

CRS Report for Congress

Received through the CRS Web

Presidential Rescission Authority: Efforts to Modify the 1974 Framework

Updated December 23, 2004

Virginia A. McMurtry
Specialist in American National Government
Government and Finance Division

Presidential Rescission Authority: Efforts to Modify the 1974 Framework

Summary

The Impoundment Control Act (ICA) constituted Title X of the Congressional Budget and Impoundment Control Act of 1974 (P.L. 93-344, 99 Stat. 297). The ICA designated two categories of impoundments: *deferrals*, or temporary delays in funding availability, and *rescissions*, or permanent cancellations of budget authority. The act stipulated different procedures for congressional review and control of the two types of impoundment actions. In the case of a rescission, the ICA provided that the funds must be made available for obligation unless both houses of Congress took action to approve the rescission request of the President within 45 days of continuous session (not counting recesses of more than three days).

As experience with the Impoundment Control Act produced growing concern with the existing framework, attention came to focus on three different approaches to granting the President greater authority over the spending of funds provided by Congress. With *enhanced rescission*, the burden of action was reversed, creating a presumption favoring the President. Unlike the original framework of the 1974 act, with enhanced rescission, budget authority identified in the President's message remains canceled unless Congress acts to disapprove the President's action within a prescribed period. Under *expedited rescission*, the intent was to ensure a vote in Congress on rescission requests by various procedural requirements. Such proposals usually contain a specific timetable along with expedited procedures to facilitate congressional review and action on rescission messages from the President. A third approach, called *separate enrollment*, more closely resembled a statutory item veto. With separate enrollment, an appropriations bill was broken up into many individual pieces by the enrolling clerk prior to presentation for the President's signature. So, each item of appropriation became a separate bill, giving the President *de facto* item veto authority.

Since 1974, repeated attempts have been made in Congress to amend the ICA or otherwise provide the President with expanded rescission or overt item veto authority. After reviewing selected floor votes of interest, using Congressional Research Service files and Library of Congress databases, this report assesses these attempts to expand the President's power. The majority of the votes examined (23 out of 36, or more than 60%) dealt with enhanced or expedited rescission proposals, while 10 votes involved separate enrollment procedures.

Impoundment reform efforts culminated in the Line Item Veto Act of 1996 (P.L. 104-130, 110 Stat. 1200). However, it was held unconstitutional by the Supreme Court in 1998. In the aftermath of that decision, there has been renewed interest in other approaches that might pass constitutional muster. Several measures have been introduced in subsequent Congresses to provide alternative statutory means for conveying expanded rescission authority to the President.

This report will be updated as events warrant.

Contents

Introduction	1
Overview of Votes Covered	2
Initial Efforts at Floor Votes	3
House and Senate Votes in the 102 nd Congress	7
House and Senate Votes in the 103 rd Congress	9
Action in the 104 th Congress	11
The 105 th Congress and Beyond	12

List of Tables

1. Selected Votes on or Relating to Measures to Provide Item Veto or Expanded Rescission Authority, 98 th -108 th Congresses *	4
---------------------------------------------------------------------------------------------------------------------------------------------------------	---

Presidential Recession Authority: Efforts to Modify the 1974 Framework

Introduction

The Impoundment Control Act (ICA) constituted Title X of the Congressional Budget and Impoundment Control Act of 1974 (P.L. 93-344, 99 Stat. 297). The ICA designated two categories of impoundments: *deferrals*, or temporary delays in funding availability, and *rescissions*, or permanent cancellations of budget authority. The act stipulated different procedures for congressional review and control of the two types of impoundment actions. In the case of a rescission, the ICA provided that the funds must be made available for obligation unless both houses of Congress took action to approve the President's rescission request within 45 days of continuous session (not counting recesses of more than three days).

As experiences with the Impoundment Control produced growing dissatisfaction with the existing framework, attention came to focus on three different approaches to granting the President greater authority over the spending of funds provided by Congress. With *enhanced rescission*, the burden of action was reversed, creating a presumption favoring the President. Unlike the original framework of the 1974 act, with enhanced rescission, budget authority identified in the President's message remains canceled unless Congress acts to disapprove the action of the President within a prescribed period. Under *expedited rescission*, the intent was to ensure a vote in Congress on rescission requests by various procedural requirements. Such proposals usually contain a specific timetable along with expedited procedures to facilitate congressional review and action on rescission messages from the President. A third approach, called *separate enrollment*, more closely resembled a statutory item veto. With separate enrollment, an appropriations bill was broken up into many individual pieces by the enrolling clerk prior to presentation for the President's signature. So, each item of appropriation became a separate bill, giving the President *de facto* item veto authority.

Since 1974, repeated attempts have been made in Congress to amend the ICA, or otherwise provide the President with expanded rescission or overt item veto authority.¹ This report reviews House and Senate floor votes on selected measures to expand the President's power to rescind appropriated funds or grant authority to veto items in appropriations bills (see Table 1 below).

¹ For a historical review of impoundment reform efforts, see CRS Issue Brief IB89148, *Item Veto and Expanded Impoundment Proposals*, by Virginia A. McMurtry.

This impoundment reform effort culminated in the Line Item Veto Act of 1996 (P. L. 104-130, 110 Stat. 1200).² However, it was held unconstitutional by the Supreme Court in 1998. In the aftermath of that decision, there has been renewed interest in previous approaches that might pass constitutional muster. Several measures have been introduced in the subsequent Congresses to provide alternative statutory means for conveying expanded rescission authority to the President.

Overview of Votes Covered

A review was made of selected votes of interest, using Congressional Research Service files and Library of Congress databases. The examination is characterized as “selected,” since the method of review could have missed some relevant instances, but the proffered results are thought to be relatively comprehensive. Some of the votes are on procedural issues, as indicated in the table, rather than on the proposal itself. The votes occurred from the 98th to the 108th Congresses, covering the period since the enactment of the Impoundment Control Act.

During the 22-year review period (1983-2004), at least 36 floor votes occurred on selected measures to provide the President with expanded impoundment authority (see Table 1). The majority of these votes, 23 out of 36, or more than 60%, dealt with enhanced or expedited rescission proposals. Eight reflected the expedited rescission approach, while 15 incorporated enhanced rescission. Also counted were two 103rd Congress votes on an amendment to the Budget Resolution for FY1994 containing sense-of-the-Senate provisions in support of expedited or enhanced rescission.

Ten votes listed in Table 1 had to do with separate enrollment procedures. The Mattingly bills in the 98th and 99th Congresses, providing early examples of this approach, required that each item of an appropriation’s measure — i.e., “any numbered section or unnumbered paragraph” — be enrolled as a separate bill. With this version of separate enrollment (which again became central to the impoundment reform debate in the 104th Congress), an appropriation bill is broken up into many “billets” prior to presentation for the President’s signature. Other measures placed in the separate enrollment category, such as the Evans amendments in the 100th Congress, would have broken up omnibus continuing resolutions into components akin to regular appropriations bills. While such proposals may not, strictly speaking, be comparable, they were deemed to be within the scope of this report.

Three other votes listed in Table 1 are on or relate to measures characterized as item veto proposals *per se*. Two proposals voted on in the 98th Congress contained language identical (Gramm amendment) or similar (Gingrich amendment) to a formulation first offered in the 75th Congress, when the Independent Offices Appropriations for 1939 contained an amendment, approved by voice vote in the House, but dropped before final passage, that sought to allow the President to

² For further discussion of the legislative history of P.L. 104-130, see *ibid.*; and Philip G. Joyce and Robert D. Reischauer, “The Federal Line-Item Veto: What Is It and What Will It Do?” *Public Administration Review*, vol. 57, Mar./Apr. 1997, pp. 96-97.

eliminate or reduce appropriations by executive order.³ Over the years, many proposals have been introduced to grant the President an item veto by constitutional amendment, but the only floor vote on such a measure occurred in 1992.

Initial Efforts at Floor Votes

As indicated in Table 1, the first floor vote on an expanded rescission proposal occurred in 1983, less than 10 years after enactment of the Impoundment Control Act. Additional votes occurred in each succeeding Congress until the 105th, with the frequency of floor considerations of expanded rescission or item veto proposals increasing markedly after 1991. The discussion that follows highlights these events Congress by Congress, beginning with the 102nd Congress. However, before turning to that review, it is useful to note briefly some preliminary developments in the 101st Congress.

In the 101st Congress, a new hybrid version of impoundment reform legislation appeared, reflecting features of both enhanced and expedited rescission approaches (but classified Table 1 according to their predominant components of enhanced rescission). The Legislative Line Item Veto Act of 1989 (S. 1553)⁴ sought to provide the President with enhanced rescission (termed “item veto”) authority by amending the ICA to allow transmission of a special rescission message within 10 days of enactment of appropriations measures or to accompany the President’s annual budget submission. Budget authority so rescinded remained canceled unless Congress disapproved (with expedited procedures provided) within 20 days.

Twice in the 101st Congress, the provisions of S. 1553 were offered as an amendment during Senate floor debate. After several unsuccessful attachment attempts in the fall of 1989, Senator Dan Coats sought to incorporate the provisions of S. 1553 into a November 9, 1989, amendment to the conference report for the Department of Transportation Appropriations Act for FY1990.⁵ However, the Senate rejected (51-40) a motion to waive section 306 of the Congressional Budget Act of 1974 (which prohibits consideration of budget process legislation not reported by the Budget Committee), and a point of order raised against the amendment was sustained. A second attempt was made to offer provisions of S. 1553 as an amendment, this time to a measure amending the Federal Aviation Act of 1958. Led by Senator John McCain on June 6, 1990, it failed (43-50) on the same procedural grounds.⁶

³ See Representative Clifton Woodrum, remarks in the House, *Congressional Record*, vol. 83, Jan. 11, 1938, p. 355.

⁴ S. 1553 was introduced by Senator Dan Coats on Aug. 4, 1989. A House companion measure, H.R. 3271, was introduced by Representative Tom Tauke on Sept. 13, 1989.

⁵ *Congressional Record*, daily edition, vol. 135, Oct. 9, 1989, pp. S15336-S15358.

⁶ Senate debate on S. 341, concerning air travel rights for blind individuals. *Congressional Record*, daily edition, vol. 136, June 6, 1990, pp. S7457-S7478.

1. Selected Votes on or Relating to Measures to Provide Item Veto or Expanded Rescission Authority, 98th-108th Congresses*

Congress	Measure	Sponsor	Date/Chamber	Vote	Type of Proposal
108 th	Amendment to H.R. 4663	Ryan of WI	06/24/04 House	174-237	Expedited rescission
104 th	S. 4, conference report	Clinger/Dole	3/28/96 House	232-177	Enhanced rescission
104 th	S. 4, conference report	Clinger/Dole	3/27/96 Senate	69-31	Enhanced rescission
104 th	S. 4, as amended	Dole	3/23/95 Senate	69-29	Separate enrollment
104 th	H.R. 2, as amended	Clinger	2/6/95 House	294-134	Enhanced rescission
103 rd	H.R. 4600, as amended	Spratt	7/14/94 House	342-69	Strengthened expedited rescission
103 rd	Amendment to H.R. 4600	Stenholm	7/14/94 House	298-121	Strengthened expedited rescission
103 rd	Amendment to H.R. 4600	Solomon	7/14/94 House	205-218	Enhanced rescission
103 rd	Amendment 542 to S. 1134	Bradley	6/24/93 Senate	53-45 (Budget Act waiver)	Separate enrollment
103 rd	H.R. 1578	Spratt	4/29/93 House	258-157	Expedited rescission
103 rd	Amendment to H.R. 1578	Castle	4/29/93 House	198-219	Enhanced rescission
103 rd	Amendment 264 to S.Con.Res. 18	Bradley	3/25/93 Senate	73-24	Separate enrollment
103 rd	Amendment 200 to S.Con.Res. 18	Cohen	3/25/93 Senate	Voice Vote	Expedited rescission

CRS-5

Congress	Measure	Sponsor	Date/Chamber	Vote	Type of Proposal
103 rd	Amendment 200 to S.Con.Res. 18	Cohen	3/25/93 Senate	34-65 (to table)	Expedited rescission
103 rd	Amendment 73 to S. 460	McCain	3/10/93 Senate	45-52 (Budget Act waiver)	Enhanced rescission
102 nd	H.R. 2164	Carper	10/3/92 House	312-97	Expedited rescission
102 nd	H.Res. 580 (Rule accompanying H.J.Res. 553)	Solomon	9/30/92 House	213-204 (rule)	Enhanced rescission
102 nd	Amendment 3013 to H.R. 5677	McCain/Coats	9/17/92 Senate	40-56 (Budget Act waiver)	Enhanced rescission
102 nd	H.Res. 530 (Rule accompanying H.R. 5678)	Solomon	7/30/92 House	240-176 (previous question)	Enhanced rescission
102 nd	H.Res. 527 (Rule accompanying H.R. 5620)	Solomon	7/28/92 House	207-199 (previous question)	Enhanced rescission
102 nd	H.Res. 517 (Rule accompanying H.R. 5503)	Solomon	7/22/92 House	236-171 (previous question)	Enhanced rescission
102 nd	Amendment to H.R. 2637	Walker	7/21/92 House	144-248	Separate enrollment
102 nd	Amendment to H.J.Res. 290	Kyl	6/11/92 House	170-258	Item veto
102 nd	Amendment 1698 to S. 479	McCain	2/27/92 Senate	44-54 (Budget Act waiver)	Enhanced rescission
101 st	Amendment 1955 to S. 341	McCain	6/6/90 Senate	43-50 (Budget Act waiver)	Enhanced rescission
101 st	Amendment 1092 to H.R. 3015	Coats et al.	11/9/89 Senate	40-51 (Budget Act waiver)	Enhanced rescission
100 th	Amendment 1294 to H.J.Res. 395	Evans	12/11/87 Senate	44-51	Separate enrollment

CRS-6

Congress	Measure	Sponsor	Date/Chamber	Vote	Type of Proposal
100 th	Amendment 650 to H.J.Res. 324	Evans	7/31/87 Senate	41-48	Separate enrollment
99 th	Amendment 2853 to S. 2706	Quayle/Exon	9/19/86 Senate	34-62 (Budget Act waiver)	Expedited rescission
99 th	S. 43	Mattingly et al.	7/24/85 Senate	58-40 (cloture)	Separate enrollment
99 th	S. 43	Mattingly et al.	7/18/85 Senate	57-42 (cloture)	Separate enrollment
98 th	Amendment 3045 to H.R. 2163	Mattingly	5/3/84 Senate	56-34 (out of order)	Separate enrollment
98 th	Amendment to H.R. 2708	Gekas	2/23/84 House	145-243	Separate enrollment (variation)
98 th	Amendment to H.R. 2878	Gingrich	1/31/84 House	144-248	Item veto
98 th	Amendment to H.R. 2165	Gramm	1/24/84 House	131-245	Item veto
98 th	Amendment 2625 to H.J.Res. 308	Armstrong	11/16/83 Senate	49-46 (to table)	Enhanced rescission

***Source:** Bills and votes identified by use of Library of Congress SCORPIO databases and from Congressional Research Service files. Other data from *Congressional Record*.

House and Senate Votes in the 102nd Congress

There were floor votes on nine propositions widely viewed as reflecting support, at least indirectly, for the item veto, enhanced or expedited rescission, or separate enrollment approaches in the 102nd Congress. In all but one of these cases, the substance of the expanded rescission, item veto, or separate enrollment provision was offered as an amendment during floor debate on another measure.

There were two more attempts in the Senate to achieve a vote on the Legislative Line Item Veto Act (reintroduced as S. 196), by offering its provisions as a floor amendment; both failed on Budget Act waiver votes. On February 26, 1992, Senator McCain offered the proposal as an amendment during debate on the National Cooperative Research Act. Extended debate ensued, during which the chairman of the Senate Appropriations Committee, Senator Robert Byrd, spoke at length in opposition to the proposed amendment. The following day, the Senate rejected (44-54) a motion to waive section 306 of the Budget Act. Subsequently, the point of order raised under section 306 was sustained.⁷ Senators McCain and Coats again tried to offer the provisions of S. 196 as an amendment on September 17, 1992, during floor debate on the Labor/HHS/Education Appropriations bill for 1993. The needed motion to waive section 306 of the Budget Act failed by vote of 40-56.⁸

During the 102nd Congress, six of the seven attempts in the House also involved floor amendments, but the contexts varied. On June 11, 1992, during debate on H.J.Res. 290, proposing a balanced budget constitutional amendment, the House voted on an amendment containing item veto authority for the President. Representative Jon Kyl offered the amendment (to the proposed constitutional amendment) to allow the President to exercise item veto authority when signing any measure containing spending authority (broadly defined), to limit total outlays for a fiscal year to 19% of the gross national product of that year, and to require a three-fifths vote of Congress to approve any additional funds. The House rejected the Kyl amendment by a vote of 170-258.⁹

Three times in July 1992, Representative Gerald Solomon and others attempted to have an amendment to provide “Legislative Line Item Veto Rescission Authority” made in order during debate in the House on various appropriations measures. Each attempt occurred as an effort to defeat the previous question on the special rule for considering the measure, which did not make consideration of the Solomon amendment in order.¹⁰ As indicated in Table 1, the closest vote occurred on July 28, 1992, when the previous question was ordered by a margin of fewer than 10 votes (207-199). Although supporters of the Solomon amendment sought to characterize the procedural vote as a measure of sentiment on the item veto, the floor debate indicates that some voted against moving the previous question on the rule for other

⁷ *Congressional Record*, daily edition, vol. 138, Feb. 27 1992, pp. S2457-S2477.

⁸ *Congressional Record*, daily edition, vol. 138, Sept. 17, 1992, pp. S13684-S13697.

⁹ *Congressional Record*, daily edition, vol. 138, June 11, 1992, pp. H4595-H4605.

¹⁰ See *Congressional Record*, daily edition, vol. 138, July 22, 1992, pp. H6356-H6364; July 28, 1992, pp. H6773-H6783; July 30, 1992, pp. H6988-H6999.

reasons. Likewise, some Members who favored enhanced rescission might have voted for the previous question for reasons unrelated to their position on the item veto.

On July 21, 1992, during debate in the House on H.R. 2637 (to withdraw lands for the Waste Isolation Pilot Project), Representative Robert Walker offered an amendment, which he characterized as an item veto effort (but which is listed in the chart as a separate enrollment measure). The Walker amendment sought to provide that the funds authorized by the bill subsequently were to be appropriated only in an act or joint resolution containing no other appropriation to carry out any other law. The House rejected the amendment by a vote of 144-248.¹¹

On September 30, 1992, another effort was made in the House to offer the enhanced rescission provisions as a floor amendment to an appropriations measure, this time to H.J.Res. 553, the short-term continuing resolution providing a five-day funding extension. Representative Solomon urged defeat of the previous question on H.Res. 580 (the accompanying rule). However, the majority leadership apparently urged those wishing to signify support for the amendment effort to oppose the rule itself rather than attempt to defeat the previous question. Thus, the rule was agreed to by a margin of fewer than 10 votes (213-204), while the previous question was agreed to by vote of 231-186.¹² Shortly before the votes on the previous question and the rule occurred, Representative Butler Derrick, chairman of the Rules Subcommittee on the Legislative Process, which had held two days of hearings on expanded rescission and item veto measures, spoke. Concluding, he said: "I think that there is a possibility that we might get a vote of some sort on this line-item veto proposal before we get out of here, although I cannot say that definitely. There are discussions going on about that."¹³

The promised House debate and vote on an expanded rescission proposal occurred before the 102nd Congress adjourned in early October 1992. H.R. 2164, the Expedited Consideration of Proposed Rescissions Act, was viewed as a compromise measure. With over 220 cosponsors, it was called up under a suspension of the rules on October 2, 1992. On the following day, H.R. 2164 passed the House by a vote of 312-97.¹⁴ This version of expedited rescission applied to proposals from the President submitted within three days of his signing an appropriations act. The proposed rescission could not reduce a program below the budget level of the previous year or by more than 25% for new programs. Funds would become available again after a vote in either house to reject the proposed rescission.

¹¹ *Congressional Record*, daily edition, vol. 138, July 21, 1992, pp. H6326-H6327.

¹² *Congressional Record*, daily edition, vol. 138, Sept. 30, 1992, pp. H9894-H9903.

¹³ *Ibid.*, p. H9894.

¹⁴ *Congressional Record*, daily edition, vol. 138, Oct. 2, 1992, pp. H10805-H10816; Oct. 3, 1992, pp. H10975-H10976.

House and Senate Votes in the 103rd Congress

On March 10, 1993, Senator McCain once again attempted to offer an amendment containing the provisions of the Legislative Line Item Veto Act (reintroduced as S. 9). This effort occurred during floor consideration of S. 460, the National Voter Registration Act. Following considerable debate on the amendment, the Senate rejected (45-52) the motion to waive section 306 of the Budget Act.¹⁵

The House continued to favor expedited rescission proposals in the 103rd Congress, although there were votes on proposals reflecting the enhanced rescission approach as well. Initial action occurred on April 2, 1993, when the House briefly considered H.R. 1578, a revised version of expedited rescission, which had been reported by the Rules Committee with an amendment in the nature of a substitute. The rule (H.Res. 149) providing for consideration of the bill was, however, unexpectedly withdrawn without a vote. Action on the identical rule and bill was scheduled to resume on April 21. However, for the second time, House leaders hastily pulled the bill from the floor, seemingly because of continuing concern that a vote on the rule would not pass. On April 28, the rule, which had generated some controversy, again came to the floor, was debated, and voted upon, ultimately passing by only four votes. On April 29, 1993, the House continued consideration of H.R. 1578, eventually passing it by a vote of 258-157. In contrast to H.R. 2164 in the previous Congress, H.R. 1578, as reported by the Rules Committee, allowed the President to propose rescission of up to 100% of any program, and also contained a section pertaining to expedited judicial review. Most significantly, H.R. 1578, as reported, detailed expedited procedures for a vote on an Appropriations Committee substitute as an alternative to the President's rescission package. During consideration of H.R. 1578, the Castle amendment in the nature of a substitute providing enhanced rescission authority, was rejected (198-219).¹⁶

Meanwhile, on March 25, 1993, the Senate adopted two sense-of-the-Senate amendments relating to rescission reform as a part of the Budget Resolution for FY1994: the Bradley amendment, regarding separate enrollment for items in appropriations and tax measures, and an amendment introduced by Senator William Cohen, supporting expedited rescission authority with regard to items of appropriation, tax expenditures, and direct spending. The former was approved by a vote of 73-24 after Senator Byrd, chairman of the Appropriations Committee, rather unexpectedly stated his support: "I know what is in the amendment. It would extend the veto to tax expenditures. I think we all ought to vote for this amendment."¹⁷ The conference version retained a single sense-of-the-Senate provision in this regard, stating that the "President should be granted line-item veto authority over items of appropriations and tax expenditures" to expire at the end of the 103rd Congress.

¹⁵ *Congressional Record*, daily edition, vol. 139, Mar. 10, 1993, pp. S2576-S2601.

¹⁶ *Congressional Record*, daily edition, vol. 139, Apr. 28, 1993, pp. H2084-H2104; April 29, 1993, pp. H2138-H2163.

¹⁷ *Congressional Record*, daily edition, vol. 139, Mar. 25, 1993, p. S3686.

On June 24, 1993, during debate on S. 1134, the Omnibus Budget Reconciliation measure, Senator Bill Bradley again offered an amendment calling for item veto authority by requiring separate enrollment of items in appropriations bills and tax expenditures in revenue bills. This time, however, it was not sense-of-the-Senate language, but, rather, an actual amendment of the Impoundment Control Act to create statutory authority for the new procedures. The motion to waive the Budget Act point of order failed of the necessary three-fifths majority by a vote of 53-45; subsequently, a point of order was sustained, and the amendment fell.¹⁸

As adopted in May 1994, H.Con.Res. 218, the Budget Resolution for FY1995, also contained sense-of-the-Congress provisions, including support for expedited rescission. This provision was in the resolution as reported by the House Budget Committee.¹⁹ The language reiterated that legislation granting the President expedited rescission authority, such as H.R. 1578 already passed by the House, should be enacted.²⁰

On June 23, 1994, the House Rules Committee reported H.R. 4600, the Expedited Rescissions Act of 1994, which was identical to H.R. 1578 as passed by the House on April 29, 1993. The report accompanying H.R. 4600 explained that, by considering an identical measure in the second session, the “House hopes to impress upon the Senate the importance of its own support for and action on these budget process reforms.”²¹

On July 14, 1994, the House passed H.R. 4600, with an amendment in the nature of a substitute, by a vote of 342-69. Sponsored by Representative Charles Stenholm, this substitute amendment, which expanded upon the existing provisions in the bill for expedited rescission (e.g., adding “targeted tax benefits”), was agreed to by a vote of 298-121. The Solomon substitute amendment, which sought to give the President enhanced rescission authority akin to an item veto, was rejected by a vote of 205-218.²²

¹⁸ *Congressional Record*, daily edition, vol. 139, June 24, 1993, pp. S7920-57921.

¹⁹ U.S. Congress, House Committee on the Budget, *Budget Resolution for FY1995*, report to accompany H.Con.Res. 218, 103rd Cong., 2nd sess., H.Rept. 103-428 (Washington: GPO, 1994), p. 225.

²⁰ Since this language was contained in the measure as reported, there was no separate floor vote on the sense-of-the-Congress provision in support of expedited rescission, and hence no mention of it in Table 1.

²¹ U.S. Congress, House Committee on Rules, *Amending the Congressional Budget and Impoundment Control Act of 1974 to provide for the Expedited Consideration of Certain Proposed Rescissions of Budget Authority*, report to accompany H.R. 4600, 103rd Cong., 2nd sess., H.Rept. 103-557, Part 1 (Washington: GPO, 1994), p. 2.

²² *Congressional Record*, daily edition, vol. 140, July 14, 1994, pp. H5700-H5730.

Action in the 104th Congress

During the 1994 congressional election campaign, many Republican incumbent Representatives and candidates endorsed an election platform document called the *Contract with America*, which pledged action on a number of measures, including a “legislative line item veto,” within the first 100 days, should a Republican majority be elected. When the 104th Congress convened with a Republican majority in both houses of Congress, action on an expanded rescission measure became a high priority.

In the House, H.R. 2, an enhanced rescission measure, was introduced on January 4, 1995, and referred jointly to the Committees on Government Reform and Oversight and on Rules; both committees reported the measure, as amended, in late January. House floor debate began on February 2, and the House passed H.R. 2, as amended, by a vote of 294-134 on February 6. In the Senate, S. 4, an enhanced rescission bill, and S. 14, an expedited rescission bill, were likewise introduced on January 4, 1995; both were referred jointly to the Committees on the Budget and on Governmental Affairs. Both committees acted to report both bills, without recommendation, and Senate floor consideration commenced in March 1995. On March 23, 1995, the Senate passed S. 4, as amended, by a vote of 69-29; during floor action, an amendment incorporating the separate enrollment approach was approved as a substitute for the original enhanced rescission language. The amended version provided for the separate enrollment of items of appropriations and items of new direct spending and certain limited tax benefits. Nearly a year elapsed before the conference committee filed its report, on March 21, 1996, but, within a week, both houses had approved S. 4 as reported from conference. The conference substitute reflected compromise between the two versions, basically incorporating the enhanced rescission approach of the House and the broader coverage of the Senate measure. On April 9, 1996, President Clinton signed the Line Item Veto Act into law as P.L. 104-130.²³

While the new law remained in effect, its provisions augmented the rescission authority provided earlier to the President by adding a new part at the end of the Impoundment Control Act on “line item veto.” Whenever the President signed a bill or joint resolution, he could cancel in whole: (1) any dollar amount of discretionary budget authority; (2) any item of new direct spending; and (3) certain limited tax benefits. Under the Line Item Veto Act, the subject matter of a President’s rescission authority expanded. Moreover, with the enhanced rescission framework, the burden of action changed: rescissions proposed by the President remained permanent unless Congress acted to disapprove; any bill or joint resolution of disapproval was subject to a presidential veto, requiring a two-thirds vote in each house for the override. After notifying Congress in a special message, a 30-day review period followed,

²³ For a summary of its provisions and sources for its legislative history, see CRS Report 96-765, *The Line Item Veto Act*, by Louis Fisher and Virginia A. McMurtry, pp. 2-4 (out-of-print: available from author [ext. 7-8678]); and McMurtry, *Item Veto and Expanded Impoundment Proposals*.

during which expedited procedures applied.²⁴ The act also contained a “lockbox” procedure to help ensure that any savings from cancellations would go toward deficit reduction.

The 105th Congress and Beyond

The Line Item Veto Act became effective on January 1, 1997. The following day, six Members of Congress filed a lawsuit in federal district court challenging the constitutionality of the new law. On April 10, 1997, Judge Thomas Penfield Jackson ruled that the Line Item Veto Act was unconstitutional because it violated provisions of the Presentment Clause of the Constitution.²⁵

Since the Line Item Veto Act contained provisions specifically designed to expedite judicial review, the district court decision was appealed directly to the Supreme Court, where oral arguments were heard on May 27, 1997. On June 26, 1997, the Supreme Court announced its decision in the case of *Raines v. Byrd*, setting aside the judgment of the lower court on jurisdictional grounds by ruling that the Senators and Representatives lacked legal standing to bring the case. However, the Supreme Court confined its decision to this technical matter and did not consider the merits of the underlying constitutional issues.²⁶

Shortly after Judge Jackson’s April 1997 decision, rescission reform measures were again introduced in the 105th Congress. On April 15, Representative David Skaggs introduced H.R. 1321, the Expedited Rescissions Act of 1997, noting: “This bill is similar to one that passed the House but was not taken up by the Senate in 1993. It will provide a very useful tool for getting at wasteful items in appropriations bills”²⁷ The next day, Senator Ernest Hollings introduced a separate enrollment bill (S. 592), identical to that passed by the Senate in 1995.²⁸ Joint resolutions providing for an item veto constitutional amendment also were introduced.²⁹

²⁴ For summary of the expedited procedures, see CRS Report 96-973, *The Line Item Veto Act: Procedural Issues*, by Louis Fisher and Virginia A. McMurtry (out-of-print: available from author [ext. 7-8678]). For a more detailed discussion of procedures, see U.S. Congress, House Committee on Rules, *The Use and Application of the Line Item Veto*, committee print, 105th Cong., 1st sess. (Washington: GPO, Jan. 2, 1997).

²⁵ *Byrd v. Raines*, 956 F.Supp. 25 (D.D.C. 1997).

²⁶ *Raines v. Byrd*, 521 U.S. 811 (No. 96-1671, June 26, 1997).

²⁷ Rep. David Skaggs, “Line Item Veto Act Held Unconstitutional by Federal District Court,” *Congressional Record*, daily edition, vol. 143, Apr. 15, 1997, pp. H1459-H1460, H1514.

²⁸ Sen. Ernest Hollings, “Line-Item Veto Legislation,” *Congressional Record*, daily edition, vol. 143, Apr. 16, 1997, p. S3272.

²⁹ See Rep. Jo Ann Emerson, “Introduction of the Bipartisan Line Item Veto Constitutional Amendment,” *Congressional Record*, daily edition, vol. 143, Apr. 16, 1997, p. E674; and Sen. Wayne Allard, “The Line Item Veto Constitutional Amendment,” *Congressional Record*, daily edition, vol. 143, Apr. 24, 1997, pp. S3686-S3687.

After the President used the cancellation authority for the first time in the summer of 1997, additional suits were filed in the district court, and soon reached the Supreme Court on appeal. On June 25, 1998, the Supreme Court held that the Line Item Veto Act was unconstitutional because its cancellation provisions were in violation of procedures set forth in the Constitution's presentment clause found in Article I, section 7.³⁰

Once the Supreme Court struck down the Line Item Veto Act, other legislative approaches, such as expedited rescission or separate enrollment, received renewed attention. In June of 1998, three bills were introduced.³¹ Upon the convening of the 106th Congress in 1999, four measures were introduced proposing constitutional amendments giving the President line item veto authority along with four bills to provide alternative statutory means for conveying expanded impoundment authority to the President.³²

In the 107th Congress, two measures proposing an item veto constitutional amendment were introduced. H.J.Res. 23 sought to allow the President to disapprove any item of appropriation in any bill. H.J.Res. 24 sought to allow the President to decline to approve (i.e., to item veto) any in whole dollar amount of discretionary budget authority, any item of new direct spending, or any limited tax benefit. Omnibus budget reform bills, such as H.R. 5259, contained provisions for expedited rescission procedures. On March 28, 2001, during House consideration of H.Con.Res. 83 (FY2002 budget resolution), the Blue Dog Coalition substitute was offered, which contained a sense-of-the-Congress provision calling for modified line item veto authority to require congressional votes on rescissions submitted by the President; the amendment was rejected 204-221.³³

Early in the 108th Congress, H.R. 180, an omnibus budget reform measure, was introduced by Representative Paul Ryan, containing provisions for expedited procedures for congressional action on proposals from the President to rescind budget authority identified as "wasteful spending" (Section 252). Later in 2003 two constitutional amendment proposals to authorize an item veto for the President were introduced (108th Congress, H.J.Res. 60 and S.J.Res. 25).

³⁰ *Clinton v. City of New York et al.*, 524 U.S. 417 (No. 97-1374, June 25, 1998).

³¹ These 105th Congress bills included H.R. 4174 and S. 2220, providing expedited procedures for considering rescissions, and S. 2221, reflecting the separate enrollment perspective. Previously, In April 1997 shortly after the district court decision, H.R. 1321, an expedited rescission measure similar to that passed by the House in the 103rd Congress was introduced. Likewise, S. 592, a separate enrollment measure identical to S. 4 as passed by the Senate in the 104th Congress, was introduced.

³² In the 106th Congress, the item veto constitutional amendment proposals included H.J.Res. 9, H.J.Res. 20, H.J.Res. 30, and S.J.Res.31. Two House bills provided for expedited rescissions (H.R. 3442 and H.R. 3523), and two Senate bills incorporated the separate enrollment approach (S. 100 and S. 139).

³³ *Congressional Record*, daily edition, vol. 147, Mar. 28, 2001, pp. H1229-H1240. This vote was not included in Table 1, since it was on a substitute budget resolution, not a discrete amendment endorsing expedited rescission procedures.

In the second session of the 108th Congress additional budget reform measures with familiar provisions that would grant expedited rescission authority to the President were introduced. H.R. 3800, the Family Budget Protection Act of 2004, contained expedited rescission provisions in Section 311; and H.R. 3925, the Deficit Control Act of 2004, included such provisions in Section 301. On June 16, 2004, an editorial in the *Wall Street Journal* endorsed H.R. 3800, offering special praise for its expedited rescission provisions: “Presidents would have the power of rescission on line items deemed wasteful, which would then be sent back to Congress for an expedited override vote.”³⁴ On June 24, 2004, provisions from H.R. 3800 were offered as a series of floor amendments during House consideration of H.R. 4663, the Spending Control Act of 2004. An amendment offered by Representative Paul Ryan that sought to establish expedited rescission authority for the President to propose the elimination of wasteful spending identified in appropriations bills was rejected by a recorded vote of 174-237,³⁵ as indicated in Table 1.

The congressional budget resolution for FY2005 (S.Con.Res. 95), as approved by the Senate on March 11, 2004,³⁶ also contained Sense of the Senate provisions in Section 501 relating to budget process reform. In particular, it called for enactment of legislation to restrain government spending, including such possible mechanisms as “enhanced rescission or constitutional line-item veto authority for the President.”³⁷

It is anticipated that expanded impoundment proposals may receive renewed congressional attention in the 109th Congress. President Bush reiterated his support for restoring presidential line item veto authority in his “Agenda for America” speech to the Republican national convention on September 2, 2004. At his first post-election news conference, on November 4, 2004, in response to a question about reducing the deficit, he stated, in part, that the president needed a line item that “passed constitutional muster,” in order “to maintain budget discipline.”³⁸ In response to a question about the lack of vetoes during his first term, at a press conference the following month, the President answered that Congress passed bills that met his budget targets, but that a line item veto would be useful. He stated:

So how can you veto a series of appropriations bills if the Congress has done what you’ve asked them to do? Now, I think the president ought to have the line item veto because within the appropriations bills, there may be differences of opinion on how the money is being spent.³⁹

³⁴ “GOP Budget Revolt,” *Wall Street Journal*, June 16, 2004, pp. A12, A14.

³⁵ Roll No. 313, *Congressional Record*, daily edition, vol. 150, June 24, 2004, pp. H5013-H5014.

³⁶ Roll No. 58, *Congressional Record*, daily edition, vol. 150, Mar. 11, 2004, p. S2699.

³⁷ See 108th Cong., S.Con.Res. 95 ES, pp. 53-54.

³⁸ Transcript, *New York Times*, Nov. 5, 2004, p. A17.

³⁹ Transcript available electronically at [<http://www.whitehouse.gov/news/releases/2004/12/20041220-3.html>], visited Dec. 22, 2004.