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A Balanced Budget Constitutional Amendment: Procedural Issues and Legislative History

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ABSTRACT

This report examines the recent legislative history of proposed constitutional amendments to require a balanced federal budget. It provides a detailed description of committee and floor consideration during the 104th and 105th Congresses, as well as a brief account of previous consideration, and a list of recent hearings and committee reports on the subject. This report will be updated as legislative actions occur. For additional background information; see CRS Report 97-379 GOV, *A Balanced Budget Constitutional Amendment: Background and Congressional Options*. This report supercedes archived Issue Brief 97013, *A Balanced Budget Constitutional Amendment: Procedural Issues and Legislative History*.

A Balanced Budget Constitutional Amendment: Procedural Issues and Legislative History

Summary

One of the most persistent political issues of recent years has been the federal budget of the United States and its deficit. Since the 1930s, dozens of proposals have called for laws or constitutional amendments that would require a balanced budget and/or limit the size or growth of the federal budget or of the public debt. The accumulation of large deficits since the 1970s has heightened the feeling of some policymakers and other observers that the Constitution should be amended to require the federal government to balance revenues and expenditures.

The chief debate has been on the necessity of making such a requirement a part of the Constitution, but other questions have arisen as well. How would such a requirement affect the balance of power between the President and Congress? If Congress and the President failed to pass a balanced budget, how would the requirement be enforced? Should there be exceptions or circumstances when the requirement would not be enforced?

In the 104th Congress, the House Republican leadership placed a balanced budget constitutional amendment on the agenda as part of its "Contract with America." The House passed H.J.Res. 1, as amended, by the necessary two-thirds majority (300-132) on January 26, 1996. However, votes in the Senate on a balanced budget amendment fell short of achieving the necessary two-thirds majority vote on two occasions — March 2, 1995, 65-35; and June 6, 1996, 64-35.

Consideration of a balanced budget constitutional amendment has been renewed in the 105th Congress. The Senate Judiciary Committee held hearings on S.J.Res. 1 on January 17 and 22, 1997, and ordered it reported on January 30. The Senate began debating the measure on February 5, 1997, and on March 4 it was defeated when it fell short of the necessary two-thirds majority, 66-34. In the House, consideration in the 105th Congress has not advanced as far. After hearings by the Judiciary Committee (on February 3, 1997) and the Budget Committee (on February 5, 1997), the Judiciary Committee began a markup of H.J.Res. 1 on February 5, but recessed without coming to any conclusion. No further action has been taken.

While the debate on a balanced budget amendment has continued, both Congress and the President have also worked towards the goal of achieving a balanced budget. The combined effect of the growth of the U.S. economy and efforts to restructure spending and revenues is a Congressional Budget Office (CBO) projection that the federal budget is expected to be balanced in 1998 and is likely to remain so for several years. On February 2, 1998, President William Clinton submitted the first proposed balanced budget since 1970. Subsequently, both the House and the Senate adopted concurrent resolutions on the budget, projecting a surplus.

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A Balanced Budget Constitutional Amendment: Procedural Issues and Legislative History

Most Recent Developments

In each of the past several Congresses, the House or the Senate or both have considered proposals for a constitutional amendment to require a balanced federal budget. In the 105th Congress, the Senate has considered one such proposal (S.J.Res. 1), but the measure failed (66-34) to achieve the necessary two-thirds majority vote on March 4, 1997. Shortly afterwards, House Judiciary Committee Chairman Henry Hyde commented that he did not see any current momentum for further consideration of a balanced budget amendment in this Congress.

Although there has been no legislative action in 1998, the debate on a balanced budget amendment has continued. Both Congress and the President have worked towards the goal of actually achieving a balanced budget. The combined effect of the growth of the U.S. economy and efforts to restructure spending and revenues is a Congressional Budget Office (CBO) projection that the federal budget is expected to be balanced in 1998, and is likely to remain so for several years. In addition, on February 2, 1998, President William Clinton submitted the first proposed balanced budget since 1970. Subsequently, both the House and the Senate adopted concurrent resolutions on the budget, projecting a surplus.

Background and Analysis

The debate over the relative benefits of a balanced budget, as well as the accompanying debate over a constitutional amendment solution, has been spurred in recent years partly by a concern that commitment to an annually balanced federal budget has been largely abandoned. Balanced budgets enjoyed a long history of acceptance as a part of an “unwritten constitution,” like political parties and the President’s cabinet. However, since the 1930s, and especially since the Kennedy Administration, federal budget deficits and surpluses have come to be “managed” as an aspect of fiscal policy. Additionally, because the federal government has not ended a fiscal year in surplus since FY1969, and the size of the annual deficits has increased dramatically since FY1982, some observers feared that the practical pursuit of a balanced budget has been abandoned. Nevertheless, the revival of the balanced budget as a political goal and the call for a constitutional amendment to require its realization reflect its status as one of the most persistent political issues of recent years, especially during the Reagan, Bush, and Clinton Administrations.

The previous experience of some Members of Congress in state governments, where there are various requirements for a balanced budget, and the increasing level

of the federal deficit made the idea of mandating a balanced budget in the Constitution more popular. Both Presidents Reagan and Bush expressed strong support for this position, though neither submitted or presided over such budgets. On March 16, 1994, President Clinton sent a letter to Congress in which he stated his opposition to a constitutional amendment, despite his overall support for the goal of deficit reduction.¹ This distinction was drawn again when on February 4, 1997, in his State of the Union message, President Clinton stated that he believed it “unwise to adopt a balanced budget amendment that could cripple our country in time of crisis later on ...” and submitted an FY1998 budget on February 6, 1997, that included a projected balanced budget for FY2002. The budget for FY1999, submitted by President Clinton February 2, 1998, included a projected balanced budget for each fiscal year between FY1999 and FY2008.²

Congressional Consideration in the 105th Congress

On January 17, 1997, the Senate Judiciary Committee held a hearing addressing the balanced budget constitutional amendment issue. Four days later, on January 21, Senator Orrin G. Hatch introduced a proposed amendment to the Constitution to require a balanced budget by the beginning of FY2002, and each year after that “unless three-fifths of the whole number of each House of Congress” voted to waive the requirement. The measure was sponsored by 62 Senators. At least five additional supporters were needed for it to reach the two-thirds majority required for approval.

The Senate Judiciary Committee held a second hearing on the issue on January 22 and reported S.J.Res. 1 without amendment on January 30 (S.Rept 105-3). Six amendments, including two substitutes, were offered during the committee’s deliberations, but all were rejected. The proposed substitutes (offered by Senators Dianne Feinstein and Robert Torricelli) addressed three issues: if and when Social Security should be exempted; whether there should be a capital budget; and under what circumstances the balanced budget requirements would not have to apply. The four amendments that were considered separately addressed the following issues: (1) the Kennedy amendment called for the Social Security trust fund to be excluded from balanced budget calculations; (2) the Leahy amendment would have stricken the supermajority requirement for raising the debt limit; (3) the Durbin amendment would have required a majority of the whole number in each house to approve tax expenditures; and (4) the Feingold amendment would have required ratification by the states within three years. As reported, S.J.Res. 1 consisted of the following provisions:

¹ U.S. Congress, House, *A Communication from the President of the United States, Transmitting a Letter in Writing to Reaffirm His Opposition to the Proposed Balanced Budget Amendment to the Constitution of the United States (H.J. Res. 103)*, H.Doc. 103-223, 103rd Cong., 2nd sess. (Washington: GPO, March 17, 1994).

² For more information on the pros and cons of a balanced budget constitutional amendment see: U.S. Library of Congress, Congressional Research Service, *A Balanced Budget Constitutional Amendment: Background and Congressional Options*, by James V. Saturno, CRS Report 97-379 GOV (Washington: March 20, 1997).

Section 1. Total outlays for any fiscal year shall not exceed total receipts for that fiscal year, unless three-fifths of the whole number of each House of Congress shall provide by law for a specific excess of outlays over receipts by a rollcall vote.

Section 2. The limit on the debt of the United States held by the public shall not be increased, unless three-fifths of the whole number of each House shall provide by law for such an increase by a rollcall vote.

Section 3. Prior to each fiscal year, the President shall transmit to the Congress a proposed budget for the United States Government for that fiscal year, in which total outlays do not exceed total receipts.

Section 4. No bill to increase revenue shall become law unless approved by a majority of the whole number of each House by a rollcall vote.

Section 5. The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect. The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law.

Section 6. The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts.

Section 7. Total receipts shall include all receipts of the United States Government except those derived from borrowing. Total outlays shall include all outlays of the United States Government except for those for repayment of debt principal.

Section 8. This article shall take effect beginning with fiscal year 2002 or with the second fiscal year beginning after its ratification, whichever is later.

On February 4, 1997, a unanimous consent agreement was propounded to begin consideration of S.J.Res. 1 on the Senate floor the following day. On February 5, the Senate began debate on the measure and began consideration of amendments the following day. Action on amendments to the measure was as follows:

- ! Durbin amendment to allow waivers of the balanced budget requirement for cases of economic emergency — tabled, 64-35, on February 10;
- ! Wellstone amendment to establish a policy whereby spending for education, nutrition, and health programs for the poor should not be disproportionately affected by the effort to achieve a balanced budget — tabled, 64-35, on February 11;
- ! Dodd amendment to modify the language concerning waivers of the balanced budget requirement for threats to national security — tabled, 64-36, on February 12;

- ! Byrd amendment to strike reliance on estimates under the provisions of the amendment — tabled, 61-34, on February 24;
- ! Reid amendment to exclude Social Security from the amendment's requirements — tabled, 55-44, on February 25;
- ! Feinstein substitute to allow the amendment's requirements to be waived for military or economic emergencies or natural disasters, to exclude Social Security, to allow for the creation of a capital budget, and to allow the debt limit to be raised by majority vote — tabled, 67-33, on February 26;
- ! Torricelli amendment to allow the amendment's requirements to be waived by majority vote for military or economic emergencies, and to provide for a separate capital budget — rejected, 37-63, on February 26;
- ! Dorgan substitute to allow for the amendment's requirements to be waived by majority vote for military or economic emergencies and to exclude Social Security — tabled, 59-41, on February 26;
- ! Boxer amendment to allow federal assistance to states and localities for emergency relief to be excluded from the amendment's requirements — tabled, 60-40, on February 26;
- ! Graham/Robb amendment to strike provision limiting application of Section 2 to debt held by the public — tabled, 59-39, on February 27;
- ! Feingold amendment to require ratification by the states within three years — tabled 69-31, on February 27;
- ! Feingold amendment to allow the use of an accumulated surplus to balance the budget for a subsequent fiscal year — tabled, 60-40, on February 27;
- ! Leahy (for Kennedy) amendment to provide that only Congress shall have authority to enforce the amendment — tabled, 61-39, on February 27;
- ! Bumpers motion to refer the joint resolution to the Budget Committee with instructions that it be reported back with the Bumpers/Feingold substitute language (which would make the balanced budget requirement a part of the Congressional Budget Act rather than the Constitution) — tabled, 65-34, on February 27;
- ! Hollings/Specter/Bryan amendment to add provisions relating to campaign finance — withdrawn on February 27.
- ! Conrad (for Rockefeller) amendment to limit reductions in outlays for Medicare — withdrawn on February 27.

On February 27, a unanimous consent agreement was reached to provide for a final vote on March 4. On that day, the measure was defeated when it failed to achieve the necessary two-thirds majority, 66-34.³

A House companion measure, H.J.Res. 1, was considered by the House Judiciary Committee at a hearing on February 3. The committee began a markup of the measure on February 5 but recessed without reaching any conclusion. Also on February 5, the House Budget Committee held a hearing on the issue of a balanced budget amendment.

On June 5, 1997, the House and Senate approved H.Con.Res. 84, a budget resolution showing a path to a balanced budget in FY2002. That same week, House Judiciary Committee Chairman Hyde commented that he did not see any current momentum for further consideration of a balanced budget amendment.⁴

Congressional Consideration in the 104th Congress

House Action

In the 104th Congress, the new Republican leadership in the House placed a balanced budget constitutional amendment on the agenda as part of its “Contract with America.” On January 4, 1995, Representative Joe Barton and others introduced H.J.Res. 1, a constitutional balanced budget amendment consistent with the “Contract with America”; the resolution was referred to the House Judiciary Committee. The committee held two days of hearings, (on January 9 and 10), and reported the measure with amendments on January 11 (H.Rept. 104-3). On January 24, the House Rules Committee reported H.Res. 44 (H.Rept. 104-4), providing for the consideration of H.J.Res. 1 and H.Con.Res. 17 (relating to the treatment of Social Security under any constitutional balanced budget amendment).

According to the measure’s chief sponsor, Representative Michael Flanagan, H.Con.Res. 17 required “Congress to leave the Federal Old Age and Survivors Insurance Trust Fund and the Federal Disability Trust Fund alone when it is forced to comply with the balanced budget amendment.” The precise effect of the amendment, however, was a point of contention during debate. Nevertheless, the House passed the resolution on January 25, by a vote of 412-18.⁵

³ See vote no. 24 in the *Congressional Record*, daily edition, vol. 143, March 4, 1997, p. S1920.

⁴ Eric Pianin, “Budget Amendment Languishes,” *Washington Post*, June 8, 1997, p. A8.

⁵ Representative Michael Flanagan, remarks in the House, *Congressional Record*, daily edition, vol. 141, Jan. 25, 1995, p. H619; H.Con.Res. 17, approved by vote no. 40, *Ibid.*, p. H628.

On January 25 and 26, the House considered H.J.Res. 1, before passing it with the necessary two-thirds majority by a vote of 300-132,⁶ making it the first proposed balanced budget amendment to be approved by the House. Adoption followed consideration of six substitute amendments, which were selected from 44 amendments inserted in the *Congressional Record* between January 13 and January 20, pursuant to a notice issued by the House Rules Committee. Two of these substitutes were adopted during the debate. The first would have required a three-fifths vote to increase tax revenues (offered by Representative Barton and identical to a Judiciary Committee amendment offered during markup). It was adopted 253-171.⁷ This action was superceded, however, when the House adopted a second substitute by a larger majority. The chief difference in the second approved substitute was that it would have required a majority of the House rather than a super majority, to approve tax increases, (offered by Representative Dan Schaefer). This substitute was adopted 293-139.⁸

The major features of H.J.Res. 1, as passed by the House on January 26, 1995, were the following:

- ! total outlays could not exceed receipts, unless a deficit is allowed by a three-fifths roll call vote in each house (261 Members in the House and 60 Members in the Senate);
- ! the limit on debt held by the public could only be raised by a three-fifths roll call vote in each house;
- ! the President was required to submit a budget reflecting a budgetary balance;
- ! no bill to increase revenue could become law unless approved by an absolute majority vote in each house (218 Members in the House and 51 Members in the Senate);
- ! the requirements could be waived only in the event of a declared war or declared imminent and serious military threat;
- ! all receipts (except borrowing) and all outlays (except for the repayment of debt principal) were covered; and
- ! Congress was required to enforce the article by appropriate legislation.

Additionally, H.J.Res. 1 provided an effective date of FY2002, or the second year after ratification, whichever was later.

⁶ See vote no. 51 in the *Congressional Record*, daily edition, vol. 141, Jan. 26, 1995, p. H772.

⁷ See vote no. 41, *Ibid.*, p. H713.

⁸ See vote no. 49, *Ibid.*, p. H770.

Senate Action

Following passage of H.J.Res. 1 in the House, several Democratic Senators voiced concern about passage in the Senate without also producing a detailed plan for deficit reduction and released a letter to Majority Leader Robert Dole to that effect signed by 41 Democratic Senators. During consideration of S. 1 (Unfunded Mandates Act) on January 26, 1995, the Senate adopted two amendments expressing the sense of the Senate concerning the treatment of Social Security under a constitutional balanced budget amendment.⁹

The Senate version of the balanced budget amendment, S.J.Res. 1, was introduced by Majority Leader Dole, and others, on January 4, 1995, and referred to the Senate Judiciary Committee. The committee held one day of hearings on January 5, before reporting S.J.Res. 1, without amendment, on January 23 (S.Rept. 104-5). After H.J.Res. 1 was passed by the House, the Senate agreed by unanimous consent on January 27, to begin deliberation using the House-passed version as the vehicle for consideration on the following Monday, January 30. The Senate debated the proposal on January 30 and 31, and February 1 and 2, before the first amendments were offered on February 3.

As in the House, the issue of a detailed plan arose. On Friday, February 3, an amendment was offered by Senator Thomas A. Daschle, the so-called “right-to-know” amendment. It required that a blueprint be established showing the planned course of deficit reduction and elimination before the proposed constitutional amendment could take effect. After debating the amendment on February 3, 6, and 7, the Senate voted on February 8 to table a motion by Senator Daschle to commit H.J.Res. 1 to the Judiciary Committee with instructions that it incorporate the Daschle amendment (231) into the resolution and then report back the amended resolution. The Daschle motion and amendment were effectively killed when the motion to table was agreed to by the Senate, 56-44.¹⁰

The second major issue to be addressed by the Senate was the budgetary status and treatment of Social Security under a balanced budget amendment. The issue was formally raised when Senator Harry Reid offered an amendment on February 8 to exclude the receipts and outlays of Social Security from a balanced budget requirement. The Reid amendment (236) was debated on February 8, 9, 10, 13, and 14, before being tabled by the Senate, 57-41.¹¹ Previously, the Senate had agreed by voice vote to a motion by Majority Leader Dole to commit the measure to the Budget Committee with instructions that the committee report back the resolution forthwith, and report to the Senate as soon as possible a plan for achieving a balanced budget

⁹ See consideration of Senate amendments 190 and 196 (to amendment 190), *Ibid.*, pp. S1557, S1583-S1599.

¹⁰ See vote no. 62 in the *Congressional Record*, daily edition, vol. 141, Feb. 8, 1995, p. S2307.

¹¹ See vote no. 65 in the *Congressional Record*, daily edition, vol. 141, Feb. 14, 1995, p. S2592.

without affecting Social Security receipts or payments. A Dole amendment to that motion (238) established its final language and was agreed to, 87-10.¹²

After the Reid amendment was disposed of, the Senate considered and rejected several other amendments on February 14 and 15. On February 16, the Senate voted on a motion entered by Majority Leader Dole to invoke cloture and limit further consideration of the resolution. That motion failed to achieve the necessary three-fifths majority, 57-42.¹³ Later that same day, however, the Senate agreed by unanimous consent to limit further consideration and to provide for a final vote on the measure on February 28.¹⁴ In addition, two cloture votes scheduled for February 22 were vitiated. Consideration of amendments and motions to refer with instructions continued on February 22, 23, 24, 27 and 28.

On February 28, the Senate agreed to an amendment offered by Senator Sam Nunn. The Nunn amendment (300, as modified) added language limiting judicial authority to interpret or enforce the proposed constitutional amendment to situations specifically authorized by law. The provision was agreed to, 92-8.¹⁵ After finishing consideration of all amendments and motions, the Senate recessed on February 28 and March 1, without taking a final vote on adopting the proposed constitutional amendment, as amended. On March 2, 1995, the Senate fell short of the necessary two-thirds majority, 65-35.¹⁶ Majority Leader Dole changed his vote to the prevailing side (against the amendment) for the final tally in order to take advantage of Senate Rule XIII and enter a motion to reconsider the vote at a later time. The Senate agreed by unanimous consent to the motion to reconsider on June 4, 1996. After debating the proposal on June 5 and June 6, H.J.Res. 1 failed to achieve the necessary two-thirds majority, 64-35.¹⁷

Earlier Congressional Consideration

The proposal for a balanced budget constitutional amendment has consistently been an issue in Congress in recent years. Because proposed constitutional amendments are under the jurisdiction of the House and Senate Judiciary Committees, these committees have been in the forefront of the debate. The Senate

¹² See vote no. 63 in the *Congressional Record*, daily edition, vol. 141, Feb. 10, 1995, p. S2453.

¹³ See vote no. 74 in the *Congressional Record*, daily edition, vol. 141, Feb. 16, 1995, p. S2778.

¹⁴ The remaining amendments and motions to be in order were enumerated in *Ibid.*, p. S2820.

¹⁵ See vote no. 87 in the *Congressional Record*, daily edition, vol. 141, Feb. 28, 1995, p. S3276.

¹⁶ See vote no. 98 in the *Congressional Record*, daily edition, vol. 141, March 2, 1995, p. S3314.

¹⁷ See vote no. 158 in the *Congressional Record*, daily edition, vol. 142, June 6, 1996, p. S5903.

Judiciary Committee has conducted hearings on a balanced budget amendment on at least 25 days extending back to the 84th Congress, and has reported nine joint resolutions between the 97th and 105th Congresses. The only proposed balanced budget amendment to be reported prior to that time did not receive floor consideration. The measure had been referred jointly to the Senate Appropriations and Judiciary Committees by special arrangement by unanimous consent. Although the Appropriations Committee reported the proposal back to the Senate (S.J.Res. 61, S.Rept. 154, 80th Congress), the Judiciary Committee took no further action.¹⁸

The House Judiciary Committee has held hearings less often (in the 100th and 105th Congresses), but the House has considered a proposed constitutional amendment on five occasions — in the 97th, 101st, 102nd, 103rd, and 104th Congresses. Other committees that have held hearings include the House Budget Committee (102nd Congress), the Senate Budget Committee (102nd Congress), the Senate Appropriations Committee (103rd Congress), and the Joint Economic Committee (98th and 104th Congresses).

House and Senate consideration of proposed constitutional balanced budget amendments in previous years has touched on myriad issues. Some of the most prominent are: super-majority requirements for raising taxes, the budgetary treatment of the Social Security trust funds and capital expenditures, the role of the judiciary, and enforcement generally.

House Consideration, 97th- 103rd Congresses

House consideration in the 97th, 101st, 102nd, and 103rd Congresses came after the discharge process was used to force consideration (although in none of these cases was the discharge procedure, by itself, used for considering the proposed amendment). In the House, past practice has been to consider a series of alternate balanced budget amendments in the form of a series of substitutes. In the 97th, 101st, 102nd, and 103rd Congresses, these were considered in Committee of the Whole under a king-of-the-hill amendment structure, where the last version to receive a majority vote would be the version reported back to the House (and would require a two-thirds majority vote for final approval). In the 104th Congress, this was modified to a so-called queen-of-the-hill process, in which the version receiving the greatest majority in Committee of the Whole would be the version reported back to the House. On each occasion that the House has considered a proposed balanced budget amendment, it has been considered over a period of one or two days.¹⁹

In the 97th Congress, the House considered two alternatives, the proposed measure itself and one substitute that would have required the President to submit a balanced budget and for Congress to adopt a statement of receipts and outlays in which “total outlays are no greater than total receipts,” but not require the year to end with the budget actually balanced. The substitute was rejected, and the measure

¹⁸ See *Congressional Record*, vol. 93, May 6, 1947, pp. 4555-4557.

¹⁹ For additional detail on consideration in the 97th - 103rd Congresses, see: CRS Report 97-379 GOV, *A Balanced Budget Constitutional Amendment: Background and Congressional Options*, pp. 18-23.

subsequently failed to achieve the necessary two-thirds majority, 236-187.²⁰ In the 101st Congress, the House considered two substitutes for a balanced budget amendment; it rejected one substitute that would have limited the rate of growth of federal revenues, but approved a minor modification of the measure offered by its chief sponsor. Again the proposal failed to achieve the necessary two-thirds majority, 279-150.²¹ In the 102nd Congress, the House considered four substitutes. The first would have limited expenditures to 19% of gross national product (GNP) and provided the President with an item veto; the second would have limited the rate of growth of federal revenues; and the third would have exempted Social Security from the provisions of the amendment. All of these were rejected, but the House again approved a substitute that was a minor modification of the measure offered by its chief sponsor. The measure failed to achieve the necessary two-thirds majority, 280-153.²²

In the 103rd Congress, the House considered four substitutes. Two of these (the first limiting expenditures to 19% of GNP and providing the President with an item veto, the second exempting Social Security from the amendment's provisions and establishing a separate capital budget) were rejected in Committee of the Whole. One substitute that would have limited the growth of federal revenues was rejected in Committee of the Whole, in which territorial delegates and the Resident Commissioner from Puerto Rico were allowed to vote, but later approved in the House, where the vote was limited to Representatives. This approval, was later superseded when the final substitute was approved, making minor changes to the effective date of the amendment. The proposal, however, failed to achieve the necessary two-thirds majority, 271-153.²³

Senate Consideration, 97th- 103rd Congresses

Consideration of proposed balanced budget amendments in the Senate has not been as structured as House consideration. In each of the Congresses in which the Senate has considered a proposed balanced budget amendment, a number of issues have been raised separately, in the form of floor amendments, but complete substitutes have typically not been considered.

The Senate has considered a proposed amendment on the floor in the 97th, 99th, and 103rd Congresses. In the 97th Congress, the Senate considered S.J.Res. 58 on the floor over a period of 11 days and approved the proposal, 69-31.²⁴ In the 99th Congress, the Senate considered S.J.Res. 225 on the floor over a period of eight days,

²⁰ See vote no. 387 in the *Congressional Record*, vol. 128, Oct. 1, 1982, p. 27255.

²¹ See vote no. 238 in the *Congressional Record*, vol. 136, July 17, 1990, p. 17819.

²² See vote no. 187 in the *Congressional Record*, vol. 138, June 11, 1992, p. 14468.

²³ See vote no. 65 in the *Congressional Record*, daily edition, vol. 140, March 17, 1994, p. H1497.

²⁴ See vote no. 288 in the *Congressional Record*, vol. 128, Aug. 4, 1982, p. 19229.

but the measure failed to achieve the necessary two-thirds majority, 66-34.²⁵ In the 103rd Congress, the Senate debate focused on S.J.Res. 41, modified to include a provision limiting the authority of the judiciary to enforce a balanced budget amendment, and a substitute proposed by Senator Harry Reid that would have exempted Social Security and capital expenditures from the balanced budget requirement and provided for its suspension in times of economic recession. Considered on the floor over a period of six days, the Reid substitute was rejected, 22-78,²⁶ and S.J.Res. 41, as modified, failed to achieve a two-thirds majority, 63-37.²⁷

In addition, during the 102nd Congress, the Senate considered an amendment that would have stricken the language in an unrelated bill and replaced it with a proposed balanced budget constitutional amendment. The amendment was withdrawn when two attempts to invoke cloture failed by identical votes of 56-39.²⁸

Congressional Procedures for Considering a Balanced Budget Amendment

The basic process for consideration of any amendment to the Constitution is outlined in Article V. This provision grants Congress the ability to propose amendments to the states “whenever two-thirds of both houses shall deem it necessary.” This means that both the House and Senate must pass a joint resolution proposing a constitutional amendment by two-thirds majorities. Unlike other joint resolutions, such measures are not submitted to the President for his signature. Instead, the Constitution specifies that they be submitted to the states for ratification. If the proposal is ratified by three-fourths (38) of the states, it is certified by the archivist of the United States and becomes a part of the Constitution.

Except for the requirement for two-thirds majorities in each house, congressional procedure for considering a joint resolution to amend the Constitution is the same as for any other proposed legislation. Some procedural points are worth noting, however. For example, the required two-thirds majority is two-thirds of those voting, a quorum being present, and not two-thirds of the entire membership (which is 290 in the House and 67 in the Senate). Also, this requirement applies only to the vote on final passage (and on adoption of any conference report or second-chamber amendment), not to any preliminary or ancillary matters. The precedents of the House require only a majority vote for committee action (including action in Committee of the Whole or by a conference committee), adoption of special rules reported by the House Rules Committee, and adoption of any amendments. Similar practices apply in the Senate. In addition, joint resolutions proposing constitutional

²⁵ See vote no. 45 in the *Congressional Record*, vol. 132, March 25, 1986, p. 6124.

²⁶ See vote no. 47 in the *Congressional Record*, daily edition, vol. 140, Mar. 1, 1994, p. S2089.

²⁷ See vote no. 48, *Ibid.*, p. S2158.

²⁸ See vote no. 135 in the *Congressional Record*, vol. 138, June 30, 1992, p. 16986, and vote no. 136 in the *Congressional Record*, vol. 140, July 1, 1992, p. 17321.

amendments cannot also include any provisions that are intended to be only statutory. For this reason, provisions requiring administration or committee reports, clarifying legislative history, or declaring congressional intent have been considered in the Senate in the form of motions to refer the measure to a committee with instructions that the committee report back the measure forthwith, unchanged, and that it also report separately the instructed language. This action allows the Senate to consider proposed constitutional amendments without having to incorporate clarifications or congressional intentions directly into the proposals.

The drafting style of proposed amendments is also somewhat different from that for statutory enactments. Proposed amendments rarely make explicit reference to any other amendment or portion of the Constitution, even if the intent is to revise a specific point. For example, Article I, Section 3 is superseded by the Seventeenth Amendment (election of Senators), and Article I, Section 4 is superseded by the Twentieth Amendment (meeting day for Congress), but in neither case does the latter explicitly repeal the former. The only specific reference to another portion of the Constitution in an amendment is in the Twenty-First Amendment, which repeals the Eighteenth Amendment (prohibition).

The Constitution also provides a second method for proposing amendments, though it has never been used. Article V of the Constitution specifically provides that “on the application of two-thirds of the several states Congress shall call a convention for proposing amendments.” A convention would not have the power to amend the Constitution directly; any proposed amendment would still need to be ratified by three-fourths of the states in the same manner as one proposed by Congress.

Balanced Budget Constitutional Amendment Proposals in the 105th Congress, 1997-1998

H.J.Res. 1 (Schaefer)

Proposed amendment to the Constitution to require a balanced budget. Introduced January 7, 1997; referred to Committee on Judiciary. Hearing held February 3. Committee markup began on February 5, but recessed without taking action.

S.J.Res. 1 (Hatch)

Proposed amendment to the Constitution to require a balanced budget. Introduced January 21, 1997; referred to Committee on Judiciary. Hearings held January 17 and 22. Reported without amendment (S.Rept. 105-3), January 30, 1997. Consideration on the Senate floor began on February 5, and continued on February 6, 7, 10, 11, 12, 13, 24, 26, 27, and March 4 measure failed to achieve the necessary two-thirds majority, 66-34, on March 4.

Chronology of Actions on Proposed Balanced Budget Constitutional Amendments, 1936-1996

- 06/04/96 — The Senate agreed by unanimous consent to a motion to reconsider the vote on H.J.Res. 1 of March 2, 1995. Consideration continued on June 5 and 6. The Senate failed to adopt the proposal, 64-35.
- 01/30/95 — The Senate began consideration of H.J.Res. 1 by unanimous consent. Consideration continued on January 31, February 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 22, 23, 24, 27, and 28. On March 2, the Senate failed to adopt the proposal, 65-35.
- 01/25/95 — The House passed H.Con.Res. 17, 412-18, and began consideration of H.J.Res. 1. Consideration continued the following day, and the House passed H.J.Res. 1, as amended, by the necessary two-thirds majority, 300-132.
- 01/23/95 — Senate Judiciary Committee reported S.J.Res. 1 (S.Rept. 104-5).
- 01/18/95 — House Judiciary Committee reported H.J.Res. 1 (H.Rept. 104-3).
- 04/17/94 — The House failed to adopt H.J.Res. 103, 271-153, a proposed constitutional amendment to require a balanced federal budget.
- 02/22/94 — The Senate began consideration of S.J.Res. 41 (reported October 21, 1993, S.Rept. 103-163). Consideration continued on February 23, 24, 25, 28, and March 1. The Senate failed to adopt the proposal, 63-37.
- 06/24/92 — The Senate began consideration of an amendment to S. 2733 (a bill to regulate government-sponsored enterprises) that would replace the text of the bill with language for a balanced budget constitutional amendment. Consideration continued on June 25, 26, 30, and July 1. The amendment was withdrawn on July 1, when the Senate failed to invoke cloture, 56-39.
- 06/11/92 — The House failed to adopt H.J.Res. 290, 280-153, a proposed constitutional amendment to require a balanced federal budget.
- 06/09/92 — The House considered a bill under Suspension of the Rules (H.R. 5333), which would require the President to submit a balanced budget and Congress to consider a concurrent resolution on a budget that is balanced. The bill failed to achieve the necessary two-thirds majority, 220-199.
- 07/09/91 — The Senate Judiciary Committee reported S.J.Res. 18, a proposed constitutional amendment to require a balanced federal budget (S.Rept. 102- 103).

- 07/18/90 — The House passed H.R. 5258, 282-144, to require the President to submit a balanced budget and to require that each House consider a balanced budget resolution.
- 07/17/90 — The House failed to adopt H.J.Res. 268, 279-150, a proposed constitutional amendment to require a balanced federal budget.
- 03/25/86 — The Senate failed to adopt S.J.Res. 225, 66-34, a proposed constitutional amendment to require a balanced federal budget.
- 10/01/82 — The House failed to adopt H.J.Res. 450, 236-187, a proposed constitutional amendment to require a balanced federal budget and limit tax increases.
- 08/04/82 — The Senate agreed to S.J.Res. 58, 69-31, a proposed constitutional amendment to require a balanced federal budget and limit tax increases.
- 07/10/81 — The Senate Judiciary Committee reported S.J.Res. 58, the first proposed constitutional amendment to require a balanced federal budget and limit tax increases to reach the Calendar of either chamber (S.Rept. 97-151).
- 06/14/56 — The Senate Judiciary Committee held the first hearing on proposed constitutional amendments to require a balanced federal budget.
- 05/06/47 — The Senate Appropriations Committee reported S.J.Res. 61, to require a balanced federal budget, which was then referred to the Senate Judiciary Committee (S.Rept. 80-154).
- 05/04/36 — Representative Harold Knutson introduced H.J.Res. 579, the first formal proposal for a constitutional amendment to require a balanced federal budget.

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