting for approval, the Republican negotiators obtained the signatures of a majority of conferees, thus readying the conference report for final action.

The conference substitute reflected compromise between the House and Senate versions, although the enhanced rescission approach of H.R. 2 rather than the separate enrollment framework of S. 4 was chosen. As in the November compromise package, new direct spending and certain targeted tax benefits were subject to the new authority of the President as well as items of discretionary spending in appropriation laws. The measure was to take effect on January 1, 1997, absent an earlier balanced budget agreement, and would terminate on January 1, 2005. The Senate approved the conference substitute on March 27, 1996, by vote of 69-31, and the House followed suit on March 28, 1996, by vote of 232-177. President Clinton signed S. 4 on April 9, 1996.[21]

The Line Item Veto Act of 1996 (LIVA) amended the Congressional Budget and Impoundment Control Act of 1974 (P.L. 93-344), to give the President "enhanced rescission authority" to cancel certain items in appropriations and entitlement measures and also certain narrowly applicable tax breaks. The act authorized the President to cancel in whole any dollar amount of discretionary budget authority (appropriations), any item of new direct spending (entitlement), or limited tax benefits with specified characteristics, contained in a bill otherwise signed into law. The cancellation was to take effect upon receipt in the House and Senate of a special notification message. "Cancellation" in this context meant to prevent from having legal force; in other words, provisions canceled never were to become effective unless Congress reversed the action of the President by enacting a "disapproval bill." The President was only to exercise the cancellation authority if he determined that such cancellation would reduce the federal budget deficit and would not impair essential government functions or harm the national interest; and then notified the Congress in a special message of any such cancellation within five calendar days after enactment of the law providing such amount, item, or benefit. The act provided 30 days for the expedited congressional consideration of disapproval bills to reverse the cancellations contained

[19] U.S. President (Clinton), "Address Before Joint Session of Congress on the State of the Union," Jan. 23, 1996, *Public Papers of the Presidents*, 1996, vol. I (Washington: GPO, 1997), p. 85.

[20] U.S. Congress, Conference Committees, *Line Item Veto Act*, conference report to accompany S. 4, 104th Cong., 1st sess., H.Rept. 104-491 (Washington: GPO, 1996).

[21] P.L. 104-130, 110 Stat. 1200.

in the special messages received from the President. Detailed provisions for expedited consideration of the disapproval bill in the House and Senate were outlined.[22] The LIVA also contained a "lockbox" procedure to help ensure that any savings from cancellations go toward deficit reduction. This was to be accomplished by binding the new procedures to existing requirements relating to discretionary spending limits and the PAYGO requirements of the Budget Enforcement Act of 1990. To facilitate judicial review, the act provided for (1) expedited review by the U.S. District Court for the District of Columbia of an action brought by a Member of Congress or an adversely affected individual on the ground that any provision of this act violates the Constitution; (2) review of an order of such Court by appeal directly to the Supreme Court; and (3) expedited disposition of such matter by the Supreme Court. The act became effective on January 1, 1997.

Developments During the 105th Congress

During 1997, the first year with the Line Item Veto Act in effect, several noteworthy developments involved judicial challenges and the first use of the new authority by President Clinton. In Congress, disapproval bills to overturn the cancellations by the President were introduced, along with alternative measures for providing the President with expanded rescission authority, bills to repeal the Line Item Veto Act, and even a bill to correct an apparent "loophole" in the original Act. In 1998, there were additional court challenges, with the Supreme Court eventually striking down the new law as unconstitutional.

Initial Court Decisions

On April 9, 1996 (the same day the Line Item Veto Act was signed by President Clinton), the National Treasury Employees Union et al. filed a complaint for declaratory and injunctive relief, challenging the constitutionality of the new law in the U.S. District Court for the District of Columbia (Civil Action No. 96-624). Only individuals "adversely affected" by the expanded presidential authority, or Members of Congress, can bring action under the "expedited judicial review" provision in the law. On July 3, 1996, a federal judge dismissed the case, ruling that the union's claims were "too speculative and remote" to provide legal standing under the law.[23]

On January 2, 1997, the day after the Line Item Veto Act went into effect, another suit challenging its constitutionality was filed in the same court (referred to as *Byrd v. Raines*). The plaintiffs, led by Senator Robert Byrd, now included six Members of Congress: Senators Byrd, Mark Hatfield, Daniel Moynihan, and Carl Levin, and Representatives David Skaggs and Henry Waxman. Office of Management and Budget Director Franklin Raines and Secretary of the Treasury Robert Rubin were named as defendants, because of their responsibilities for implementing key aspects of the law. The plaintiffs contended that the act violated the constitutional requirements of bicameral passage and presentment "by granting to the President, acting alone, the authority to 'cancel' and thus repeal provisions of federal law."

On January 22, 1997, the Senate by unanimous consent agreed to S.Res. 21 to direct the Senate Legal Counsel to appear as *amicus curiae* (friend of the court) in the name of the Senate in the *Byrd v. Raines* case. During debate on S.Res. 21, Majority Leader Trent Lott noted that Title VII

[22] U.S. Congress, House Committee on Rules, *The Use and Application of the Line Item Veto Act*, committee print, 104th Cong., 2nd sess. (Washington: GPO, 1997).

[23] *NTEU* v. *United States*, 929 F.Supp. 484, 488 (D.D.C. 1996).

of the Ethics in Government Act authorized such action by the Senate in any legal action "in which the powers and responsibilities of the Congress under the Constitution are placed in issue."

On March 21, 1997, U.S. District Court Judge Thomas Penfield Jackson heard oral arguments in the case of *Byrd v. Raines*. Less than three weeks later, on April 10, Judge Jackson ruled that the Line Item Veto Act was unconstitutional because it violated provisions of the Presentment Clause in the Constitution (Article I, Section 7, Cl. 2). His ruling found that compared with permissible delegations in the past, the Line Item Veto Act, "hands off to the President authority over fundamental legislative choices." In so doing, "Congress has turned the constitutional division of responsibilities for legislating on its head."[24]

As already noted, the Line Item Veto Act provided for expedited judicial review, allowing for appeal of a district court decision directly to the Supreme Court. Such a request was filed, and on April 23, 1997, the Supreme Court agreed to an accelerated hearing. The Court heard oral arguments on May 27 and announced its decision in *Raines v. Byrd* on June 26, 1997. In a 7-2 decision, the Court held that the Members of Congress challenging the law lacked legal standing, so the judgment of the lower court (finding the act unconstitutional) was put aside and the Line Item Veto Act remained in force. However, the Supreme Court confined its decision to the technical issue of jurisdiction and refrained from considering the underlying merits of the case (i.e., whether the Line Item Veto Act was unconstitutional).[25]

The Line Item Veto in Action

On August 11, 1997, President Clinton exercised his new veto authority for the first time by transmitting two special messages to Congress, reporting his cancellation of two limited tax benefit provisions in the Taxpayer Relief Act of 1997 (P.L. 105-34), and one item of direct spending in the Balanced Budget Act of 1997 (P.L. 105-33).[26] Both measures had been signed into law on August 5, 1997. The law provided a period of 30 calendar days of session after receipt of a special message (only days when both the House and Senate are in session count) for Congress to consider a disapproval bill under expedited procedures.

Upon reconvening in early September, Congress responded quickly to the President's cancellations, with the introduction of four disapproval bills. S. 1144 and H.R. 2436 sought to disapprove the cancellation of the direct spending provision in P.L. 105-33, transmitted by the President on August 11, 1997, and numbered 97-3, regarding Medicaid funding in New York. S. 1157 and H.R. 2444 sought to disapprove the cancellations of two limited tax benefit provisions in P.L. 105-34, transmitted by the President on August 11, 1997, and numbered 97-1 and 97-2. The first provision dealt with income sheltering in foreign countries by financial services companies, and the second involved tax deferrals on gains from the sales of agricultural processing facilities to farmer cooperatives. A compromise was apparently reached between the White House and congressional leaders on the canceled tax benefit provisions; on November 8,

[24] *Byrd* v. *Raines*, 956 F.Supp. 25, 37-38 (D.D.C. 1997).

[25] *Raines* v. *Byrd*, 521 U.S. 811 (1997).

[26] The cancellation messages were published in the *Federal Register* and also as congressional documents. See Office of Management and Budget "Cancellation Pursuant to the Line Item Veto Act: Taxpayer Relief Act of 1997," *Federal Register*, vol. 62, no. 155, Aug. 12, 1997, p. 43265; and Message from the President transmitting "A Cancellation of Two Limited Tax Benefits Contained in the Taxpayer Relief Act of 1997, pursuant to P.L. 104-130 Sec. 2(a)," 105th Cong., 1st sess., H.Doc. 105-116 (Washington: GPO, 1997). The Office of the Federal Register, Archives and Records Administration assembled and continues to sponsor a site with the "History of Line Item Veto Notices," providing links to all 82 of the cancellation notices as they appeared in the *Federal Register*, along with other relevant information, available electronically at http://www.access.gpo.gov/nara/nara004.html.

1997, the disapproval bill (H.R. 2444) was tabled in the House, and no further action occurred on S. 1157.

On October 6, 1997, President Clinton exercised the new authority to veto items in appropriations bills by cancelling 38 projects contained in the FY1998 Military Construction Appropriations Act (P.L. 105-45). On October 24, the Senate Appropriations Committee approved S. 1292, with an amendment to exclude two more of the projects from the disapproval bill, reflecting the wishes of Senators from the states involved; there was no written report. On October 30, the Senate passed S. 1292, after the committee amendment was withdrawn, disapproving 36 of the 38 cancellations, by vote of 69-30. On November 8, 1997, the House passed its version of the disapproval bill, H.R. 2631 (covering all 38 of the cancellations originally in the President's message), by vote of 352-64. On November 9, the Senate passed H.R. 2631 by unanimous consent, precluding the need for conference action, and clearing the disapproval measure for the President. On November 13, 1997, the President vetoed H.R. 2631, the first disapproval bill to reach his desk under the provisions of the 1996 law. The House voted to override on February 5, 1998 (347-69), and the Senate did likewise on February 25, 1998 (78-20); therefore, the disapproval bill was enacted over the President's veto (P.L. 105-159). (Cancellations under the Line Item Veto Act became effective on the date the special message from the President was received by the House and Senate, but the cancellations became null and void if a disapproval bill was enacted.)

On October 14, 1997, President Clinton vetoed 13 projects in the Department of Defense Appropriations. On October 16, 1997, he used the cancellation authority on a provision in the Treasury and General Government Appropriations relating to pension systems for federal employees. On October 17, 1997, the President applied his veto to eight more projects, this time in the Energy and Water Appropriations Act. On November 1, 1997, President Clinton exercised his line-item veto authority in two appropriations acts, canceling seven projects in the VA/HUD measure and three projects in the Transportation Act. On November 20, 1997, the President canceled two projects from Interior and five from the Agriculture Appropriations Act. On December 2, 1997, President Clinton exercised his line-item veto authority for a final time in one of the 13 annual appropriations acts for FY1998, canceling a project in the Commerce-Justice-State measure. This action brought the total of special messages in 1997 to 11, and the total cancellations under the new law to 82[27].

More Court Challenges

Once the President used the new authority, other cases were expected to be brought by parties who could more easily establish standing, having suffered ill effects directly as a result of the cancellations. On October 16, 1997, two separate cases challenging the Line Item Veto Act were initiated. A complaint was filed by the City of New York and other interested parties seeking to overturn the cancellation of the new direct spending provision affecting Medicaid funding in the Balanced Budget Act in the U.S. District Court for the District of Columbia (case number 1:97CV02393). On the same day, the National Treasury Employees Union (who had brought the first suit challenging the new law in the spring of 1996, even before it became effective), filed another suit in district court, seeking to overturn the veto of the federal pension provision in the Treasury Appropriations Act (case number 1:97CV02399). On October 21, 1997, a third case, seeking to overturn the cancellation of the limited tax benefit affecting farm cooperatives, was filed in the district court by Snake River Potato Growers, Inc. (case number 1:97CV02463). On

[27] Enactment of P.L. 105-159, already noted, served to disapprove 38 cancellations in the Military Construction Appropriations Act, and another cancellation was found impermissible under the law (discussed below). So 43 of the original 82 cancellations were en force when the Supreme Court overturned the Line Item Veto Act in 1998.

October 24, 1997, the cases of the three suits challenging the Line Item Veto Act, were combined, placed in the random assignment pool, and ultimately reassigned to Judge Thomas Hogan. On October 28, 1997, NTEU filed an amended complaint, challenging the specific application of the cancellation authority (as well as the constitutionality of the law). A hearing on the consolidated case was set for January 14, 1998.

Meanwhile, on December 19, 1997, the Clinton Administration conceded that the President's cancellation in October of the federal pension provision exceeded the authority conveyed in the Line Item Veto Act. On January 6, 1998, Judge Hogan approved a negotiated settlement in the suit between the Justice Department and the National Treasury Employees Union and ordered that the previously canceled pension provision for an open season to switch pension plans be reinstated. The order found that the President lacked authority to make this cancellation, and so it was "invalid and without legal force and effect." The NTEU's constitutional challenge was declared moot, but oral arguments for the two remaining parties in the consolidated case challenging the law's constitutionality were to proceed.

On January 14, 1998, there was a three-hour hearing before Judge Hogan. Arguments were presented by attorneys for the Idaho potato farmers group and for New York City and co-plaintiffs in the cases involving cancellations by the President in August, 1997, of a limited tax benefit provision and an item of new direct spending (affecting Medicaid funding). Judge Hogan on February 12, 1998, issued his ruling, which held the Line Item Veto Act unconstitutional, because it "violates the procedural requirements ordained in Article I of the United States Constitution and impermissibly upsets the balance of powers so carefully prescribed by its Framers."[28] On February 20, 1998, the Justice Department appealed that decision to the Supreme Court, and on February 27, 1998, the Supreme Court agreed to review the case.

The Supreme Court heard oral arguments in the case of *Clinton v. New York City* on April 27, 1998. Both sides conceded that a true item veto, allowing the President to sign some provisions and veto others when presented a piece of legislation, would be unconstitutional. The Solicitor General sought to distinguish the President's cancellation of provisions under the Line Item Veto Act from a formal repeal of the provisions, but several of the Justices seemed skeptical. Another key argument concerned the matter of delegation and whether the act conveys so much authority to the President as to violate the separation of powers. The issue of standing for the two groups of plaintiffs combined in the case also was examined. On June 25, 1998, the Court rendered its decision, holding the Line Item Veto Act unconstitutional, because its cancellation provisions were in violation of procedures set forth in the Constitution's presentment clause found in Article I, section 7.[29]

In the immediate aftermath of the Supreme Court decision there was some uncertainly regarding how funding for projects canceled under the now unconstitutional law could be restored. In the view of some, OMB might not be required to fund projects eliminated from appropriations acts, because the cancellations in the consolidated case brought before the Supreme Court only involved limited tax benefit and direct spending provisions. Some suggested that each affected party might have to sue, as did New York City in the case decided by the Supreme Court. Although it was widely expected that funding for projects not explicitly covered by the Supreme Court decision would be restored, three weeks passed before the Justice Department and OMB determined officially that the funds were to be released. On July 17, 1998, OMB announced that

[28] *City of New York* v. *Clinton*, and *Snake River Potato Growers, Inc*. v. *Rubin*, 985 F.Supp. 168 (D.D.C. 1998).

[29] *Clinton* v. *City of New York*, 524 U.S. 417 (1998). The decision is available online at http://supct.law.cornell.edu/supct/html/97-1374.ZS.html.

funds for the remaining cancellations (those not overturned by previous litigation or the disapproval bill covering the Military Construction appropriations) would be made available.

Consideration of Alternatives to the Line Item Veto Act

After the President exercised the new authority to cancel items in appropriations acts, bills were introduced to repeal the Line Item Veto Act. On October 9, 1997, such a bill was introduced by Representative Skaggs (H.R. 2650, 105th Congress), and on October 24, 1997, a similar bill was introduced by Senators Byrd and Moynihan (S. 1319, 105th Congress).

Shortly after the district court decision in April 1997, expanded rescission measures were reintroduced in the 105th Congress. On April 15, 1997, H.R. 1321, an expedited rescission measure similar to that passed by the House in the 103rd Congress, was introduced, and on the following day, S. 592, a separate enrollment measure identical to S. 4 as passed by the Senate in the 104th Congress, was introduced. Joint resolutions proposing an item veto constitutional amendment were also introduced. Another bill introduced in the fall of 1997, H.R. 2649, combined the features of H.R. 2650 (repealing the line-item veto) and H.R. 1321 (establishing a framework for expedited rescission).

On March 11, 1998, the House Rules Subcommittee on Legislative and Budget Process began two days of hearings on the Line Item Veto Act. Although the principal focus of the hearing was on the operation of the act during its first year, there was some consideration of possible alternatives should the law be found unconstitutional by the Supreme Court.

On June 25, 1998, the same day the Supreme Court held the Line Item Veto Act unconstitutional, three more bills were introduced. Two new versions of expedited rescission (similar but not identical measures), seeking to apply expedited procedures to targeted tax benefits as well as to rescissions of funding in appropriations measures, were introduced as H.R. 4174 and S. 2220 (105th Congress). A modified version of separate enrollment, applicable to authorizing legislation containing new direct spending, as well as to appropriations measures, was introduced as S. 2221.

Developments from 1999-2004

106th Congress

Upon convening of the 106th Congress in January 1999, measures were again introduced to propose constitutional amendments giving the President line-item veto authority (H.J.Res. 9, H.J.Res. 20, H.J.Res. 30, and S.J.Res. 31), and to provide alternative statutory means for conveying expanded impoundment authority to the President (S. 100 and S. 139). Subsequently, two expedited rescission bills were introduced in the House (H.R. 3442 and H.R. 3523).

On July 30, 1999, the House Rules Subcommittee on the Legislative and Budget Process held a hearing to address the subject, “The Rescissions Process after the Line Item Veto: Tools for Controlling Spending.” Testimony was received from the Office of Management and Budget, the Congressional Budget Office, and the General Accounting Office, as well as from a panel of academic experts.

On March 23, 2000, the House Judiciary Subcommittee on the Constitution held a hearing to consider measures proposing a constitutional amendment for an item veto. Two Members testified in support of H.J.Res. 9. A second panel, consisting of seven outside witnesses, provided various viewpoints. During the presidential election campaign in 2000, the topic of expanded rescission

authority for the President received some attention, with both candidates on record in support of such legislation.

107th Congress

In his budget message transmitted to Congress on February 28, 2001, President George W. Bush endorsed several budget process reforms, including a call to "restore the President's line item veto authority." In the subsequent discussion, the document suggested that the constitutional flaw in the Line Item Veto Act of 1996 might be corrected by linking the line-item veto to retiring the national debt.[30] On April 9, 2001, President Bush transmitted to Congress a more detailed budget for FY2002, without further mention of the line-item veto proposal.

In his budget submission for FY2003, sent to Congress on February 4, 2002, President Bush again endorsed various proposals for reform of the budget process, including another try at crafting a line-item veto that could pass constitutional muster. As described therein, the President's proposal would restore authority exercised by Presidents prior to 1974 (and the restrictions imposed by the ICA). Specifically, the proposal "would give the President the authority to decline to spend new appropriations, to decline to approve new mandatory spending, or to decline to grant new limited tax benefits (to 100 or fewer beneficiaries) whenever the President determines the spending or tax benefits are not essential Government functions, and will not harm the national interest."[31]

In the 107th Congress, two measures proposing an item veto constitutional amendment were introduced. H.J.Res. 23 sought to allow the President to disapprove any item of appropriation in any bill. H.J.Res. 24 sought to allow the President to decline to approve (i.e., to item veto) any entire dollar amount of discretionary budget authority, any item of new direct spending, or any limited tax benefit. On March 28, 2001, during House consideration of H.Con.Res. 83 (FY2002 budget resolution), a substitute endorsed by Blue Dog Coalition[32] was offered, which contained a sense of the Congress provision calling for modified line-item veto authority to require Congressional votes on rescissions submitted by the President; the amendment was rejected 204-221.

On October 9, 2002, the Congressional Budget Office estimated a total federal budget deficit of about $157 billion for FY2002, reflecting the largest percentage drop in revenues in over 50 years and the largest percentage growth in spending on programs and activities in 20 years. Some hoped that the worsening deficit picture might stimulate renewed interest in mechanisms thought conducive to spending control, such as a line-item veto or expanded impoundment authority for the President.

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[30] U.S. Office of Management and Budget, *A Blueprint for New Beginnings: A Responsible Budget for America's Priorities* (Washington: GPO, 2001), pp. 175-176.

[31] U.S. Office of Management and Budget, *Fiscal Year 2003 Analytical Perspectives* (Washington: GPO, 2002), pp. 217-218.

[32] The Blue Dog Coalition was organized in the 104th Congress as a policy-oriented group of moderate and conservative Democrats. In the 109th Congress, its 37 members are geographically diverse, but the group's nickname reflects some southern ancestry. "Taken from the South's longtime description of a party loyalist as one who would vote for a yellow dog if it were on the ballot as a Democrat, the "Blue Dog" moniker was taken by members of the coalition because their moderate-to-conservative views had been "choked blue" by their party in the years leading up to the 1994 election." See the group's website at http://www.bluedogdems.com/what.html.

108th Congress

In his budget submission for FY2004, President Bush repeated his request for legislation to provide him with a "constitutional line-item veto" to use on "special interest spending items." While discussion the previous year had called for applying savings to debt reduction, the explanation now suggested that all savings from the line-item veto would be designated for deficit reduction.[33]

Early in the 108th Congress, H.R. 180, an omnibus budget reform measure, was introduced, containing provisions for expedited procedures for congressional action on proposals from the President to rescind budget authority identified as "wasteful spending" (Section 252). On April 11, 2003, during remarks on a forthcoming supplemental appropriations conference report, the ranking member of the Appropriations Committee offered his observations on the demise of the Line Item Veto Act of 1996.[34] On June 16, 2003, H.J.Res. 60, proposing a constitutional amendment to authorize the line-item veto, was introduced by Representative Andrews. On November 19, 2003, S.J.Res. 25, proposing a constitutional amendment and reading, in part, "Congress shall have the power to enact a line-item veto," was introduced by Senator Dole.

In his budget submission for FY2005, transmitted February 2, 2004, President Bush again called for legislation to provide him with a "constitutional line-item veto" linked to deficit reduction. According to the explanation provided, such a device is needed to deal with spending or tax provisions benefitting "a relative few which would not likely become law if not attached to other bills." The line-item veto envisioned would give the President authority "to reject new appropriations, new mandatory spending, or limited grants of tax benefits (to 100 or fewer beneficiaries) whenever the President determines the spending or tax benefits are not essential Government priorities." All savings resulting from the exercise of such vetoes would go to reducing the deficit.[35]

In the second session of the 108th Congress, additional budget reform measures were introduced with provisions that would have granted expedited rescission authority to the President. The budget resolution for FY2005 (S.Con.Res. 95), as approved by the Senate on March 11, 2004, contained several Sense of the Senate provisions in Title V. Section 501, relating to budget process reform, called for enactment of legislation to restrain government spending, including such possible mechanisms as enhanced rescission or constitutional line-item veto authority for the President.

A bill in the 108th Congress, H.R. 3800, the Family Budget Protection Act of 2004, contained expedited rescission provisions in Section 311; and H.R. 3925, the Deficit Control Act of 2004, included such provisions in Section 301. On June 16, 2004, an editorial in the *Wall Street Journal* endorsed H.R. 3800, offering special praise for its expedited rescission provisions: "Presidents would have the power of rescission on line items deemed wasteful, which would then be sent back to Congress for an expedited override vote." Further, the editorial stated, the procedures would preserve Congress's power of the purse, and might also provide "a deterrent effect on the porkers."[36] On June 24, 2004, provisions from H.R. 3800 were offered as a series of floor amendments during House consideration of H.R. 4663, the Spending Control Act of 2004. An amendment that sought to initiate expedited rescission for the President to propose the

[33] U.S. Office of Management and Budget, *Fiscal Year 2004 Analytical Perspectives* (Washington: GPO, 2003), p. 318.

[34] Sen. Robert Byrd, "A Constitutional Emergency Response Fund," *Congressional Record*, daily edition, vol. 149, Apr. 12, 2003, p. S5398.

[35] U.S. Office of Management and Budget, *Fiscal Year 2005 Analytical Perspectives* (Washington: GPO, 2004), p. 285.

[36] See "GOP Budget Revolt," *Wall Street Journal*, June 16, 2004, pp. A12, A14.

elimination of wasteful spending identified in appropriations bills was rejected by a recorded vote of 174-237.

On August 3, 2004, the Kerry-Edwards [Democratic Party] plan "to keep spending in check while investing in priorities and cutting wasteful spending" was released. Included in the presidential campaign document was a proposal for expedited rescission authority, whereby the President could sign a bill and then send back to Congress a list of specific spending items and tax expenditures of which he disapproved, for an expedited, up-or-down vote.

President Bush reiterated his support for restoring presidential line item veto authority in his speech to the Republican national convention on September 2, 2004. At his first post-election news conference, on November 4, 2004, in response to a question about reducing the deficit, he stated, in part, that the president needed a line item that "passed constitutional muster," in order "to maintain budget discipline." At a press conference on December 20, 2004, the President again called for line item veto authority, responding that he had not yet vetoed any appropriations bills, because Congress had followed up on his requested budget targets; but further observing, "Now I think the president ought to have the line item veto because within the appropriations bills there may be differences of opinion [between the executive branch and Congress] on how the money is spent."[37]

Developments in the 109th Congress

On January 31, 2006, in his State of the Union address, President Bush reiterated his request for line-item veto authority, noting: "And we can tackle this problem [of too many special-interest "earmark" projects] together, if you pass the line-item veto."[38] In his budget submission for FY2006, transmitted February 7, 2005, President Bush called for a "line item veto linked to deficit reduction."

On March 6, 2006, President Bush sent a draft bill titled the Legislative Line Item Veto Act of 2006 to Congress,[39] and the measure was introduced the next day (see H.R. 4890 and S. 2381 below). Title notwithstanding, the bills sought to amend the Impoundment Control Act of 1974 (ICA) to incorporate a typical expedited rescission framework, intended through procedural provisions to require an up-or-down vote on presidential requests to cancel certain previously enacted spending or tax provisions. Since congressional approval would remain necessary for the rescissions to become permanent, expedited rescission is generally viewed as a weaker tool than an item veto. H.R. 4890 and S. 2381, as introduced, also contained rather novel provisions authorizing the President to withhold funds proposed for rescission or to suspend execution of items of direct spending for up to 180 days. These provisions arguably might sanction the return of policy deferrals, originally provided for in the ICA, subject to a one-house veto, but invalidated by the *Chadha* and *New Haven* decisions, as well as the statutory provisions in P.L. 100-119.[40]

[37] Press Conference of President George W. Bush, Dec. 20, 2004. Available electronically at http://www.whitehouse.gov/news/releases/2004/12/20041220-3.html.

[38] U.S. President (George W. Bush), "Address before a Joint Session of the Congress on the State of the Union," *Weekly Compilation of Presidential Documents,* vol. 42, Feb. 6, 2006, p. 145.

[39] President's message, along with press briefing and fact sheet available electronically at http://www.whitehouse.gov/news/releases/2006/03/20060306-5.html.

[40] See above, p. 4. For a discussion of possible constitutional issues in measures in the 109th Congress, see CRS Report RL33365, *Line Item Veto: A Constitutional Analysis of Recent Proposals,* by Morton Rosenberg.

On March 15, 2006, the House Rules Subcommittee on the Legislative and Budget Process held a hearing on H.R. 4890. Testimony was received from Representative Paul Ryan, sponsor of H.R. 4890, and from Representative Jerry Lewis, chairman of the House Appropriations Committee. The Deputy Director of OMB and the Acting Director of CBO also appeared before the subcommittee.[41] On April 27, 2006, the House Judiciary Subcommittee on the Constitution held a hearing on the line item veto and received testimony from Representatives Paul Ryan and Mark Kennedy; and from two attorneys, Charles J. Cooper in private practice, and Cristina Martin Firvida of the National Women's Law Center. On May 2, the Senate Budget Committee held a hearing on S. 2381; witnesses included Senator Robert Byrd, Austin Smythe from OMB, Donald Marron from CBO, Louis Fisher from the Library of Congress, and attorney Charles J. Cooper.

The House Budget Committee held two hearings on H.R. 4890, on May 25 and June 8, 2006. The first day focused on "Line-Item Veto: Perspectives on Applications and Effects" and featured four witnesses representing private sector groups, including a former Member and two former congressional aides. The second hearing concentrated on constitutional issues, with testimony received from Charles Cooper, Louis Fisher, and Professor Viet D. Dinh from the Georgetown University Law Center.[42]

On June 14, the House Budget Committee held markup of H.R. 4890. Representative Paul Ryan offered a substitute amendment, which was further amended. An amendment offered by Representative Cuellar to add a sunset provision, whereby the act would expire after six years, was approved by voice vote. Also successful was an amendment offered by Representative Neal, as further amended by Representative McCotter, expressing the sense of Congress regarding possible abuse of proposed cancellation authority: no President or other executive official should make any decision for inclusion or exclusion of items in a special message contingent upon a Members' vote in Congress. The Ryan substitute, as amended, was adopted by voice vote. The Committee then voted 24-10 to report the bill favorably.[43]

Several amendments offered by minority Members were rejected, generally with a straight party-line vote. Democrats sought to exempt future changes in Social Security, Medicare, and veterans' entitlement programs from possible cancellations under the LLIVA. Democrats also attempted unsuccessfully to restore pay-as-you-go budget rules, to strengthen requirements for earmark disclosures, and to facilitate enforcement of the three-day lay-over rule for appropriations bills before floor votes.

On June 15, the House Rules Committee met to markup H.R. 4890 and voted 8-4 to approve a substitute amendment containing the same version as approved by the Budget Committee.[44] Several changes in the substitute version addressed concerns with the bill as introduced. For example, in response to concern expressed over a return to policy deferrals by allowing the President to withhold spending for up to 180 calendar days, the substitute would allow the President to withhold funds for a maximum of 90 calendars days (an initial 45-day period, which could be extended for another 45 days). Submission of special rescission or cancellation messages by the President would occur only within 45 days of enactment of the measure, and the President would be limited to submission of five special messages for each regular act and 10 messages for

[41] Hearing testimony available electronically at http://www.rules.house.gov/legbudg/hearings/lineitemveto/109_lpb_lineitemveto_index.html.

[42] Both hearings available electronically at http://www.gpoaccess.gov/congress/house/budget/index.html.

[43] See U.S. Congress, House Committee on the Budget, *Legislative Line Item Veto Act of 2006*, report to accompany H.R. 4890, 109th Cong., 2nd sess., H.Rept. 109-505, part 1 (Washington: GPO, 2006).

[44] U.S. Congress, House Committee on Rules, *Legislative Line Item Veto Act of 2006*, report to accompany H.R. 4890, 109th Cong., 2nd sess., H.Rept. 109-505, part 2 (Washington: GPO, 2006).

an omnibus measure. Submission of duplicative proposals in separate messages would be prohibited.

On the other hand, some changes in the substitute version approved by the Budget and Rules Committees, and subsequently by the full House, arguably might be subject to additional critiques. The substitute narrowed the definition of a targeted tax benefit to a revenue-losing measure affecting a single beneficiary, with the chairs of the Ways and Means and Finance Committees to identify such provisions. The definition in H.R. 4890 as introduced referred to revenue-losing measures affecting 100 or fewer beneficiaries, as did the Line Item Veto Act of 1996. The bill as introduced, however, would have allowed the President to identify the provisions by default, whereas the 1996 law assigned the duty to the Joint Committee on Taxation. Supporters of the substitute version suggested that it would treat targeted tax benefits comparably to earmarks in appropriations bills. Critics countered that the new definition was too narrow, and that few tax benefits would be subject to cancellation.[45]

On June 21, the House Rules Committee voted to report H.Res. 886, providing for the consideration of H.R. 4890, as amended, favorably by a nonrecord vote.[46] A manager's amendment offered by Representative Paul Ryan was adopted as a part of the rule for debate. In response to concerns raised by the Transportation and Infrastructure Committee, the amendment added clarifying language that any amounts cancelled which came from a trust fund or special fund would be returned to the funds from which they were originally derived, rather than revert to the General Fund. The following day the House took up H.R. 4890, approved the rule (H.Res. 886) by vote of 228-196, and passed the measure by vote of 247-172.[47] A motion by Representative Spratt to recommit H.R. 4890 to the Budget Committee with instructions to report it back to the House with an amendment was rejected by vote of 170-249.

Meanwhile, on June 20, 2006, the Senate Budget Committee marked up S. 3521, the Stop Over Spending Act of 2006, an omnibus budget reform measure containing provisions for expedited rescission in Title I.[48] Minority amendments to exclude Medicare, Social Security, and Veterans' Health Programs from possible rescissions were rejected 10-12 on party-line votes. A manager's amendment was adopted by voice vote, which among other things would prohibit the resubmission of items of direct spending or targeted tax benefits previously rejected by Congress, but would allow the President to resubmit proposed cancellations if Congress failed to complete action on them due to adjournment. Whereupon the committee voted 12-10 to report S. 3521, as amended, favorably. The report to accompany S. 3521 was filed on July 14, 2006.[49]

On June 27, 2006, the President met with some Senators at the White House to discuss the Legislative Line Item Veto bill, and he subsequently urged that the Senate act quickly to approve such a measure.[50] Despite the White House lobbying effort, press accounts questioned the

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[45] For further discussion of different versions and analysis, see CRS Report RL33517, *Legislative Line Item Veto Act of 2006: Background and Comparison of Versions*, by Virginia A. McMurtry.

[46] U.S. Congress, House *Committee on Rules, Providing for Consideration of H.R. 4890, Legislative Line Item Veto Act of 2006*, report to accompany H.Res. 886, 109th Cong., 2nd sess., H.Rept. 109-518 (Washington: GPO, 2006).

[47] "Legislative Line Item Veto Act of 2006," debate and vote in the House, *Congressional Record*, daily edition, vol. 152, June 22, 2006, pp. H4433-41, H4467-93.

[48] For further discussion of this bill, see CRS Report RL33547, *S. 3521, the Stop Over Spending Act of 2006: A Brief Summary*, by Bill Heniff Jr.

[49] U.S. Congress, Senate Committee on the Budget, *The Stop Over Spending Act of 2006*, report to accompany S. 3521, 109th Cong., 2nd sess., S.Rept. 109-283 (Washington: GPO, 2006).

[50] See White House, Office of the Press Secretary, "Fact Sheet: the Legislative Line-Item Veto: Constitutional, Effective, and Bipartisan," June 27, 2006, available electronically at http://www.whitehouse.gov/news/releases/2006/

likelihood of further Senate action in the 109th Congress. As reported in a story on July 20, 2006, "Senate Budget Chairman Judd Gregg, R-NH, all but pronounced the White House's item veto proposal dead for the year, telling reporters that the Bush Administration had not worked aggressively enough to round up the votes."[51] According to a similar story appearing the same day:

> Senate Budget Chairman Judd Gregg, R-NH, conceded this week that his budget overhaul package (S. 3521), which includes a sunset commission, line-item rescission authority and other budget enforcement measures has little chance of passage. Supporters have been unable to overcome Democratic opposition and a reluctance among some Republicans to address it in an election year.[52]

In addition to the alternative of possible action on S. 3521, the Senate could have chosen to consider a stand alone item veto measure, such as H.R. 4890, as passed by the House, or S. 2381. A news story published shortly before Congress departed for the August recess suggested that the issue remained an open question: "Senate Majority Leader Bill Frist, R-TN, has made no decisions about timing or which [line item rescission measure] to bring up, and is taking a wait-and-see approach to the White House lobbying effort."[53] None of these bills, however, saw floor action in the Senate before the 109th Congress adjourned.

Measures Reported in the 109th Congress

H.R. 4890 (Paul Ryan)/S. 2381(Frist). Legislative Line Item Veto Act of 2006. Amends the ICA of 1974 to provide for expedited consideration of certain rescissions of budget authority or cancellation of targeted tax benefits proposed by the President in special messages. Requires any rescinded discretionary budget authority or items of direct spending to be dedicated to deficit reduction. Grants the President authority to withhold funds proposed for rescission or to suspend execution of direct spending and targeted tax benefits. Both bills introduced on March 7, 2006. H.R. 4890 referred jointly to Committees on Budget and on Rules; S. 2381 referred to Budget Committee. Reported favorably, as amended, by House Budget Committee on June 16 (H.Rept. 109-505 Part 1), and by Rules Committee on June 19, 2006 (H.Rept. 109-505 Part 2). Passed House, as amended, by vote of 247-172 on June 22, 2006.

S. 3521 (Gregg). Stop Over Spending Act of 2006. An omnibus budget reform bill. Title I, the Legislative Line Item Veto Act, amends the ICA of 1974 to provide for expedited consideration of certain rescissions of budget authority or cancellation of targeted tax benefits proposed by the President. Introduced on June 15, 2006; referred to the Budget Committee. Committee voted 21-10 to report bill, as amended, favorably on June 20, 2006. The report was filed on July 14, 2006 (S.Rept. 109-283).

06/20060627-2.html.

[51] Peter Cohn, "Chances Poor for Line-Item Veto Legislation," *Congress Daily AM*, July 20, 2006, p. 1.

[52] Steven T. Dennis, "White House Casts Lifeline to Try to Rescue Line-Item Rescission Authority," *CQToday*, June 20, 2006, p. 9.

[53] Peter Cohn, "Portman Upbeat on Line Item Veto But 60 Votes Still an Elusive Target," *Congress DailyAM*, July 26, 2006, p. 15.

Developments in the 110th Congress

Early in the 110th Congress, line item veto measures received Senate floor consideration. On January 10, 2007, Senator Judd Gregg introduced "The Second Look at Wasteful Spending Act of 2007"[54] as an amendment (S.Amdt. 17 to S.Amdt. 3 to S. 1) to the Legislative Transparency and Accountability Act of 2007, an ethics and lobbying reform bill. According to Senator Gregg, the language in S.Amdt. 17 was similar to the expedited rescission provisions contained in a Democratic amendment, known as the Daschle substitute, offered in 1995 during Senate consideration of the Line Item Veto Act of 1996.[55] The Bush Administration went on record in support of S.Amdt. 17: "The Administration strongly supports Senator Gregg's legislative line item veto amendment—an initiative that is consistent with the President's goals."[56]

S.Amdt. 17 would have provided for expedited consideration of certain rescissions of discretionary or new mandatory spending or cancellation of targeted tax benefits proposed in special messages from the President. The President could submit up to four rescission packages a year (once with the Budget and three other times at the President's choosing). The President could withhold funding contained in a special message for up to 45 days. The new authority would expire in four years.

At one point, it appeared that the ethics and lobbying reform measure might become stalled, with the minority leader insisting on a vote on the Gregg amendment before proceeding to final action on S. 1.[57] An agreement was worked out, however, between the majority leader and the minority leader, with a promise of a vote on the line item veto amendment during debate on the minimum wage bill (H.R. 2) the following week. On January 18, 2007, S.Amdt. 17 was withdrawn, and S. 1 passed by vote of 96-2.[58]

In accordance with the leadership agreement, Senator Gregg filed another amendment (S.Amdt. 101 to H.R. 2) on January 22, 2007, and two hours of floor debate on the line item veto measure ensued.[59] Senator Gregg noted "one major change" in provisions from the previous S.Amdt. 17 incorporated into S.Amdt. 101: addition of the right to strike. During consideration of a rescission package proposed by the President, a Senator, with the support of 11 others, could move to strike one or more of the rescissions included in the bill; in other words, Congress could amend the President's proposal by deleting selected items. Senator Gregg suggested that this change brought S.Amdt. 101 even more in line with the Daschle substitute in 1995. He also observed that several of the 20 cosponsors of the previous Daschle amendment were still in the Senate.[60]

Senator Kent Conrad, chair of the Budget Committee, suggested that the two amendments differed in important respects. The Gregg amendment would have allowed the President to

[54] For the text of S.Amdt. 17, see *Congressional Record*, daily edition, vol. 153, Jan. 10, 2007, pp. S397-S399. For initial debate on S.Amdt. 17, see ibid., pp.S336-S341.

[55] See "Daschle (and Others) Amendment No, 348," *Congressional Record*, daily edition, vol. 141, Mar. 21, 1995, pp. S4281-S4283.

[56] "Administration Supports Legislative Line Item Veto Amendment to Senate Bill," press release from Office of Management and Budget, Jan. 10, 2007.

[57] "Senate Debate on Reform Measure Stalls Over Amendment to Provide Line-Item Veto," *Daily Report for Executives*, Jan. 18, 2007.

[58] "Legislative Transparency and Accountability Act of 2007," *Congressional Record*, daily edition, vol. 153, Jan. 18, 2007, p. S746.

[59] For text of S.Amdt. 101, see *Congressional Record*, daily edition, vol. 153, Jan. 22, 2007, pp. S863-S866.

[60] Ibid., pp. S792-S793.

propose rescinding items of new direct spending in programs such as Medicare, whereas the Daschle amendment did not cover such mandatory spending. The Gregg amendment would have permitted the President to propose rescissions from multiple bills in one rescission package whereas the Daschle amendment would have required that a presidential rescission package cover just one bill. According to Senator Conrad, this latter arrangement would give the President less leverage over an individual member.[61]

Debate on S.Amdt. 101 resumed on January 24, 2007. A vote to invoke cloture on the line item veto amendment failed to attain the necessary 60 votes (49-48).[62] The amendment was subsequently set aside, and formally withdrawn on January 31.

In his budget submission for FY2008 transmitted on February 5, 2007, President Bush once again called for enactment of a line item veto mechanism, such as the Administration's proposal from March 2006, that "would withstand constitutional challenge."[63]

Expedited rescission bills were also introduced in the House in the 110th Congress (see below). On the same day as the cloture motion on the Gregg line item veto proposal failed in the Senate, Representative Paul Ryan, ranking Republican on the House Budget Committee, along with 83 cosponsors, introduced H.R. 689, the Legislative Line Item Veto Act of 2007. H.R. 689 was nearly identical to H.R. 4890 as passed by the House in the 109th Congress.

On April 23, 2007, companion bills titled the Congressional Accountability and Line-Item Veto Act were introduced as H.R. 1998 by Representative Paul Ryan, and as S. 1186 by Senator Russell Feingold. In his introductory remarks, Senator Feingold sought to differentiate this measure from previous bills, noting the following:

> There have been a number of so-called line-item veto proposals offered in the past several years. But the measure Congressman Ryan and I propose today is unique in that it specifically targets the very items that every line-item veto proponent cites when promoting a particular measure, namely earmarks. When President Bush asked for this kind of authority, the examples he gave when citing wasteful spending he wanted to target were congressional earmarks.[64]

The universe of items subject to rescission or cancellation by the President in S. 1186 showed noteworthy differences from those contained in the 109th Congress bills, as passed by the House (H.R. 4890) and reported in the Senate (S. 3521, Title I). Instead of allowing the President to propose rescission of any amount of discretionary spending in appropriations acts, et al. (as did the 109th bills), in H.R. 1998/S. 1186 the newly expedited rescission authority would have only applied to "congressional earmarks" (as defined in the bill). The provisions regarding the cancellation of limited tax benefits seen in H.R. 1998/S. 1186 reflected language both from the House-passed bill (chairmen of Ways and Means and Finance Committees to identify them) and Senate-reported version (applicable to any revenue-losing provisions affecting a single or limited group). Most significantly, perhaps, under H.R. 1998/S. 1186, the expedited rescission authority would have covered no mandatory spending, but in a departure from provisions in the bills receiving action in the109th Congress, would have applied to limited tariff benefits.

The 110th Congress bills, H.R. 1998 and S. 1186, had some provisions similar to those seen in one or more bills from the 109th Congress. For example, language in H.R. 1998/S. 1186 regarding the

[61] Ibid., pp. S797-S798.

[62] *Congressional Record*, daily edition, vol. 153, Jan. 24, 2007, p. S746.

[63] U.S. Office of Management and Budget, *Fiscal Year 2008 Analytical Perspectives* (Washington: GPO, 2007), p. 219.

[64] Remarks by Senator Feingold accompanying the introduction of S. 1186, *Congressional Record*, daily edition, vol. 153, April 23, 2007, p. S4852.

relationship with the ICA paralleled that in the House-passed version of H.R. 4890, 109th Congress, as did the language regarding seriatim rescissions, abuse of the proposed cancellation authority, and using any savings for deficit reduction. The expedited congressional procedures in the 109th, compared with the 110th, bills are virtually the same.

In most cases, when provisions in H.R. 1998/S. 1186 differed from those in the 109th Congress bills, the new features served to further confine the boundaries of the additional rescission authority to be granted the President. The deadline for submission of special rescissions or cancellation messages under H.R. 1998/S. 1186 would have been within 30 days of enactment, compared to 45 days in the House-passed bill in the 109th Congress and one year in the Senate-reported bill (S. 3521, Title I). In a similar manner, S. 1186 would have set a limit of one special message for each act, except for an omnibus budget reconciliation or appropriations measure when two special messages would have been allowed.

On the other hand, stipulations regarding deferrals (withholding of spending) by the President in S. 1186 appeared to be less restrictive than those found in the House-passed and Senate-reported versions in the 109th Congress. Both H.R. 4890 as passed by the House and S. 3521 as reported, allowed withholding for a period not to exceed 45 calendar days. S. 1186 would have permitted the President to withhold funding for designated earmarks or suspend execution of limited tax or tariff benefits for a period of 45 calendar days of continuous session.[65] In addition, S. 1186 would have allowed the extension of the withholding for another 45-day period if the President submitted a supplemental message between days 40 and 45 in the original period. Under the ICA, the President likewise may withhold funds included in a rescission request for 45 calendar days of continuous session, which often equals 60 or more calendar days. Under the provisions in H.R. 1998/S. 1186, the President could conceivably have withheld funds for 100 days or longer.

As noted already, the original Administration bill in 2006 allowed the President to withhold funds for 180 calendar days. In 2006, some contended that the 180-day withholding mechanism arguably might be viewed as sanctioning the return of policy deferrals, originally provided for in the ICA, subject to a one-house veto, but invalidated by the *Chadha* and *New Haven* decisions, as well as the statutory provisions in P.L. 100-119.[66] The extension of the withholding period in H.R. 1998/S. 1186 conceivably to over 100 days, compared with the 45-calendar-day period in the House-passed and Senate-reported bills, might arguably be appraised as representing a de facto return to policy deferrals.

Two constitutional amendment proposals were introduced in the 110th Congress. H.J.Res. 38 would have allowed the President to decline to approve any dollar amount of discretionary budget authority, any item of new direct spending, or any tax benefit. This coverage was similar to that seen previously in the Line Item Veto Act of 1996. S.J.Res. 27 would have allowed the President to reduce or disapprove any appropriation in a measure presented to him; after so "amending" the measure, the President may have signed the legislation as modified into law.

[65] S. 1186 contains a definition for "calendar day" as "a standard 24-hour period beginning at midnight," but does not define "calendar day of continuous session." There is a definition of the "prescribed 45 day period" in the ICA, however, which stipulates "Continuity of a session of the Congress shall be considered as broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain shall be excluded from the computation of the 45-day period." P.L. 93-344, Sect. 101(5). The phrase "calendar days of continuous session" generally means that days falling in recesses longer than three days are not counted.

[66] For further discussion of policy deferrals, see CRS Issue Brief IB89148, available to congressional clients from author upon request. For further discussion of possible constitutional issues, see CRS Report RL33365, *Line Item Veto: A Constitutional Analysis of Recent Proposals*, by Morton Rosenberg.

Measures Introduced in the 110th Congress

H.R. 595 (Mark Udall and Paul Ryan). Stimulating Leadership in Limiting Expenditures Act of 2006. Amends the ICA to provide for expedited consideration of certain presidential proposals for rescission of budget authority contained in appropriation acts. Introduced on January 19, 2007; jointly referred to Committees on Budget and on Rules.

H.R. 689 (Paul Ryan et al.). Legislative Line Item Veto Act of 2007. Amends the ICA of 1974 to provide for expedited consideration of certain rescissions of discretionary budget authority or cancellation of an item of new direct spending, limited tariff benefit, or targeted tax benefits proposed by the President in a special message. Dedicates any savings only to deficit reduction or increase of a surplus. Introduced on January 24, 2007; jointly referred to Committees on Budget and on Rules.

H.R. 1375 (Buchanan). Earmark Accountability and Reform Act of 2007. Amends the ICA of 1974 to provide for expedited consideration of certain rescissions of discretionary budget authority or cancellation of an item of new direct spending or targeted tax benefit proposed by the President in a special message. Dedicates any cancellation only to deficit reduction or increase of a surplus. Amends House Rules to provide that any earmark not contained in House- or Senate-passed versions be deemed out of scope in conference. Introduced on March 7, 2007; referred jointly to Committees on Budget and on Rules.

H.R. 1998 (Paul Ryan). Congressional Accountability and Line-Item Veto Act. Amends the ICA of 1974 to authorize the President to propose in a special message the repeal of any congressional earmark or the cancellation of any limited tariff benefit or targeted tax benefit. Provides expedited procedures for congressional consideration of the proposals contained in special messages. Dedicates any savings from a repeal or cancellation only to deficit reduction or increase of a surplus. Introduced on April 23, 2007; referred jointly to Committees on Budget and on Rules.

H.R. 2084 (Hensarling). Family Budget Protection Act. Omnibus budget reform bill. Section 311 establishes expedited procedures for congressional consideration of certain rescission proposals from the President. Similar expedited rescission provisions were considered by the House in 2004 and rejected by vote of 174-237. Introduced on May 1, 2007; referred to the Committee on the Budget and in addition to the Committees on Rules, Ways and Means, Appropriations, and Government Reform for consideration of those provisions falling within their respective jurisdictions.

H.J.Res. 38 (Platts). Constitutional amendment. Allows the President to decline to approve in whole any dollar amount of discretionary budget authority, any item of new direct spending, or any tax benefit. Introduced on February 27, 2007; referred to the Judiciary Committee.

S. 1186 (Feingold). Congressional Accountability and Line-Item Veto Act. Companion bill to H.R. 1998 (see above). Introduced on April 23, 2007; referred to the Budget Committee.

S.J.Res. 27 (Dole). Constitutional amendment. Allows the President to reduce or disapprove any appropriation in any bill, order, resolution, or vote which is presented to him. Introduced on December 11, 2007; referred to the Judiciary Committee.

Developments During the 111th Congress

Actions Taken in Congress

On March 4, 2009, the Congressional Accountability and Line-Item Veto Act was reintroduced in the 111th Congress. In the Senate, S. 524 was cosponsored by Senators Feingold and McCain, and in the House H.R. 1294 was introduced by Representatives Paul Ryan and Mark Kirk.

Senator Gregg and cosponsor Senator Lieberman introduced S. 640, the Second Look at Wasteful Spending Act of 2009, on March 19, 2009. S. 640 is similar to a bill in the 109th Congress, S. 3521 (Title I) as reported by the Senate Budget Committee in 2006 (then chaired by Senator Gregg). Some provisions in the earlier bill, however, appear in modified form in S. 640. For example, with respect to limited tax benefit provisions that the President would be able to propose for cancellation, S. 3521 in the 109th Congress stipulated that the Joint Committee on Taxation was to identify such provisions, while S. 640 is silent regarding the identification function. There are also some provisions in S. 640 that were not included in S. 3521, 109th Congress. For example, a new section in S. 640 contains expedited provisions for deliberations by a conference committee.

Senator Carper, along with 20 cosponsors, introduced S. 907, the "Budget Enforcement Legislative Tool Act of 2009," on April 28, 2009. This bill is similar to one introduced in the 102nd Congress (H.R. 2164) by then Representative Carper with over 200 cosponsors. The House passed H.R. 2164 by vote of 312-97, under a suspension of the rules, on October 3, 1992.[67] This constituted the first time an expanded rescission bill received favorable floor action in either chamber.[68]

The Senate Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security, on December 16, 2009, held a hearing on "Tools to Combat Deficits and Waste: Expedited Rescission Authority," and considered S. 524, S. 640, and S. 907. Witnesses included Senator Feingold, and staff from the Congressional Research Service, the Government Accountability Office, the National Governors Association, the Concord Coalition, and Citizens Against Government Waste.[69]

The Senate Judiciary Subcommittee on the Constitution held a hearing on May 25, 2010, concerning "The Legality and Efficacy of Line-Item Veto Proposals." Witnesses included Senator Carper, Jeffrey Liebman, Acting Deputy Director of OMB, and three witnesses from the private sector.[70]

Expedited Rescission and the Obama Administration

In his budget submissions for FY2010 and FY2011, President Obama endorsed an "expedited process for considering rescission requests." According to a FY2011 budget volume, "There would be a benefit to establishing the option of an additional procedure [besides that in the ICA]

[67] Speaker pro tempore, "Expedited Consideration of Proposed Rescissions Act of 1991," House floor action, *Congressional Record*, vol. 138, part 21 (October 3, 1992), pp. 3015-3016.

[68] CRS Report RL30223, *Presidential Rescission Authority: Efforts to Modify the 1974 Framework*, by Virginia A. McMurtry, p.8.

[69] For statements at the hearing, see links from http://hsgac.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=34e3c205-9016-4269-be41-a27ec7e90a8c.

[70] For statements at the hearing, see links from http://judiciary.senate.gov/hearings/hearing.cfm?id=4613.

in those cases where the President finds a need for a rapid, up-or-down vote on a package of rescission proposals." Proposals for rescissions under the expedited procedures could "only reduce or eliminate funding for budget accounts, programs, projects, or activities."[71]

On May 24, 2010, President Obama transmitted an Administration draft bill to Congress, the Reduce Unnecessary Spending Act of 2010, which would provide expedited rescission procedures for consideration of certain requests from the President. Within 45 days after signing a bill into law, the President would be able to submit a package of rescissions for reducing or eliminating discretionary appropriations or non-entitlement mandatory spending. Such proposed rescissions from the President would be considered as a group and would be subject to expedited procedures in Congress, designed to ensure an up-or-down vote on the package. As explained in a section-by-section analysis accompanying the 2010 draft, "There is no method to provide an absolute guarantee of a vote, because all rules of the House and Senate are implemented by persons making the motions under the rules. If *no one* moves to consider a piece of legislation, it will not be considered."[72]

On May 28, 2010, the Reduce Unnecessary Spending Act of 2010 as proposed by President Obama was introduced in the House as H.R. 5454 by Representative Spratt along with 20 cosponsors, and on June 9 S. 3474 was introduced by Senator Feingold and eight cosponsors.

On June 17, 2010, the House Budget Committee held a hearing titled the "Administration's Proposal for Expedited Rescission." The sole witness was Dr. Liebman from OMB, who called for prompt action by Congress to pass the Reducing Unnecessary Spending Act. Chairman Spratt, who has supported expedited rescission measures in the past and introduced H.R. 5454, indicated that the bill would receive careful scrutiny by the committee, concluding his opening statement by saying, "I look forward to working with all interested parties as we consider ways to improve this bill and move it through Congress."

Measures Introduced in the 111th Congress

H.R. 1294 (Paul Ryan et al.). Congressional Accountability and Line-Item Veto Act. Amends the ICA of 1974 to authorize the President to propose in a special message the repeal of any congressional earmark or the cancellation of any limited tariff benefit or targeted tax benefit. Provides expedited procedures for congressional consideration of the proposals contained in such a special message. Dedicates any savings from a repeal or cancellation only to deficit reduction or increase of a surplus. Introduced on March 4, 2009; referred to Committees on Budget and on Rules.

H.R. 1390 (Buchanan). Earmark Accountability and Reform Act of 2009. Amends the ICA of 1974 to provide for expedited consideration of certain rescissions of discretionary budget authority or cancellation of an item of new direct spending or targeted tax benefit proposed by the President in a special message. Dedicates any cancellation only to deficit reduction or increase of a surplus. Amends House Rules to provide that any earmark not contained in House- or Senate-passed versions be deemed out of scope in conference. Introduced on March 9, 2009; referred to Committees on Budget and on Rules.

[71] Office of Management and Budget, *Analytical Perspectives, Budget of the U.S. Government Fiscal Year 2011*, Washington, DC, February 2010, p. 150, http://www.whitehouse.gov/omb/budget/fy2011/assets/concepts.pdf.

[72] Section-by-Section Analysis and Explanation of the "Reduce Unnecessary Spending Act of 2010," May 24, 2010, available at http://www.whitehouse.gov/omb/assets/blog/Unnecessary_Spending_Act.pdf, p. 4.

H.R. 3268 (Reichert et al.). Earmark Transparency and Accountability Reform Act, Title II, Earmark Rescission Authority. Amends the ICA of 1974 to authorize the President to propose in a special message the repeal of any congressional earmark or the cancellation of any limited tariff benefit or targeted tax benefit. Provides expedited procedures for congressional consideration of the proposals contained in such special messages. Dedicates any savings from a repeal or cancellation only to deficit reduction or increase of a surplus. Authorizes temporary presidential authority to withhold congressional earmarks and to suspend any limited tariff or targeted tax benefit. Requires the Comptroller General to develop and implement a systematic process to audit and report to Congress annually on programs, projects, and activities funded through earmarks. Introduced on July 20, 2009; referred to House committees on Rules, Standards of Official Conduct, Judiciary, and Oversight and Reform.

H.R. 3964 (Hensarling et al.). Spending, Deficit, and Debt Control Act of 2009. Title II, subtitle B: Legislative Line-Item Veto Act of 2009. Amends the ICA of 1974 to authorize the President to propose to Congress in a special message the cancellation of any item of discretionary spending, item of direct spending, or limited tariff benefit or targeted tax benefit. Provides expedited procedures for congressional consideration of the proposals contained in such special messages. Dedicates any savings from a repeal or cancellation only to deficit reduction or increase of a surplus. Authorizes the President to withhold discretionary budget authority temporarily from obligation (or to defer), or to suspend temporarily direct spending, a limited tariff, or targeted tax benefit. Requires the Comptroller General to report to Congress when any item of discretionary spending is not made available or any item of direct spending, limited tariff benefit, or targeted tax benefit continues to be suspended after the deferral period has expired. Introduced on October 29, 2009; referred to the Committee on the Budget, and in addition to the Committees on Rules, Appropriations, Oversight and Government Reform, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

H.R. 4921 (Minnick et al). Budget Enforcement Legislative Tool Act of 2010. Companion bill to S. 907 (see below). Introduced on March 24, 2010; referred to the Budget Committee and in addition to the Rules Committee, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

H.R. 5454 (Spratt et al.). Reduce Unnecessary Spending Act of 2010. Amends the ICA of 1974 to provide an expedited process for consideration of certain rescission requests from the President, submitted within 45 days after signing a bill into law. The President would be able to request in such a rescission package the reduction or elimination of any new budget authority or obligation limits in spending measures except to the extent that the funding would provide for an entitlement law. Items in the special message would be considered as a package and would be subject to expedited procedures in Congress, designed to ensure an up-or-down vote on the approval bill. Introduced on May 28, 2010; referred to the Budget Committee and in addition to the Rules Committee, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

H.J.Res. 15 (Platts). Constitutional amendment. Allows the President to decline to approve in whole any dollar amount of discretionary budget authority, any item of new direct spending, or any limited tax benefit. Introduced on January 8, 2009; referred to the Judiciary Committee.

S. 524 (Feingold and McCain). Congressional Accountability and Line-Item Veto Act of 2009. Companion bill to H.R. 1294 (see above). Introduced on March 4, 2009; referred to the Budget Committee.

S. 640 (Gregg and Lieberman). Second Look at Wasteful Spending Act of 2009. Amends the ICA of 1974 to authorize the President to propose rescission of dollar amounts of discretionary budget authority, items of direct spending, or cancellation of targeted tax benefits in a special message to Congress. Provides expedited procedures for consideration of the draft bill accompanying the special message from the President. Introduced on March 19, 2009; referred to the Budget Committee. Similar to provisions in S. 3521,109th Congress, reported favorably by the Budget Committee on (S.Rept. 109-283).

S. 907 (Carper et al.). Budget Enforcement Legislative Tool Act of 2009. Amends the ICA of 1974 to authorize the President to propose certain rescissions of discretionary budget authority in a special message to Congress within three days of enactment of the appropriations act. Establishes expedited procedures for congressional consideration of a draft measure (to accompany each special message), approving of the requested rescissions. Introduced on April 28, 2009; referred to the Budget Committee.

S. 1808 (Feingold). Control Spending Now Act. Title I, subpart B: Legislative Line Item Veto Act of 2009. Congressional Accountability and Line Item Veto Act of 2009—Amends the ICA of 1974 to authorize the President to propose the repeal of any congressional earmark or the cancellation (line item veto) of any limited tariff or targeted tax benefit. Dedicates any such repeal or cancellation only to deficit reduction or increase of a surplus. Prescribes procedures for expedited consideration in Congress for such proposals. Authorizes the President temporarily to withhold congressional earmarks from obligation or suspend a limited tariff or targeted tax benefit. Requires the Comptroller General to report to Congress when any item of discretionary spending is not made available or any item of direct spending, limited tariff benefit, or targeted tax benefit continues to be suspended after the deferral period has expired. Expresses the sense of Congress on abuse of proposed repeals and cancellations. Introduced on October 20, 2009; referred to the Committee on Finance.

S. 3026 (Bayh and McCain). Fiscal Freeze Act of 2010. Title I, Congressional Accountability and Line-Item Veto Act of 2010. This title of the omnibus budget reform measure is virtually the same as H.R. 1294 and S. 524. Introduced on February 23, 2010; referred to the Budget Committee.

S. 3423 (Kerry). Veto Wasteful Spending and Protect Taxpayers of 2010. Amends the ICA of 1974 to authorize the President to propose cancellation of any dollar amount of discretionary budget authority, any item of new direct spending, or any limited tax benefit, within 10 days of enactment. Provides expedited procedures for congressional consideration of the approval bill accompanying each special message from the President. Introduced on May 25, 2010; referred to the Budget Committee.

S. 3474 (Feingold et al.). Reduce Unnecessary Spending Act of 2010. Companion bill to H.R. 5454 (see above). Introduced on June 9, 2010; referred to the Budget Committee.

S.J.Res. 22 (LeMieux). Constitutional amendment. Includes provisions relative to requiring a balanced federal budget and granting the President the power to exercise a line-item veto. Introduced on December 15, 2009; referred to the Judiciary Committee.

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