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Federal Budget Process Reform in the 110th Congress: A Brief Overview

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Summary

During the 110th Congress, the House and Senate have faced a wide array of budget process reform proposals, pertaining to such matters as internal PAYGO rules in the House and Senate; restoration of the statutory discretionary spending limits and PAYGO requirement; earmarking; and modifications to the budget resolution, reconciliation, and appropriations processes.

The House and Senate may pursue budget process reform in various ways, including modifications to each chamber's rules and practices, the enactment of freestanding legislation, or the inclusion of budget process changes in other budgetary legislation, such as budget resolutions or annual appropriations acts. This report provides a context for congressional actions in this area and briefly discusses selected actions and proposals in order to illustrate the diversity of issues involved.

On January 5, 2007, the House completed action on its rules package for the 110th Congress, H.Res. 6. Title IV of the measure included several budget process changes dealing with such matters as earmark reform, a prohibition against using the reconciliation process to reduce a surplus or incur a deficit, and the establishment of a PAYGO rule for the House. Also, on January 9, the House adopted H.Res. 35, a measure establishing a Select Intelligence Oversight Panel of the House Appropriations Committee. The panel is charged with studying and reviewing intelligence activities and the intelligence budget and making recommendations in this area; it does not exercise jurisdiction over appropriations legislation for these purposes. The panel includes Members of the House Appropriations Committee and the House Permanent Select Committee on Intelligence.

The House and Senate agreed to the conference report on the FY2008 budget resolution, S.Con.Res. 21, on May 17, 2007. The budget resolution contained several procedural provisions, including, among other things, a bar in the Senate against the consideration of reconciliation legislation that would reduce a surplus or incur a deficit, a revision of the Senate's PAYGO rule, and the extension of House and Senate controls on advance appropriations. Additional procedural provisions are included in the FY2009 budget resolution (S.Con.Res. 70/H.Con.Res. 312); final House and Senate action on the measure has not been completed.

Some of the other legislation considered by the House and Senate includes (1) P.L. 110-53 (August 31, 2007), the Implementing Recommendations of the 9/11 Commission Act of 2007, requiring annual disclosure of aggregate intelligence funding (Section 601); (2) P.L. 110-81 (September 14, 2007), the Honest Leadership and Open Government Act of 2007, establishing certain ethics reforms and (in Section 521) a new Senate Rule XLIV on earmarking; and (3) H.Res. 491 (adopted by the House on June 18, 2007), a measure dealing with the inclusion of earmarks in conference reports on regular appropriations acts that were not submitted to the conference by either chamber.

The report will be updated as developments warrant.

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Congress and the President regularly propose and make changes to the federal budget process in order to achieve certain budgetary, economic, or political objectives. This report briefly discusses the context in which federal budget process changes are made and identifies selected reform proposals by major category. The identification of reform proposals in this report is not intended to be comprehensive; other CRS reports discuss different aspects of budget process reform in more detail.[1]

The Context of Budget Process Reform

The main impetus for budget process reform may arise from a variety of sources. Congress initiated a thorough overhaul of its internal budget process and ameliorated ongoing conflicts with President Richard Nixon over the withholding of appropriated funds through enactment of the Congressional Budget and Impoundment Control Act of 1974. President Bill Clinton, like many Presidents before him, requested line-item veto authority, which Congress granted in 1996 in the Line Item Veto Act (but was invalidated by court action in 1998). State and local government officials were instrumental in securing passage of the Unfunded Mandates Reform Act of 1995. Finally, special commissions, such as the President's National Commission on Terrorist Attacks Upon the United States (the "9/11 Commission"), have recommended changes in budget structure and procedure that have been adopted. (Citations to laws identified in this report are provided in **the Appendix**.)

Perhaps more than any other factor over the years, concern about the size and persistence of the federal deficit has animated calls for budget process reform. The federal deficit, which amounted to $162 billion for FY2007, jumped to $455 billion for FY2008 in the face of a significant economic downturn.[2] Media reports have indicated that the deficit for FY2009, driven upward by further economic deterioration and the need for economic stabilization and stimulus legislation, may reach the $1 trillion level.[3] The dramatic increase in the deficit, and its likely

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[1] CRS reports on budget process reform may be accessed in several ways, including by subject term and author searches at the CRS website. Also, see CRS Report RL31478, *Federal Budget Process Reform: Analysis of Five Reform Issues*, by James V. Saturno and Bill Heniff Jr., for a discussion of selected reforms proposed in past years.

[2] Treasury Department, *Monthly Treasury Statement*, October 2008, p. 2.

[3] See, for example, several reports refer to a statement issued by the Committee for a

(continued...)

persistence at high levels in the short term, can be expected to fuel strong interest in procedural reform.

The federal budget process is rooted in constitutional mandates, statutory requirements, House and Senate rules and practices, and administrative directives.[4] Thus, there are several avenues through which budget process changes can occur. Either chamber may focus on changes in its rules, thereby minimizing the time needed to effect the change and the scale of potential conflict needed to be resolved, but at the same time possibly minimizing the impact of the changes. Broader and potentially more consequential changes, involving statutes or constitutional amendments, may entail a larger set of participants in the decision-making (i.e., the other chamber, the President, state legislatures), likely escalating the effort required to reach agreement and lengthening the time period before the changes take effect.

Legislative changes in the budget process may take the form of freestanding bills or joint resolutions (e.g., the Line Item Veto Act), or may be incorporated into other budgetary legislation, such as acts raising the debt limit (e.g., the Balanced Budget and Emergency Deficit Control Act of 1985, also referred to as the Gramm-Rudman-Hollings Act), implementing reconciliation instructions (e.g., the Budget Enforcement Act of 1990), or providing annual appropriations (e.g., revisions in the Senate's cap on discretionary appropriations). Budget process changes also may be included in the annual budget resolution (a concurrent resolution), or in simple House or Senate resolutions.

In some years, changes made in the budget process were comprehensive. The Budget and Accounting Act of 1921 established the executive budget process, the Congressional Budget Act of 1974 created the congressional budget process, and the Balanced Budget and Emergency Deficit Control Act of 1985 and the Budget Enforcement Act of 1990 imposed additional budget controls on a temporary basis.[5] In other years, such as 1987, 1993, and 1997, existing budget process statutes were modified in a less comprehensive fashion and extended for limited periods. At other times, Congress and the President enacted statutes changing only selected aspects of the budget process; the Line Item Veto Act (of 1996) is one example. Finally, in every Congress, the House and Senate have modified existing rules and practices affecting the budget process and sometimes instituted new ones.

Like other types of legislation, statutes making changes in the budget process are subject to review by the judiciary. In several major instances, the Supreme Court has declared procedures established by Congress and the President to be invalid on constitutional grounds. The one-House legislative veto (found in many acts,

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[3] (...continued)
Responsible Federal Budget, "CRFB Projects a One Trillion Dollar Deficit," November 10, 2008, available at [http://www.crfb.org].

[4] For an overview of the federal budget process, see CRS Report 98-721, *Introduction to the Federal Budget Process*, by Robert Keith.

[5] A comprehensive listing and description of major budget process laws enacted over the past century (and full legal citations to them) is provided in CRS Report RL30795, *General Management Laws: A Compendium*, Clinton T. Brass (coordinator).

including the Impoundment Control Act of 1974), for example, was invalidated by *I.N.S.* v. *Chadha* in 1983, 103 S.Ct. 715 (1983); the triggering of a sequester by the Comptroller General under the Gramm-Rudman-Hollings Act was invalidated by *Bowsher* v. *Synar* in 1986, 478 U.S. 714 (1986); and the Line Item Veto Act was invalidated by *Clinton* v. *City of New York* in 1998, 118 S.Ct. 2091 (1998). In the wake of court decisions, Congress and the President may successfully modify legislation (e.g., 1987 legislation modifying the Gramm-Rudman-Hollings Act, vesting the authority to trigger a sequester in the director of the Office of Management and Budget), but sometimes persistent efforts to enact corrective legislation do not succeed (e.g., line-item veto proposals).

Given that nearly every committee of the House and Senate has jurisdiction over legislation with a budgetary impact, interest in the budget process and proposals to change it radiate throughout both chambers. Although jurisdiction over executive and congressional budget procedures generally resides with the Budget, Oversight and Government Reform, and Rules Committees in the House, and with the Budget, Homeland Security and Governmental Affairs, and Rules and Administration Committees in the Senate, other House and Senate committees, particularly the appropriations and tax committees, may exert influence over budget process changes affecting their legislative interests.

The first action in the 110th Congress to change budget procedures occurred on the second day of session, January 5, 2007. The House, which unlike the Senate is not a continuous body, must adopt its rules anew at the beginning of each Congress. Traditionally, the House adopts its rules from the previous Congress, with modifications (that may include changes in the budget process), in the form of a simple resolution. The rules package for the 110th Congress, H.Res. 6, contained several changes in the budget process, including a "pay-as-you-go" (PAYGO) rule for the House (discussed below).[6]

A second opportunity for budget process changes came in March and April of 2007, when the two chambers considered the budget resolution for FY2008, S.Con.Res. 21 (H.Con.Res. 99). Under authority referred to as the "elastic clause" (in Section 301 of the 1974 Congressional Budget Act), either chamber may include procedural provisions in the annual budget resolution that are consistent with the purposes of the 1974 act. The two chambers reached final agreement on the FY2008 budget resolution on May 17, 2007, by agreeing to the conference report on S.Con.Res. 21 (H.Rept. 110-153; May 16, 2007), by a vote of 214-209 in the House and 52-40 in the Senate.

Additional procedural provisions were included in the FY2009 budget resolution (H.Con.Res. 312 and S.Con.Res. 70), which passed the House and Senate in March 2008. The two chambers reached final agreement on the FY2009 budget resolution by agreeing to the conference report on S.Con.Res. 70 (H.Rept. 110-659;

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[6] For a detailed discussion regarding the changes in the budget process made by H.Res. 6, see CRS Report RL34149, *House Rules Changes Affecting the Congressional Budget Process Made at the Beginning of the 110th Congress*, by Bill Heniff Jr.

May 20, 2008), by a vote of 48-45 in the Senate, on June 4, and by a vote of 214-210 in the House, on June 5.

The two budget resolutions made various changes in budget enforcement procedures applicable to the House and Senate, as discussed in more detail below.

Some of the other legislation involving budget process changes considered by the House and Senate in the 110th Congress includes (1) P.L. 110-53 (August 31, 2007), the Implementing Recommendations of the 9/11 Commission Act of 2007, requiring annual disclosure of aggregate intelligence funding (Section 601); (2) P.L. 110-81 (September 14, 2007), the Honest Leadership and Open Government Act of 2007, establishing certain ethics reforms and (in Section 521) a new Senate Rule XLIV on earmarking; and (3) H.Res. 491 (adopted by the House on June 18, 2007), a measure dealing with the inclusion of earmarks in conference reports on regular appropriations acts that were not submitted to the conference by either chamber.

Congress also may express its interest in the budget process in venues that do not involve legislative activity. In the past, consideration in the Senate of nominations to the position of director of the Office of Management and Budget often has afforded the opportunity to discuss budget process reforms. Following his announcement on June 19, 2007, that OMB director Rob Portman would resign in August, President George W. Bush indicated that he would nominate Jim Nussle, a former chairman of the House Budget Committee, to the position. Nominations to the position of OMB director are considered, pursuant to S.Res. 445 (108th Cong.), by both the Senate Budget Committee and the Senate Homeland Security and Governmental Affairs Committee. The Senate confirmed the Nussle nomination on September 4, 2007, by a vote of 69-24. Although budget process changes were not a prominent part of the debate in committee and on the floor, a PAYGO requirement and other procedural matters were discussed briefly.

Selected Budget Process Reform Proposals

Among the various budget process reform proposals that have been acted on during the 110th Congress, or that are under discussion, many pertain to categories such as internal PAYGO rules in the House and Senate; restoration of the statutory discretionary spending limits and PAYGO requirement; earmarking; and modifications to budget resolution, reconciliation, and appropriations processes. In order to illustrate the diversity of proposals, these and other categories of reform are discussed briefly below.

PAYGO Rules and Discretionary Spending Limits. For FY1991 through FY2002, federal budget legislation was constrained by statutory limits on discretionary spending and a PAYGO requirement for direct spending (sometimes referred to as mandatory spending) and revenue legislation. Both these budget constraints were established by the Budget Enforcement Act of 1990, which amended the Balanced Budget and Emergency Deficit Control Act of 1985. The discretionary spending limits and the PAYGO requirement were enforced by sequestration, a process by which violations were remedied by automatic, across-the-board spending cuts. These statutory budget constraints were extended in 1993 and 1997 (and further modified by other legislation), but the discretionary spending limits expired at the

end of FY2002 and the PAYGO requirement effectively was terminated in December 2002.

In recent years, there has been considerable interest in restoring, and possibly making significant modifications to, the statutory enforcement procedures.[7] Some observers have argued that the budget enforcement mechanisms associated with the BEA promoted fiscal discipline throughout the 1990s, and contributed to the federal government achieving a total budget surplus in FY1998 — the first in almost 30 years — and the following three fiscal years.

With the return of deficits, some have argued for restoring such statutory mechanisms for fiscal discipline. A principal point of contention with regard to the PAYGO requirement is whether it should apply to revenue legislation. While some maintain that revenue reductions should not face the hurdle of a statutory PAYGO requirement because they are needed to continue the economic growth that fuels growing revenues, others assert that accommodating further revenue reductions in a PAYGO requirement (i.e., by applying it only to direct spending) likely would undermine efforts to achieve significant deficit reduction, in part by encouraging some spending initiatives to be reformulated as revenue-losing provisions.

The FY2008 budget resolutions included a sense-of-the-Congress statement that a statutory PAYGO requirement should be reinstated to help control the deficit (Section 508 of S.Con.Res. 21).

In the case of the statutory limits on discretionary spending, one issue has been the period of time for which they should be established. Advocates of two- or three-year limits argue that the five-year framework employed earlier leads to limits that are too unrealistic in the later years (due to changing circumstances). Limits that are unrealistically high fail to impose discipline, while limits that are unrealistically low encourage evasions through gimmickry and other means. Shorter term limits, they argue, are more apt to be realistic and effective constraints on spending.

As a supplement to the statutory PAYGO requirement, the Senate established its own PAYGO rule in 1993 as a provision in the FY1994 budget resolution. The rule, which operates differently than the statutory requirement, has been modified several times.

Over the years, several unsuccessful efforts were made to establish a PAYGO rule in the House.[8] As indicated previously, a PAYGO rule was contained in Title IV (Section 405) of the House's rules package for the 110th Congress, H.Res. 6. Title IV was considered separately and adopted by the House on January 5, 2007, by a vote of 280-152 (all five titles of H.Res. 6 were adopted by the House and took effect on that day). The House's PAYGO rule imposes a bar against revenue and direct spending legislation that increases a deficit (or reduces a surplus) over different time

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[7] The House Budget Committee held a hearing on the matter, "Perspectives on Renewing Statutory PAYGO," on July 25, 2007.

[8] For a review of these efforts, see CRS Report RL32835, *PAYGO Rules for Budget Enforcement in the House and Senate*, by Robert Keith and Bill Heniff Jr. (archived).

periods (i.e., the six-year and 11-year periods beginning with the current fiscal year) and makes no exception for revenue or direct spending proposals assumed in the budget resolution.[9]

In May 2007, the Senate revised its PAYGO rule as part of the FY2008 budget resolution (Section 201 of S.Con.Res. 21). The revised Senate rule conforms closely to the new House rule, applying to the same two time periods and eliminating any exception for revenue or direct spending proposals assumed in the budget resolution; it expires on September 30, 2017.[10]

The revised Senate PAYGO rule is buttressed by another rule in the FY2008 budget resolution (Section 203 of S.Con.Res. 21) that would prohibit the consideration of legislation increasing the deficit by more than $5 billion in any of the four 10-year periods covering FY2018-FY2057. The pending budget resolution for FY2009 would revise this rule by barring any deficit increases (i.e., without regard to a threshold) in any of the four 10-year periods beginning with FY2019.

Both the PAYGO rule and the long-term deficits rule can be waived only by the affirmative vote of three-fifths of the membership (60 Senators, if no seats are vacant).

Earmarking. Reform of congressional earmarking practices in appropriations, direct spending, and tax legislation (and accompanying reports) was considered in 2006 by the House and Senate, but the two chambers did not come to a resolution of the issue. The issue has been addressed again by both chambers during the 110th Congress.[11]

While definitions of earmarking vary, an earmark generally is considered to be an allocation of resources to specifically-targeted beneficiaries, either through earmarks of discretionary or direct spending, limited tax benefits, or limited tariff benefits. Earmarks may be proposed by the President or may be originated by Congress. Concern about existing earmarking practices arose because some of them were inserted into legislation or accompanying reports without any identification of the sponsor, and the belief that many earmarks were not subject to proper scrutiny and diverted resources to lesser-priority items or items without sufficient justification, thereby contributing to wasteful spending or revenue loss.

The essential feature of earmark reform proposals is a bar against the consideration of legislation that does not identify individual earmarks and the Members who sponsored them, the distribution of such information in a way that makes it readily available before the legislation is considered, and certification by

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[9] The new rule is discussed in more detail in CRS Report RL33850, *The House's "Pay-As-You-Go" (PAYGO) Rule in the 110th Congress: A Brief Overview*, by Robert Keith.

[10] The Senate PAYGO rule is examined in CRS Report RL31943, *Budget Enforcement Procedures: Senate Pay-As-You-Go (PAYGO) Rule*, by Bill Heniff Jr.

[11] For a more detailed discussion of the matter, see CRS Report RL34462, *Earmark Reform: Comparison of New House and Senate Procedural Rules*, by Sandy Streeter.

earmark sponsors that neither they nor their spouses have a financial interest in the earmark.

Earmark reform provisions, requiring the identification of earmarks and their sponsors before legislation may be considered and imposing other restrictions on the use of earmarks, were contained in Title IV (Section 404) of the House's rules package for the 110th Congress, H.Res. 6, adopted on January 5, 2007. The earmark reform provisions were added to the rules of the House as Clause 9 of Rule XXI and Clauses 16 and 17 of Rule XXIII.[12] The earmark identification requirement applies to all legislation; if no earmarks are included, then a statement to that effect must be supplied.[13]

Later in the session, on June 18, 2007, the House adopted H.Res. 491, a measure dealing (for the remainder of the 110th Congress) with the consideration of conference reports on regular appropriations acts containing earmarks that were not submitted to the conference by either chamber. The measure established a point of order that is intended to curtail the practice of "air-dropping" earmark provisions, not first passed by either chamber, into appropriations acts at the conference stage.

On January 18, the Senate adopted S. 1, ethics reform legislation. Title I of the act, referred to separately as the Legislative Transparency and Accountability Act of 2007, included earmark reform provisions requiring the prior identification of earmarks, and their sponsors, in all spending and revenue legislation, and various other constraints on earmarking practices.[14] Senator Robert C. Byrd, the chairman of the Senate Appropriations Committee, announced on April 17 that the committee would follow a policy of requiring earmark disclosure for the FY2008 appropriations cycle, similar to the requirements set forth in S. 1.

On July 31, the House passed S. 1 with an amendment under the suspension of the rules procedure, by a vote of 411-8. The Senate agreed to the House amendment, by a vote of 83-14, on August 2, thus clearing the measure. President George W. Bush signed the bill into law on September 14, as P.L. 110-81 (121 Stat. 735-776), the Honest Leadership and Open Government Act of 2007. In its final form, P.L.

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[12] The requirements under the cited rules are explained in CRS Report RS22866, *Earmark Disclosure Rules in the House: Member and Committee Requirements*, by Megan Suzanne Lynch.

[13] For examples of earmark identification for different types of measures, see (1) *Transportation-HUD Appropriations Act for FY2008*; report to accompany H.R. 3074, H.Rept. 110-238 (July 18, 2007), pp. 215-258; (2) *National Defense Authorization Act for Fiscal Year 2008*; report to accompany H.R. 1585, H.Rept. 110-146 (May 11, 2007), pp. 558-571; (3) *Farm, Nutrition, and Bioenergy Act of 2007*; report to accompany H.R. 2419, H.Rept. 110-256, Pt. 1 (July 23, 2007), p. 396; and (4) *Renewable Energy and Energy Conservation Tax Act of 2007*; report to accompany H.R. 2776, H.Rept. 110-214 (June 27, 2007), p. 119. The latter two examples contain statements that no earmarks, limited tax benefits, or limited tariff benefits are included.

[14] See CRS Report RL33852, *Ethics, Lobbying, and Related Procedural Reforms Proposed in S. 1, 110th Congress*, by Jack Maskell, R. Eric Petersen, Bill Heniff Jr., Sandy Streeter, and Todd B. Tatelman.

110-81 includes earmark reform provisions in Section 521 (Congressionally Directed Spending), which are added to the Standing Rules of the Senate as a new Rule XLIV.[15]

Congressional Budget Resolution and Reconciliation. The Congressional Budget Act of 1974 requires the House and Senate to adopt a budget resolution each year, setting forth aggregate spending and revenue levels, and spending levels by major functional categories, for at least five fiscal years. The budget resolution, which is a concurrent resolution and therefore does not become law, provides an overall budget plan that guides congressional action on individual spending, revenue, and debt-limit measures. The 1974 act includes an optional reconciliation procedure that provides for the development and consideration of revenue, spending, and debt-limit legislation to carry out budget resolution policies; enforcement of budget resolution policies also occurs by means of various points of order that may be raised on the floor. Budget resolutions and reconciliation measures are considered under expedited procedures in both chambers.

Some Members of Congress, as well as the President, have argued that the budget resolution would be more effective in enforcing budget policy by making it a joint resolution requiring the President's approval. A joint budget resolution would directly involve the President in congressional actions on the budget early in the process. If the President and Congress reach an impasse on a joint budget resolution, however, some are concerned that action on spending and revenue bills might be significantly delayed.

During the 1980s and much of the 1990s, reconciliation was used principally as a means of reducing the deficit. While some reconciliation measures included spending increases or revenue reductions, the net impact of the legislation was to reduce the deficit. In recent years, the reconciliation process has been used mainly to expedite the passage of legislation that increases the deficit, primarily through revenue reduction.

Some Members in the House and Senate have argued that the reconciliation process should be altered so that it may be used only to reduce the deficit. As part of the changes in the budget process included in the rules package for the 110th Congress, H.Res. 6, the House included a ban (in Section 402) against the consideration of a budget resolution containing reconciliation directives that would increase the deficit or reduce the surplus over the six-year or 11-year periods beginning with the current fiscal year. The Senate included a similar ban for the same two time periods in the FY2008 budget resolution (Section 202 of S.Con.Res. 21).

Annual Appropriations Process. Discretionary spending, which amounts to more than one-third of federal spending, is provided each year in regular,

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[15] Section 521 of the act may be found at 121 Stat. 760-764. The requirements under the Senate rule are explained in CRS Report RS22867, *Earmark Disclosure Rules in the Senate: Member and Committee Requirements*, by Megan Suzanne Lynch.

supplemental, and continuing appropriations acts. Discretionary spending funds most of the routine operations of federal agencies.

At the beginning of the 109th Congress, the House and Senate Appropriations Committees consolidated and realigned their subcommittees in order to streamline the appropriations process, facilitate the timely enactment of appropriations bills, and minimize the likelihood of using consolidated appropriations acts.[16] Both committees disbanded their VA-HUD Subcommittee, and the House Appropriations Committee disbanded two others (District of Columbia and Legislative Branch), leaving 12 Senate and 10 House appropriations subcommittees.

At the start of the 110th Congress, further adjustments in subcommittee alignments of the House and Senate Appropriations Committees were made, leaving each committee with 12 subcommittees. Among the changes made, each committee established a Financial Services and General Government Subcommittee and the House Appropriations Committee reestablished a Legislative Branch Subcommittee.

On January 9, the House adopted H.Res. 35, a measure establishing a Select Intelligence Oversight Panel of the House Appropriations Committee. The panel is charged with studying and reviewing intelligence activities and the intelligence budget and making recommendations in this area; it does not exercise jurisdiction over appropriations legislation for these purposes. The panel includes Members of the House Appropriations Committee and the House Permanent Select Committee on Intelligence. This action represents the House's response to one of the recommendations of the 9/11 Commission.

When a regular appropriations act or a continuing resolution is not in place after the start of the fiscal year on October 1, an agency does not have the legal authority to incur obligations in order to function and must shut down, resulting in the furlough of federal employees and disruptions in service. In order to prevent a government shutdown (or the threat of one) due to the expiration of funding, some Members have proposed establishing an automatic continuing resolution; see, for example, the Government Shutdown Prevention Act (S. 2070 and H.R. 3583, introduced by Senator Jim DeMint and Representative Jeb Hensarling).[17] An automatic continuing resolution would provide an uninterrupted source of funding for discretionary activities in the event one or more regular appropriations acts are not enacted by the start of a new fiscal year. While such a device could eliminate or reduce employee furloughs and service disruptions, some view an automatic continuing resolution as substituting a formulaic response for deliberate and informed decision-making.

Item Veto/Expanded Rescission Authority. When a spending or revenue act is sent to the President for his consideration, he must approve or veto the measure in its entirety. After a spending measure has become law, the President may impound

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[16] For a further discussion on reorganization of the appropriations subcommittees, see CRS Report RL31572, *Appropriations Subcommittee Structure: History of Changes from 1920-2005*, by James V. Saturno.

[17] This topic is discussed in CRS Report RL30339, *Preventing Federal Government Shutdowns: Proposals for an Automatic Continuing Resolution*, by Robert Keith.

funds through rescission, which cancels the funding, or deferral, which delays the expenditure of funds. Congress exercises its responsibilities in this area through procedures established under the Congressional Budget and Impoundment Control Act of 1974 and the regular legislative process.

Advocates of greater budget discipline proposed the Line Item Veto Act, which became law in 1996 (P.L. 104-130) but was struck down by the Supreme Court on June 25, 1988, in *Clinton* v. *City of New York*, 118 S.Ct. 2091 (1998). Under this act, the President was authorized to strike individual items of discretionary spending, direct spending, and certain limited tax benefits in any law.

In the years following the Supreme Court decision, various proposals have been made in Congress to grant item veto authority to the President in a manner that passes constitutional muster or to otherwise expand his rescission powers.[18] President Bush, in 2006, proposed a "legislative line-item veto," under which Congress would have to consider proposed rescissions in an expedited manner. The House passed H.R. 4890, the Legislative Line Item Veto Act of 2006, on June 22, 2006, by a vote of 247-172. In the Senate, the Budget Committee reported S. 3521, the Stop Over Spending Act of 2006, on July 14, 2006 (S.Rept. 109-283), but the Senate did not consider the bill. Title I of the bill contained the Legislative Line Item Veto Act of 2006.

While advocates of the item veto or expanded rescission powers for the President contend that such tools will enhance budgetary discipline, critics suggest that their usefulness for budgetary discipline is overstated and that they may adversely affect the balance of power between Congress and the President over budget decisions.

The Senate considered a legislative line-item veto proposal in the 110th Congress, in the form of an amendment offered by Senator Judd Gregg, first to S. 1 and then to minimum wage legislation, H.R. 2; in both instances, the Gregg amendment ultimately was withdrawn.

Commission/Task Force on Long-Term Budgetary Issues. Considerable attention has been focused recently on the large imbalances projected in the federal budget over the long term, particularly with respect to the Social Security, Medicare, and Medicaid programs.[19] One device advocated by some as a means of compelling action on long-term budgetary issues is a bipartisan commission or task force empowered to recommend legislative changes that would correct or mitigate the imbalances.

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[18] Additional information on the proposals affecting the rescission process and line-item veto authority, see (1) CRS Report RL33365, *Line Item Veto: A Constitutional Analysis of Recent Proposals*, by Morton Rosenberg; and (2) CRS Report RL33635, *Item Veto and Expanded Impoundment Proposals: Legislative History and Current Status*, by Virginia A. McMurtry.

[19] For additional information, see (1) Congressional Budget Office, *The Long-Term Budget Outlook*, December 2007; and (2) Government Accountability Office, *The Nation's Long-Term Fiscal Outlook: August 2007 Update*, GAO-07-1261R (September 2007).

The Bipartisan Task Force for Responsible Fiscal Action Act of 2007 (S. 2063, introduced by Senators Kent Conrad and Judd Gregg, and H.R. 3655, introduced by Representatives Jim Cooper and Frank Wolf), for example, would establish a bipartisan, 16-member task force (including the Treasury Secretary and another member from the executive branch, and seven members each from the House and Senate). The task force would be charged with developing legislative recommendations (by December 9, 2008) to significantly improve the long-term balances in the federal budget, including the balances in Social Security and Medicare; the recommendations would need to be approved by at least 12 of the task force members. Under the proposal, the recommendations would be considered by the House and Senate during the 2009 congressional session (during the first year of the new presidential administration), under expedited legislative procedures that would limit consideration to 100 hours in each chamber and bar amendments.[20]

Advocates of the commission or task force approach argue that it would be an effective means of surmounting political opposition and achieving an end result because of the bipartisan nature of the group, the avoidance of preconditions with respect to policy options (i.e., all options would be "on the table"), and the action-forcing nature of expedited legislative procedures. Adherents to the use of regular legislative procedures to deal with these issues maintain that while they may entail a more time-consuming and difficult route, they afford more openness and participation in the decision-making process and are more likely to lead to widespread acceptance of the results.

Capital Budgeting. Unlike many states, the federal government does not employ separate capital and operating budgets; instead, all revenue and spending is merged together into a "unified" budget. Information on capital budgeting, however, has been provided for many years as a separate chapter in one of the volumes of the President's budget.[21] Interest in adopting a capital budget for the federal government has been examined from time to time. In 1999, a commission established by President Bill Clinton pursuant to Executive Order 13037 (March 3, 1997), the President's Commission to Study Capital Budgeting, recommended several changes in budgetary practice but did not recommend the adoption of a formal capital budget.[22]

Advocates of capital budgeting generally regard it as a means of boosting resources for infrastructure needs (e.g., surface transportation and aviation systems struggling to meet capacity and deteriorating water infrastructure), overcoming an alleged bias against capital spending in the current budget process, and rationalizing

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[20] The proposal is explained by Senators Conrad and Gregg in the *Congressional Record* (daily ed.), September 18, 2007, pp. S11662-S11665.

[21] In the FY2009 budget, the discussion of capital budgeting is presented in the *Analytical Perspectives* volume as Chapter 6, "Federal Investment" (pages 57-68), which is available on the OMB website at [http://www.whitehouse.gov/omb/budget/fy2009/pdf/apers/crosscutting.pdf]].

[22] See the *Report of the President's Commission to Study Capital Budgeting*, February 1, 1999, available at [http://clinton3.nara.gov/pcscb/].

decision-making in this area. Critics of capital budgeting assert that shifting a significant portion of the budget to an accrual basis (in which costs are apportioned over the lifetime of an asset rather than accounted for up front) would unduly complicate the budget process and undermine the task of setting priorities over the full range of governmental activities.[23]

As a first step toward improved budgeting for infrastructure needs, some have advocated more information gathering and analysis in this area. Representative Collin Peterson, for example, introduced H.R. 3538, the National Infrastructure Improvement Act of 2007, on September 14, 2007. The bill would create a bipartisan National Commission on the Infrastructure of the United States charged with studying, among other things,

> the methods used to finance the construction, acquisition, rehabilitation, and maintenance of public works improvements (including general obligation bonds, tax-credit bonds, revenue bonds, user fees, excise taxes, direct governmental assistance, and private investment).

The commission is required under the bill to complete a study by February 15, 2010 of all matters relating to the state of the infrastructure of the United States.

Biennial Budgeting. While many authorizations are enacted on a multiyear cycle, Congress acts on budget resolutions and appropriations acts annually. Biennial budgeting proposals would change the cycle under which Congress acts on budget resolutions and appropriations acts (and annual authorization acts) to two years. A leading example of such legislation is S. 2627, the Biennial Budgeting and Appropriations Act, introduced by Senator Pete Domenici (the former chairman of the Senate Budget Committee and a long-time advocate of biennial budgeting).

Biennial budgeting proposals are intended to reduce the amount of time Congress spends on budgetary legislation, to allow more time for congressional oversight of federal agencies and programs, and generally to provide for more efficient budget decision-making. In the view of some, however, a biennial approach could impair Congress's ability to respond to changing economic and budgetary circumstances.[24]

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[23] For more detailed information on capital budgeting, see (1) Congressional Budget Office, *Issues and Options in Infrastructure Investment*, May 2008; General Accounting Office (now the Government Accountability Office), *Federal Capital Budgeting*, GAO/T-AFMD 93-7, Testimony of Paul L. Posner, May 26, 1993. See also CBO and GAO testimony at the joint hearing of the House Transportation and Infrastructure Committee and the House Budget Committee on May 8, 2008, available at [http://budget.house.gov/hearings.aspx].

[24] For a discussion of issues associated with biennial budgeting proposals, see CRS Report RL30550, *Biennial Budgeting: Issues and Options*, by James V. Saturno.

Appendix. Citations to Selected Budget Process Laws

Budget and Accounting Act of 1921
P.L. 67-13; June 10, 1921; 42 Stat. 20-27.

Congressional Budget and Impoundment Control Act of 1974
P.L. 93-344; July 12, 1974; 88 Stat. 297-339.

Balanced Budget and Emergency Deficit Control Act of 1985
Title II of P.L. 99-177 (Increasing the Statutory Limit on the Public Debt); December 12, 1985; 99 Stat. 1038-1101.

Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987
Title I of P.L. 100-119 (Increasing the Statutory Limit on the Public Debt); September 29, 1987; 101 Stat. 754-784.

Budget Enforcement Act of 1990
Title XIII of P.L. 101-508 (Omnibus Budget Reconciliation Act of 1990); November 5, 1990; 104 Stat. 1388-573 through 630.

Omnibus Budget Reconciliation Act of 1993
P.L. 103-66; August 10, 1993; 107 Stat. 683-685 (Title XIV).

Unfunded Mandates Reform Act of 1995
P.L. 104-4; March 22, 1995; 109 Stat. 48-71.

Line Item Veto Act
P.L. 104-130; April 9, 1996; 110 Stat. 1200-1212.

Budget Enforcement Act of 1997
Title X of P.L. 105-33 (Balanced Budget Act of 1997); August 5, 1997; 111 Stat. 677-712.

Notes: Major portions of selected budget process laws are codified as follows —

2 U.S.C. 621, et seq. (Congressional Budget and Impoundment Control Act of 1974, as amended);

2 U.S.C. 900, et seq. (Balanced Budget and Emergency Deficit Control Act of 1985, as amended); and

31 U.S.C. 1101, et seq. (Budget and Accounting Act of 1921, as amended).

For additional information on these and other budget process laws, see CRS Report RL30795, *General Management Laws: A Compendium*, Clinton T. Brass (Coordinator), Chapter III (Financial Management, Budget, and Accounting), pp. 93-195