

104TH CONGRESS }
1st Session }

SENATE

{ REPORT
104-9

LEGISLATIVE LINE ITEM VETO ACT
OF 1995

R E P O R T

OF THE

COMMITTEE ON THE BUDGET
UNITED STATES SENATE

ON

S. 4

TOGETHER WITH

ADDITIONAL AND MINORITY VIEWS



FEBRUARY 27 (legislative day, FEBRUARY 22), 1995.—Ordered to be printed

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WASHINGTON : 1995

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(III)

(IV)

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LEGISLATIVE LINE ITEM VETO ACT OF 1995

FEBRUARY 27 (legislative day, FEBRUARY 22), 1995.—Ordered to be printed

Mr. DOMENICI, from the Committee on the Budget,
submitted the following

REPORT

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany S. 4]

The Committee on Budget, to which was referred the bill (S. 4) A bill to grant the power to the President to reduce budget authority, having considered the same, reports thereon with amendments and without recommendation.

I. PURPOSE

The purpose of S. 4, the Legislative Line Item Veto Act, is to delegate to the President the authority to rescind all or part of budget authority provided in certain Acts. The President's rescissions would remain in effect unless Congress passed a disapproval bill rejecting the President's rescissions and overcame the President's veto of that disapproval bill.

While title X the Congressional Budget and Impoundment Control Act of 1974 provided legislative procedures for the consideration rescissions proposed by the President, Congress has routinely ignored these procedures. Many charge that the President's control over spending decisions was weakened by title X, which delineated the President's authority to propose rescissions of budget authority or defer the obligation of budget authority.

S. 4 would expand the President's power to reduce discretionary spending by giving him the authority to cancel budget authority without any other action required by Congress.

The major provisions of S. 4, as reported by the Committee, are as follows:

Within 20 days of the enactment of an appropriations bill, the President can rescind in whole or in part budget authority provided in that Act;

The rescission is effective unless Congress passes a disapproval bill and overrides the President's veto of the disapproval bill within 35 days; and

If the President rescinds budget authority under this procedure, a lock box provides that any savings be devoted to deficit reduction by lowering the caps on discretionary spending.

II. BACKGROUND

OVERVIEW

The United States Constitution entrusts the “power of the purse” to the Legislative Branch of the United States. Pursuant to article I, section 8 Congress is empowered “[t]o lay and collect Taxes, Duties, Imports, and Excises to pay the Debts and provide for the common Defense and General Welfare of the United States.” The power of the purse is made more clear by Article I, Section 9 which provides that “[n]o money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.”

However, the expenditure of funds pursuant to Congressional authorization is an executive function, consistent with the President's obligation under Article II, Section 3, that he “take Care that the Laws be faithfully executed”. Presidents, at least since Thomas Jefferson, have asserted that the executive has some discretion in the expenditure of monies appropriated by Congress. This tug-of-war goes to the most basic tenet of the American democratic system of government—the balance of powers between the executive and the legislative branches of government—the power of the purse versus the impoundment power.

A review of writings on this subject shows that this conflict dates back to the earliest days of the Republic. The conflict has been made manifest through executive action, congressional legislation, and decisions of federal courts, including the United States Supreme Court.

The first significant impoundment of appropriated funds, was made by the third President, Thomas Jefferson, who in 1803 refused to spend \$50,000 appropriated by Congress to provide gun boats to operate on the Mississippi River. The conflict came to a head in the early 1970's when the 37th President, Richard Nixon, withheld from expenditure over \$12 billion for highway, water, and sewer projects, and millions of dollars in appropriated funds for housing, education, and health programs.

It was President Nixon's challenge to Congress' power of the purse that was a major impetus to the enactment of the Congressional Budget and Impoundment Control Act of 1974. Title X of this Act, the Impoundment Control Act of 1974, limited the President's management of appropriated funding by establishing procedures for the deferral or rescission of budget authority. In addition, title X provided legislative procedures for congressional action on these proposals.

PRE-1970 IMPOUNDMENT ACTIONS ¹

Following President Jefferson's withholding of \$50,000 for Mississippi river gun boats because he thought their use unnecessary, the next major action on impoundment authority did not occur until the U.S. Supreme Court decided a case entitled *Kendall v. United States ex rel. Stokes*, 37 U.S. (12 Pet.) 524 (1838). In that case, the Supreme Court held that the President could not withhold payment of a contract for delivery of the mail which Congress had authorized. The court saw this as a "ministerial" function which the President could not refuse in the faithful execution of the law. Just two years later in *Decatur v. Pauling*, 39 U.S. (12 Pet.) 497 (1840), the Court upheld a decision by the Secretary of the Navy to refuse payment to a widow whose claim was based on a congressional resolution. The Court found that the Secretary of the Navy's duty in this case was not merely ministerial but required discretion and judgment and, so, the court refused the writ of mandamus.

In 1876 President Grant took up the impoundment mantle when he notified Congress that he did not intend to spend the total amount appropriated for harbor and river improvement projects because they were of a private or local interest rather than in the national interest. This mirrors the current debate over line item veto because proposed Presidential rescissions are often targeted to funding provided by Congress for specific projects (i.e. "pork barrel" projects) or for funding added by Congress above amounts requested by the Administration. However, Congress did not challenge Grant's action.

In the years following Grant's impoundment, U.S. Attorneys General stated in formal opinions that congressional intent had to be considered, and not just statutory language, in determining whether the Congress was mandating an expenditure of funds or simply permitting the President to spend these funds.

The executive impoundment of funds gained some legal status with the enactment of the Anti-Deficiency Acts of 1905 and 1906. In addition to providing a method to prevent excessive expenditures that could necessitate supplemental funding later in the fiscal year, these Acts allowed the waiver of spending appropriated funds in cases of unforeseen emergencies. President Roosevelt used this authority during the Great Depression and World War II. He also impounded flood control funding, which did evoke a legislative response from Congress in 1943 to prohibit any agency or official (other than the Commissioner of Public Roads) from impounding funds appropriated for highway construction. Although limited in scope, Congress had responded to executive impoundment of congressionally provided funding.

In the 1960s, Presidential impoundment of funds were largely limited to defense programs and projects as the President exercised his authority as "Commander in Chief" of the armed forces. However, President Johnson did withhold billions of dollars in funding for highway projects, which Congress had no mechanism to address.

¹The documentation for this section is largely taken from an article entitled "History and Practice of Executive Impoundment of Appropriated Funds," by Niles Stanton, printed in the *Nebraska Law Review*, v. 53, no. 1, 1974, pp. 1-30.

NIXON IMPOUNDMENTS

President Richard Nixon brought the impoundment issued to the fore by withholding congressionally appropriated funds and claiming that historic precedent affirmed this authority.

Two court cases in 1973 addressed the impoundment of highway funds and water pollution control funds, but did not settle the legal question about the President's authority to impound funds. In *Missouri Highway Commission v. Volpe*, 479 F.2d 1099 (8th Cir 1973), affirmed 347 F. Supp. (W.D. Mo. 1972), the court of appeals held that highway funds could not be impounded for the stated purpose of trying to control inflationary pressures on the economy. In *City of New York v. Ruckelshaus*, 358 F. Supp. 669 (D.D.C. 1973), the court held that the Nixon Administration had no authority to direct the Environmental Protection Agency not to allocate appropriated funds to the states because this was determined to be ministerial duty.

The Administration and Congress again came to conflict when the President targeted rural loan and grant programs for termination through the mechanism of impounding the funds. Congress acted legislatively to thwart these actions but left the impoundment issue squarely before Congress for further action.

IMPOUNDMENT CONTROL ACT

The 1974 Impoundment Control Act was preceded by the 1972 Federal Impoundment and Information Act, which required the President to submit reports to Congress and the General Accounting Office on funding which had been withheld. Such information, however, did not address what was perceived as a misuse of executive authority in refusing to spend funds appropriated by the Congress. Congress addressed this issue by establishing the current impoundment control procedures.

Title X of the Congressional Budget and Impoundment Control Act of 1974 requires that the President submit messages to the Congress if he proposes to defer (temporary withhold) or rescind (permanently cancel) appropriated funds. A reading of the general history shows that executive impoundments have largely been undertaken to establish spending priorities. Presidents have tended to impound funds appropriated for programs that exceed his budget request or that represent specific projects of interest to Congress. With the exception of President Nixon's actions, the impoundment of funds has not traditionally been viewed as a significant tool to reduce federal spending.

Deferrals

The President can temporarily withhold from expenditure or delay the obligation of funds that are not currently needed. Congress can disapprove the deferral of funds through enactment of an impoundment resolution. However, since deferrals are now made largely for management rather than policy reasons, it is unusual for Congress to act to disapprove deferrals, and the funds are generally released for expenditure.

Rescissions

The President can propose to rescind (permanently cancel) budget authority. In the case of rescissions, Congress has 45 calendar days (of continuous session excluding 3-day recess periods) within which to approve these rescissions. If Congress does not enact legislation to approve the proposed rescissions, in whole or in part, the President must make the funds available for expenditure. The Congress can substitute its own rescissions for the President's proposal, and often has. Under this process, there is no requirement that Congress consider and vote on the President's proposed rescissions.

The General Accounting Office (GAO) recently reported that since enactment of the Congressional Budget and Impoundment Control Act in 1974 through October 7, 1994, U.S. Presidents have officially proposed 1,084 rescissions of budget authority totaling \$72.8 billion. Congress has adopted only 399, or 37 percent, of the proposed rescissions in the amount of \$22.9 billion. Congress has also initiated 649 rescissions totaling \$70.1 billion, largely in response to the President's proposals and often to pay for other federal spending. In total, over the twenty years of the current budget process, Congress has enacted 1,048 rescissions totaling \$92.9 billion.

LINE-ITEM VETO

The current debate over the legislative line-item veto proposals transcends the historical context of executive impoundment of funds to set spending priorities other than those approved by Congress. The debate has now centered on the granting of additional authority to the President to reduce federal spending as Congress seeks to balance the federal budget.

According to the Congressional Research Service of the Library of Congress, at least ten Presidents since the Civil War have stated support for the line-item veto, including President's Grant, Hayes, Arthur, Franklin Roosevelt, Truman, Eisenhower, Nixon, Ford, Reagan, and Bush. More recently, President Clinton campaigned on a line item veto, claiming that he could reduce spending by \$9.8 billion over four years, and urged Congress again in this year's State of the Union address to give him the line item veto. Two Presidents—Taft and Carter—opposed the line-item veto authority for the President. It is also documented that the Governors of 43 of the 50 states have some form of line item veto authority (see table I).

Congress has stopped short of considering a constitutional amendment to grant the President this authority, and has chosen to address the line-item veto authority by statute. During the 1980s three statutory approaches developed on the line-item veto.

Separate enrollment legislation would require each item in an appropriations or tax bill be enrolled as a separate Act, allowing the President to veto these individual items.

Enhanced rescission legislation, such as S. 4, would delegate to the President unilateral authority to rescind budget authority provided in appropriations Acts or to repeal tax expenditures in revenue acts. The President's rescissions or repeals could only be over-

turned by passage of a separate law. Assuming the President's veto of a law overturning his own rescissions or repeals, it would take a two-thirds vote of each House to overturn his actions.

Expedited rescission legislation would establish fast-track procedures for the consideration of the President's proposals to rescind budget authority provided in an appropriations act or to repeal tax expenditures in revenue acts. These proposals would only go into effect if passed by a majority of each House and signed into law.

Table II shows Senate action over the past 12 years on these three approaches to the line item veto. Even the legislative granting of such authority puts issues of the power of the purse and the balance of powers between the Congress and the President squarely before the Congress.

TABLE I.—GOVERNORS' VETO AUTHORITY

State	Item veto	No Veto	No item veto
Alabama	X		
Alaska	X		
Arizona	X		
Arkansas	X		
California	X		
Colorado	X		
Connecticut	X		
Delaware	X		
Florida	X		
Georgia	X		
Hawaii	X		
Idaho	X		
Illinois	X		
Indiana			X
Iowa	X		
Kansas	X		
Kentucky	X		
Louisiana			X
Maine			X
Maryland	X		
Massachusetts	X		
Michigan	X		
Minnesota	X		
Mississippi	X		
Missouri	X		
Montana	X		
Nebraska	X		
Nevada			X
New Hampshire			X
New Jersey	X		
New Mexico	X		
New York	X		
North Carolina		X	
North Dakota	X		
Ohio	X		
Oklahoma	X		
Oregon	X		
Pennsylvania	X		
Rhode Island			X
South Carolina	X		
South Dakota	X		
Tennessee	X		
Texas	X		
Utah	X		
Vermont			X
Virginia	X		
Washington	X		

TABLE I.—GOVERNORS' VETO AUTHORITY—Continued

State	Item veto	No Veto	No item veto
West Virginia	X		
Wisconsin	X		
Wyoming	X		
Total	43	1	6

Source: Senate Budget Committee. Compiled from information in House Committee on Rules, 99th Cong., 2d Session, Item Veto: State Experience and Its Application to the Federal Situation, Appendix C-1 (Comm. Print 1986), and Advisory Commission on Intergovernmental Relations, Significant Features of Fiscal Federalism, Vol. 1, p. 12, June 1994.

TABLE II.—SELECTED SENATE FLOOR VOTES ON OR RELATING TO MEASURES TO PROVIDE EXPANDED RESCISSION AUTHORITY OR SEPARATE ENROLLMENT SINCE ENACTMENT OF THE IMPOUNDMENT CONTROL ACT

Congress	Measure	Sponsor	Date/Chamber	Vote	Type of proposal
103rd	Amendment 542 to S. 1134.	Bradley	6/24/93	53-45	Separate enrollment.
			Senate.	(Budget Act waiver).	
103rd	Amendment 264 to S. Con. Res. 18.	Bradley	3/25/93	73-24	Separate enrollment.
103rd	Amendment 200 to S. Con. Res. 18.	Cohen	3/25/93	Voice Vote	Expedited rescission.
103rd	Amendment 200 to S. Con. Res. 18.	Cohen	3/25/93	34-65	Expedited rescission.
			Senate.	(to table)	
103rd	Amendment 73 to S. 460.	McCain	3/10/93	45-52	Enhanced rescission.
			Senate.	(Budget Act waiver)	
102nd	Amendment 3013 to H.R. 5677.	McCain/Coats	9/17/92	40-56	Enhanced rescission.
			Senate.	(Budget Act waiver)	
102nd	Amendment 1698 to S. 479.	McCain	2/27/92	44-54	Enhanced rescission.
			Senate.	(Budget Act waiver)	
101st	Amendment 1955 to S. 341.	McCain	6/6/90	43-50	Enhanced rescission.
			Senate.	(Budget Act waiver)	
101st	Amendment 1092 to H.R. 3015.	Coats et al	11/9/89	40-51	Enhanced rescission.
			Senate.	(Budget Act waiver)	
100th	Amendment 650 to H.J. Res. 324.	Evans	7/31/87	41-48	Separate enrollment.
100th	Amendment 1294 to H.J. Res. 395.	Evans	12/11/87	44-51	Separate enrollment.
99th	S. 43	Mattingly et al	7/18/85	57-42	Separate enrollment.
			Senate.	(cloture)	
99th	S. 43	Mattingly et al	7/24/85	58-40	Separate enrollment.
			Senate.	(cloture).	
99th	Amendment 2853 to S. 2706.	Quayle/Exon	9/19/86	34-62	Expedited rescission.
			Senate.	(Budget Act waiver)	
98th	Amendment 2625 to H.J. Res. 308.	Armstrong	11/16/83	49-46	Enhanced rescission.
			Senate.	(to table)	
98th	Amendment 3045 to H.R. 2163.	Mattingly	5/3/84	56-34	Separate enrollment.
			Senate.	(out of order)	

Source: Memorandum to the Senate Budget Committee on the Line Item Veto, Virginia McMurtry, Specialist in American National Government, Congressional Research Service, Library of Congress, February 14, 1995.

III. LEGISLATIVE HISTORY

Senator Dole introduced S. 4, the Legislative Line Item Veto Act of 1995, on January 4, 1995. S. 4 is similar to legislation introduced by Senator McCain for the past four Congresses. The bill has 28 cosponsors.

The Senate Budget Committee first took action on line item veto legislation in 1990. During the markup of budget process reform legislation, the Committee defeated two proposals proposed by Senator Armstrong to grant the President enhanced rescission authority. The Committee did approve legislation put forward by the Senator Hollings and reported S. 3181, the Legislative Line Item Veto Separate Enrollment Authority Act, on October 10, 1990 (Report No. 101-518).

During the 103d Congress, the House passed two bills that provided expedited procedures for the consideration of the President's proposed rescissions. On April 29, 1993, the House passed H.R. 1578, the Expedited Rescissions Act of 1993. A little over a year later the House passed a stronger expedited rescission bill, H.R. 4600, on July 14, 1994.

Although both House-passed bills were referred to the Senate Budget Committee, the committee did not take action on the legislation. The Committee did hold a hearing on line item veto legislation on October 5, 1994, 3 days prior to the date the Senate adjourned, essentially, to end the 103d Congress. (The Senate did return on November 30 and December 1, but only for the purposes of consideration of legislation on the General Agreement on Tariffs and Trade).

The 104th Congress saw immediate action on line item veto legislation. On January 18, 1995, the Senate Budget Committee held hearings on line item veto legislation. The House passed H.R. 2, legislation that is similar to S. 4, on February 6, 1995.

The Senate Budget Committee marked up S. 4 and ordered it reported without recommendation on February 14. The Committee adopted two amendments: an amendment by Senator Domenici to sunset the provisions of the bill on September 30, 2002 and an amendment by Senators Conrad and Snowe establishing a "lock box" to assure any savings from Presidential rescissions are devoted to deficit reduction.

IV. SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE

This Act may be cited as the "Legislative Line Item Veto Act of 1995".

SECTION 2. ENHANCED SPENDING CONTROL BY THE PRESIDENT

Adds a new title, Title XI—to the Congressional Budget and Impoundment Control Act of 1974. This new title sets forth new procedures under which the President rescinds budget authority and Congress may consider a bill disapproving such rescission.

TITLE XI—LEGISLATIVE LINE ITEM VETO RESCISSION
AUTHORITY

PART A—LEGISLATIVE LINE ITEM VETO RESCISSION AUTHORITY

SECTION 1101 OF TITLE XI. GRANT OF AUTHORITY

Subsection (a) in general

Authorizes the President to rescind all or part of any budget authority if he makes certain determinations concerning the effect of the rescission on the budget or deficit and if he determines that the rescission will not impair an essential government function or harm the national interest.

The President may rescind budget authority if he notifies Congress of such rescission by special message not later than 20 days after enactment of a regular or supplemental appropriations Act or a joint resolution making continuing appropriations that provides such budget authority. Or the President may notify Congress of such rescission by special message accompanying the submission of his budget if the rescission had not been proposed for rescission previously for that fiscal year.

The President is required to submit a separate rescission message for each appropriations act when he notifies Congress within the 20-day limit.

The 20 day limit is calendar days and does not include Saturdays, Sundays, or legal holidays. The President's authority to rescind budget authority under this subsection is not limited to discretionary budget authority, and would seem to permit the President to rescind mandatory appropriations. Also, the bill appears to provide the President with authority to rescind budget authority in other than appropriations Acts if these rescissions are submitted with the budget request.

Subsection (b) Rescission Effective Unless Disapproved

Provides that any amount rescinded under this title is deemed canceled unless a rescission disapproval bill is enacted into law within the following time limits:

- (1) A congressional review period of 20 calendar days of session during which Congress must pass and present a disapproval bill to the President;
- (2) An additional 10 days during which the President may exercise his authority to veto the disapproval bill. The 10 days here do not include Sundays and are, presumably, calendar days;
- (3) If the President vetoes the bill, Congress has an additional 5 calendar days of session after the date of the veto to override.

A rescission in a special message transmitted by the President shall not take effect if Congress adjourns sine die to end a Congress before the expiration of the time periods noted above. The message is deemed to be retransmitted on the first day of the next Congress and the time periods begin to run anew beginning after such first day.

SECTION 1102. DEFINITIONS

Defines the term “rescission disapproval bill” to be a bill or joint resolution which only disapproves the full rescission of budget authority in a special message transmitted by the President under this title.

SECTION 1103. DEFICIT REDUCTION

One of the committee amendments establishes a “lockbox”. On the day following Congressional failure to disapprove a rescission within the period of review, the President is required to reduce the discretionary spending limits under section 601 of the Congressional Budget Act of 1974 or to adjust the balances of the pay-go scorecard under section 252(b) of the Balanced Budget and Emergency Deficit Control Act to reflect the savings resulting from that rescission. The Chairmen of the Senate and House Budget Committees are also required to adjust appropriate allocations under sections 311(a) and 602(a) to reflect that rescission.

PART B—CONGRESSIONAL CONSIDERATION OF LEGISLATIVE LINE
ITEM VETO RESCISSIONS

SECTION 1111. PRESIDENTIAL SPECIAL MESSAGE

When the President rescinds budget authority under this title, he must transmit a special message specifying 1) the amount proposed for rescission, 2) the account, department, project, or function for which the budget authority was available, 3) the reasons and justifications for the determinations required under section 1101, 4) the fiscal, economic, and budgetary effects of such rescission, and 5) all such other information relating to or bearing on the proposed rescission.

SECTION 1112. TRANSMISSION OF MESSAGES; PUBLICATIONS

Subsection (a) requires the special message to be transmitted to the House and Senate on the same day and provides that delivery shall be to the Clerk of the House and the Secretary of the Senate when either of those Houses is not in session. Each special message is to be referred to the appropriate committees of each House and shall be printed as a document of each House.

Subsection (b) requires that the special message be printed in the Federal Register.

SECTION 1113. PROCEDURE IN THE SENATE

Subsection (a) provides that any disapproval bill introduced with respect to a special message shall be referred to the appropriation committees of the House or Senate. A rescission disapproval bill received in the Senate from the House is required to be considered in the Senate under the procedures set forth in this section.

Subsection (b) limits debate in the Senate on any rescission disapproval bill, debatable motions or appeals, to not more than ten hours, with the time equally divided and controlled by the majority leader and the minority leader, or their designees. Debate on debatable motions or appeals is limited to one hour. A motion to further limit debate is in order and is not debatable, while a motion

to recommit is not in order, unless to report back within not more than one day. For purposes of the motion to recommit, the one-day limit does not count days on which the Senate is not in session.

Subsection (c) provides a point of order against a rescission disapproval bill that relates to any matter other than the rescission of budget authority transmitted by the President. A point of order is also provided against the consideration of any amendment to a rescission disapproval bill. Both of these prohibitions may be waived in the Senate on an affirmative vote of 60 Senators.

SECTION 1114. SUNSET

The other committee amendment sunsets the new Title XI on September 30, 2002.

V. COST ESTIMATE

Paragraph 11 of Rule XXVI of the Standing Rules of the Senate require reports accompanying measures to include an estimate of the costs that would be incurred in carrying out that measure. In accordance with that rule, the Congressional Budget Office has submitted the following cost estimate to the committee:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 22, 1995.

Hon. PETE V. DOMENICI,
Chairman, Committee on the Budget,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 4, the Legislative Line Item Veto Act of 1995, as ordered reported without recommendation by the Senate Committee on the Budget on February 14, 1996.

S. 4 would grant the President the authority to rescind all or part of any budget authority. To exercise this authority, the President must transmit a special message to both houses of Congress specifying each amount rescinded from appropriations within a particular bill that has just been enacted. Furthermore, the message must include the governmental functions involved, the reasons for the veto, and—to the extent practicable—the estimated fiscal, economic, and budgetary effect of the action. This message must be transmitted within 20 calendar days (excluding Saturdays, Sundays, and holidays) of enactment of the legislation containing the rescinded appropriations. All budget authority rescinded would be cancelled unless Congress, within 20 working days, passes a rescission disapproval bill to restore the appropriations. Those disapproval bills would themselves be subject to veto, with the usual two-thirds vote in each house required to override. In addition, if Congress does not disapprove the President's message, the President shall reduce the discretionary spending caps for all affected years to reflect the rescissions. The provisions of this bill would be effective through September 30, 2002.

The budgetary impact of this bill is uncertain, because it would depend on the manner in which the line item veto is used by the President and the success of the Congress in overriding vetoes;

however, potential savings or costs are likely to be relatively small. Discretionary spending currently accounts for only one-third of total outlays and is already tightly controlled. While the bill, as reported, also allows the President to rescind an appropriation for a mandatory program, such a rescission would have no effect on the underlying laws that govern the operations and determine the costs of the program.

By itself, this bill would not affect direct spending or receipts, so there would be no pay-as-you-go scoring under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

Enactment of this legislation would not directly affect the budgets of state and local governments. However, the exercise of line item veto authority could affect federal grants to states, federal contributions towards shared programs or projects, and the demand for state and local programs for increases or reductions in federal programs.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact on this issue is Jeffrey Holland.

Sincerely,

JAMES L. BLUM
(For Robert D. Reischauer, Director.)

VI. REGULATORY IMPACT STATEMENT

Paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate requires the committee report accompanying each reported bill to include an evaluation of the regulatory impact of the legislation. That evaluation is to include an estimate of the economic, paperwork, and privacy impact on individuals, businesses, and consumers.

S. 4 provides for the direct rescission of budget authority by the President and possible consideration by Congress of a bill disapproving such rescission. The legislation addresses Federal legislative process and will affect only that process.

The legislation has no direct economic, paperwork, or privacy impact on individuals, businesses, or consumers. These groups are not involved in the processes covered by the legislation's requirements.

S. 4 could have a regulatory or paperwork impact only to the extent that its process authorizes the President to rescind budget authority that resulted in such a regulatory or paperwork impact.

VII. COMMITTEE VOTES

Paragraph 7(b) of Rule XXVI of the Standing Rules of the Senate requires the committee report accompanying a measure reported from the committee to include the results of each roll call vote taken on the measure and any amendments thereto. In addition, paragraph 7(c) requires the report to include a tabulation of the vote cast by each member of the committee on the question of reporting the measure.

In accordance with the Standing Rules of the Senate, the following are roll call votes taken during the Senate Budget Committee mark-up of S. 4, the Legislative Line Item Veto Act of 1995, held on Tuesday, February 14, 1995.

(1) Motion to report S. 4, as amended, without recommendation.
Motion adopted by: Yeas 12 Nays 10.

Yeas	Nays
Domenici	Exon
Grassley ¹	Hollings ¹
Nickles	Johnston ¹
Gramm ¹	Lautenberg ¹
Bond ¹	Simon ¹
Lott	Conrad
Brown	Dodd
Gorton	Sarbanes
Gregg	Boxer
Snowe ¹	Murray
Abraham	
Frist	

¹ Indicates vote by proxy.

VIII. ADDITIONAL AND MINORITY VIEWS

ADDITIONAL VIEWS OF SENATOR PETE V. DOMENICI

I have serious reservations about S. 4, Senator McCain's enhanced rescission authority bill, and will not support the bill absent major modifications. I voted in favor of a motion to report S. 4, without recommendation, in order to get line item veto legislation before the Senate.

If the Senate Budget Committee did not report line item veto legislation, under section 306 of the Budget Act it would be out of order to consider such legislation in the Senate. I support strengthening procedures to give the President a vote on his proposed rescissions and in this spirit I voted in favor of motions to report S. 4, Senator McCain's bill, and S. 14, my legislative line item veto legislation.

I do not support S. 4 because I believe it will delegate too much authority to the President over the control of the budget. The issue is as old as the republic and indeed goes to one of the fundamental precepts of our constitutional form of government—the power of the purse. As James Madison wrote in Federalist Paper No. 58:

This power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.

I strongly believe that once we, the Congress, concede this power to the executive branch, it will never be restored. Senator McCain's bill, S. 4, would grant the President unilateral authority to rescind monies appropriated by Congress. S. 4 presumes the executive is omniscient on matters of spending priorities.

In order to overturn a Presidential rescission under the McCain bill, the Congress would have to overcome two hurdles. First, each House of Congress would have to pass a bill of disapproval limited to the entire rescission package. Congress could not eliminate individual items in the President's proposed rescission package. Moreover, Congress may never get to vote on an override under the McCain bill. There is no requirement for the Committee to report the disapproval bill and the motion to proceed in the Senate to the disapproval bill is fully debateable.

Even if the Congress managed to pass the disapproval bill within the narrow time frame established by the bill, the President would veto this disapproval resolution and Congress would have to overcome the second hurdle. Each House of Congress would have to override his veto with a two-thirds vote.

A true line item veto only would allow a President to delete funding for broad programs and activities as provided in Appropriation Acts. The McCain bill is much more than a line item veto because it would allow the President to reach well beyond the amounts appropriated in law. Under current law, the President can propose rescinding funding for individual programs, projects, and activities, from aircraft carriers down to paper clips, but Congress can, and usually does, ignore the President's proposals and they never take effect. The McCain bill would make the President's rescissions effective with no action required by Congress.

I am particularly concerned about what the McCain bill means for defense funding and foreign policy. As Commander in Chief, the President already has a great deal of discretion over defense and foreign policy, as we saw in Haiti last year and more recently with the Mexican financial crisis. Congress' ability to influence foreign and national security policy is largely limited to our control over the budget, which we will lose with the McCain bill.

For example, if the President included the termination of the National Missile Defense program, M-1 Tank, funding for weapons testing, or the B-2 bomber as part of a large rescission package for the entire defense appropriations bill, Congress would have to pass a bill, disapproving of all the rescissions including these items. The President would veto this disapproval bill. Items first adopted by a majority vote could only be reinstated by 67 votes in the Senate.

I support an alternative legislative line-item veto, S. 14 as reported by the Committee, that guarantees the President a vote on his rescission proposals while maintaining the delicate balance of power between the two branches on spending authority. Under my bill, the President would propose spending reductions and Congress would have to vote within 10 days on them. The proposed rescission would only take effect if the Congress passed legislation under these expedited procedures and the President signed the legislation into law. A majority would continue to rule.

I do not think it is necessary to give as much power to the President as the McCain bill provides. What infuriates the American people are those instances in which the Congress funds activities that they think are a ludicrous waste of the taxpayers' money. Since Congress can ignore the President's proposed rescissions under current law, there is no direct accountability on the part of the Congress for these individual projects. My bill would require Congress to go on record and vote on the repeal of these projects without ceding control over spending decisions to the President.

Some have suggested the McCain bill simply returns Congress and the President to the relationship that existed before enactment of the 1974 Impoundment Control Act. This clearly is not the case. Prior to 1974, Presidents had asserted their authority to impound or delay spending, citing both statutory and Constitutional authority. According to the Congressional Research Service, Presidential impoundments have been vitiated in more than 50 cases by the courts and upheld in only 4. The McCain bill would delegate to the President broader authority than impoundment—the authority to permanently cancel any funding.

Some characterize the McCain bill as the real "line-item veto" bill. It is impossible for Congress to give the President a true line

item veto by statute, either under the McCain bill or my bill. Only a Constitutional amendment can give the President the authority to delete items in spending bills and the Judiciary Committee has jurisdiction over the line item veto constitutional amendment.

This is much more than an issue about wasteful spending. it is an issue of the appropriate balance of powers between the Congress and the President. I hope we can agree on an approach that gets a bill on the President's desk and signed into law without unduly disrupting this delicate balance of powers.

MINORITY VIEWS OF SENATOR JIM EXON

By any standard or measurement, S. 4 falls short of comprehensive and pragmatic line-item veto legislation. It is dogmatic, imprecise, and inadequate for the task at hand.

First and foremost, is the question of S. 4's super-majority to override a Presidential line-item veto. As I have stated on many occasions, I do not believe that a legislative line-item veto with a two-thirds super-majority has any chance to pass the Senate. We have gone down that road many times before and it invariably leads to a dead end. S. 4 is heading in the same destination: disillusionment, dismay, and utter failure.

If we keep appealing to a narrow constituency, we will not get a line-item veto bill to the President's desk. S. 4 is the legislative equivalent of shooting oneself in the foot. I see no reason to inflict this type of ideological purity and correctness upon the Senate and the American people.

Many of our colleagues also are concerned that the super-majority rule is a boomerang that could come back and hit us when we least expect it. Under S. 4, the President needs a mere 34 percent of one House of Congress to rescind an appropriation that the Majority of Congress voted to approve. Therefore, S. 4 could unwittingly create a tyranny by the *Minority*. The Senate certainly does not need any further cause for gridlock.

I had originally co-sponsored legislation, some of which is contained in the substitute S. 14, which forces Congress to vote on the cancellation of a budget item proposed by the President. However, it requires only the approval of a simple majority of both Houses of Congress to put the President's proposed cancellation into effect. That is the right course to take.

Second, S. 4's sponsors claim that the bill deals only with appropriations. If so, then it does not deal with the real culprits that bust the budget, such as tax expenditures and direct entitlement spending.

At the Budget Committee hearing of January 18, 1995, on the line-item veto, Senator Bradley pointed out the need to make tax expenditures subject to the line-item veto. Tax expenditures cost the Treasury billions of dollars every year. They are the "stealth" entitlements that slip under our radar screens.

In his testimony, Senator Bradley correctly observed: "Any line item veto bill that fails to give the President the ability to prevent additional loopholes from entering the tax code only does half the job." S. 4 is blind to the issue of tax expenditures. It shirks responsibility on this critical component of deficit reduction, as well as the yeast of rising deficits—entitlements.

In spite of the pay-as-you-go provisions of the 1990 Budget Enforcement Act, entitlement spending is the largest and fastest growing part of the Federal budget. The terrible truth is that man-

datory spending is projected to grow from about 55 percent of Federal spending in the current fiscal year to 62 percent in 2005.

The real surge occurs in Federal health care programs. They are the only programs that will grow at a rate significantly faster than the economy, increasing from 3.8 percent of GDP in Fiscal Year 1995 to 6 percent of GDP in 2005.

On the other hand, discretionary spending, which currently makes up only about one-third of all Federal spending, has been significantly curbed and is expected to decline as a percent of the economy over the same time period.

However, we cannot take much comfort in this success story. As much as we strip and shave away the fat and waste in appropriated spending, we get to a point of diminishing returns. The numbers tell us that we can only harvest so much deficit reduction from this field. We will not be able to balance the budget if we rely strictly on appropriated spending, and I would vigorously oppose greater cuts in defense spending, which could jeopardize our readiness.

We have to look to other pastures—greener pastures for deficit reduction—and direct spending is one of them. Facts are facts. Sooner or later, we will have to look the deficit squarely in the eye and make some tough and painful choices. Entitlement spending and tax expenditures are two we can no longer afford to avoid.

Third, S. 4 is riddled with holes and loose ends. The following are just a few examples. There is no provision for floor consideration in the House. The bill is not limited to discretionary spending, so all current appropriated entitlements would be subject to rescission. S. 4 also allows non-appropriated entitlements to be rescinded, but there is no provision to take away the legal rights to these entitlements. So beneficiaries could still win their benefits in court. There is no definition of the term “essential government functions.” There is no provision for bills received in the House by the Senate. There is no provision for discharge from Committee. There is no provision for conference. The upshot is that the House and Senate could pass differing rescission disapproval bills, yet the Presidential rescission would still take effect because there was no framework for a House-Senate conference.

The list of failings and deficiencies goes on and on. Yet, despite these flaws, the Republican majority voted on a party line to report out this terribly flawed, inexact, and ineffective measure. I had hoped for better.

After all due consideration, S. 4 does not pass muster. It has a narrow vision that does not take into account many of the real problems that contribute to the deficit. It has a limited vision that will not bring together Republicans and Democrats to deal with wasteful spending. It is not the legislative line-item veto vehicle that the Senate should approve. We can do better, and we will do better than S. 4.

JIM EXON.

MINORITY VIEWS OF SENATOR BARBARA BOXER

I believe that the “enhanced rescissions” and “expedited rescissions” proposals voted out of this Committee create a dangerous shift of power from the Legislative to the Executive branch. The Constitution provides that Congress has the “power of the purse.” Under Article I, Section 9, “No Money shall be drawn from the Treasury but in Consequence of Appropriations made by Law.” In Federalist No. 48, James Madison stated that “the legislative department alone has access to the pockets of the people.”

The power of the purse, Madison said in Federalist No. 58, represents the “most complete and effectual weapon with which any constitution can arm the immediate representatives of the people for obtaining a redress of every grievance and for carrying into effect every just and salutary measure.” Through this power, Congress—as the directly elected representatives of the people—can serve as a check on the Executive branch.

These expedited and enhanced rescissions proposals would dilute this power. The President would have the power to pick and choose which programs he likes and which he does not. This power could be used for political retribution or for political reward. For instance, will a state that traditionally votes Democratic see more of its programs in a Republican President’s rescissions request? Will a state that is traditionally Republican face an overwhelming number of cuts under a Democratic President?

Under both of these proposals, Congress would have an opportunity to vote on the President’s proposed rescissions, but neither the enhanced rescissions nor the expedited rescissions proposals would allow Congress to substitute its spending cuts for those proposed by the President. In effect, part of the power of the purse is being handed over to the President.

The goal of these process changes is to bring us closer to a balanced budget. I support this goal. But, no “expedited” or “enhanced” process change will serve as a substitute for changing spending priorities and making the tough choices. No amount of process change will reduce the pain of tough budget cuts.

The implication of these proposals is much broader than simply stemming the flow of federal red ink. They undermine our constitutional balance of powers. For this reason, I oppose these expedited and enhanced rescissions proposals.

BARBARA BOXER.

MINORITY VIEWS OF SENATOR PATTY MURRAY

LINE-ITEM VETO LEGISLATION MARK-UP

I oppose both S. 4 and S. 14, to bills that grant the President line-item veto authority. I have read these bills and am convinced that they will achieve little to put this country's fiscal house in order.

I have experiences with line-item veto authority. I served in my State legislature and saw first-hand the kind of horse-trading that can occur when the Executive has this power.

I came to the United States Senate as a representative of the people of my home State of Washington. They elected me to be their voice on a wide array of issues—from funding the Hanford clean-up to providing economic relief to our hard-hit timber communities. Under no circumstances do I want to transfer my power to fight for the people of Washington State to any administration. That is precisely what these bills would do.

Reducing our deficit takes courage. We must take tough votes. There is no assurance these bills will reduce the deficit. However, they definitely will just turn over more power to the White House. I say this at a time when the President is my friend and a member of my party.

Line-item veto authority for the President is not what the framers of our Constitution envisaged. These bills go against the grain of our traditional balance of power.

A number of amendments which would have gone a long way to improve these bills are voted down—largely on party lines—in this Committee. For that and all the abovementioned reasons, I voted against these bills in Committee.

PATTY MURRAY.

IX. CHANGES TO EXISTING LAW

Paragraph 12 of rule XXVI of the Standing Rules of the Senate requires the report to accompany a bill repealing or amending a statute to include a comparative print showing the proposed changes to existing law. Existing law proposed to be omitted is enclosed in black brackets while existing law to which no change is proposed is shown in roman. New matter is shown in italic.

**THE CONGRESSIONAL BUDGET AND IMPOUNDMENT
CONTROL ACT OF 1974**

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TITLE X—IMPOUNDMENT CONTROL

PART A—GENERAL PROVISIONS

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PART B—CONGRESSIONAL CONSIDERATION OF PROPOSED RESCIS-
SIONS, RESERVATIONS, AND DEFERRALS OF BUDGET AUTHORITY

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*TITLE XI—LEGISLATIVE LINE ITEM VETO RESCISSION
AUTHORITY*

PART A—LEGISLATIVE LINE ITEM VETO RESCISSION AUTHORITY

GRANT OF AUTHORITY AND CONDITIONS

SEC. 1101. (a) IN GENERAL.—Notwithstanding the provisions of part B of title X and subject to the provisions of part B of this title, the president may rescind all or part of any budget authority, if the President—

(1) determines that—

(A) such rescission would help balance the Federal budget, reduce the Federal budget deficit, or reduce the public debt;

(B) such rescission will not impair any essential Government functions; and

(C) such rescission will not harm the national interest; and

(2)(A) notifies the Congress of such rescission by a special message not later than twenty calendar days (not including Saturdays, Sundays, or holidays) after the date of enactment of a regular or supplemental appropriations Act or a joint resolution making continuing appropriations providing such budget authority; or

(B) notifies the Congress of such rescission by special message accompanying the submission of the President's budget to Congress and such rescissions have not been proposed previously for that fiscal year.

The President shall submit a separate rescission message for each appropriations bill under paragraph (2)(A).

(b) RESCISSION EFFECTIVE UNLESS DIAPPROVED.—(1)(A) Any amount of budget authority rescinded under this title as set forth in a special message by the President shall be deemed canceled unless during the period described in subparagraph (B), a rescission disapproval bill making available all of the amount rescinded is enacted into law.

(B) The period referred to in subparagraph (A) is—

(i) a congressional review period of twenty calendar days of session under part B, during which Congress must complete action on the rescission disapproval bill and present such bill to the President for approval or disapproval;

(ii) after the period provided in clause (i), an additional ten days (not including Sundays) during which the president may exercise his authority to sign or veto the rescission disapproval bill; and

(iii) if the President vetoes the rescission disapproval bill during the period provided in clause (ii), an additional five calendar days of session after the date of the veto.

(2) If a special message is transmitted by the President under this section during any Congress and the last session of such Congress adjourns sine die before the expiration of the period described in paragraph (1)(B), the rescission shall not take effect. The message shall be deemed to have been retransmitted on the first day of the succeeding Congress and the review period referred to in paragraph (1)(B) (with respect to such message) shall run beginning after such first day.

DEFINITIONS

SEC. 1102. For purposes of this title the term "rescission disapproval bill" means a bill or joint resolution which only disapproves a rescission of budget authority, in whole, rescinded in a special message transmitted by the President under section 1101.

DEFICIT REDUCTION

SEC. 1103. (a) If Congress fails to disapprove a rescission of discretionary spending under this part within the period of review provided under this part, the President shall, on the day after the period has expired, reduce the discretionary spending limits under section 601 of the Congressional Budget Act of 1974 for the budget year and any outyear affected by the rescissions to reflect the amount of the rescission.

(b) If Congress fails to disapprove a rescission of discretionary spending under this part within the period of review provided under this part, the chairs of the Committees on the Budget of the Senate and the House of Representatives shall, on the day after the period has expired, revise levels under section 311(a) and adjust the committee allocations under section 602(a) to reflect the amount of the rescission.

(c) If Congress fails to disapprove a rescission of direct spending under this part within the period of review provided under this part, the President shall, on the day after the period has expired, adjust the balances for the budget year and each outyear under section 252(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 to reflect the amount of the rescission.

*PART B—CONGRESSIONAL CONSIDERATION OF LEGISLATIVE LINE
ITEM VETO RESCISSIONS*

PRESIDENTIAL SPECIAL MESSAGE

SEC. 1111. Whenever the President rescinds any budget authority as provided in section 1101, the President shall transmit to both Houses of Congress a special message specifying—

- (1) the amount of budget authority rescinded;*
- (2) any account, department, or establishment of the Government to which such budget authority is available for obligation, and the specific project or governmental functions involved;*
- (3) the reasons and justifications for the determination to rescind budget authority pursuant to section 1101(a)(1);*
- (4) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect of the rescission; and*
- (5) all facts, circumstances, and considerations relating to or bearing upon the rescission and the decision of effect the rescission, and to the maximum extent practicable, the estimated effect of the rescission upon the objects, purposes, and programs for which the budget authority is provided.*

TRANSMISSION OF MESSAGES; PUBLICATION

SEC. 1112. (a) DELIVERY TO HOUSE AND SENATE.—Each special message transmitted under sections 1101 and 1111 shall be transmitted to the House of Representatives and the Senate on the same day, and shall be delivered to the Clerk of the House of Representatives if the House is not in sessions, and to the Secretary of the Senate if the Senate is not in session. Each special message so transmitted shall be referred to the appropriate committees of the House of Representative and the Senate. Each such message shall be printed as a document of each House.

(b) PRINTING IN FEDERAL REGISTER.—Any special message transmitted under sections 1101 and 1111 shall be printed in the first issue of the Federal Register published after such transmittal.

PROCEDURE IN SENATE

SEC. 1113. (a) REFERRAL.—(1) Any rescission disapproval bill introduced with respect to a special message shall be referred to the appropriate committees of the House of Representatives or the Senate, as the case may be.

(2) Any rescission disapproval bill received in the Senate from the House shall be considered in the Senate pursuant to the provisions of this section.

(b) FLOOR CONSIDERATION IN THE SENATE.—

- (1) Debate in the Senate on any rescission disapproval bill and debatable motions and appeals in convention therewith, shall be limited to not more than ten hours. the time shall be*

equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(2) Debate in the Senate on any debatable motion or appeal in connection with such a bill shall be limited to one hour, to be equally divided between, and controlled by, the mover and the manager of the bill, except that in the event the manager of the bills is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from the time under their control on the passage of the bill, allot additional time to any Senator during the consideration of any debatable motion or appeal.

(3) A motion to further limit debate is not debatable. A motion to recommit (except a motion to recommit with instructions to report back within a specified number of days, not to exceed one, not counting any day on which the Senate is not in session) is not in order.

(c) POINT OF ORDER.—(1) It shall not be in order in the Senate of the House of Representatives to consider any rescission disapproval bill that relates to any matter other than the rescission of budget authority transmitted by the President under section 1101.

(2) It shall not be in order in the Senate or the House of Representatives to consider any amendment to a rescission disapproval bill.

(3) Paragraphs (1) and (2) may be waived or suspended in the Senate only by a vote of three-fifths of the members duly chosen and sworn.

SEC. 1114. This title shall cease to be effective on September 30, 2002.

