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COMPREHENSIVE BUDGET PROCESS ACT OF 1999

JUNE 24, 1999.—Ordered to be printed

Mr. YOUNG of Florida, from the Committee on Appropriations, submitted the following

ADVERSE REPORT

[To accompany H.R. 853]

The Committee on Appropriations, to whom was referred the bill (H.R. 853) to amend the Congressional Budget Act of 1974 to provide for joint resolutions on the budget, reserve funds for emergency spending, strengthened enforcement of budgetary decisions, increased accountability for Federal spending, accrual budgeting for Federal insurance programs, mitigation of the bias in the budget process toward higher spending, modifications in paygo requirements when there is an on-budget surplus, and for other purposes, having considered the same, report thereon with an amendment and recommend that the bill, as amended, do not pass.

The amendment is as follows:

Strike the entire text of Subtitle D—Automatic Continuing Resolution of Title VI beginning on page 91, line 1 down through page 95, line 17.

COMMITTEE PERSPECTIVE ON H.R. 853

H.R. 853 was referred to the Committee on the Budget, and in addition to the Committees on Rules and Appropriations in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned. For the Committee on Appropriations, the matter within our jurisdiction is the automatic continuing resolution. The Committee does not recommend that such a provision be included in any Congressional Budget Act amendments. H.R. 853 includes several other matters that have significant impact on the Committee on Appropriations that are not within the Committee's jurisdiction. These are a Budget with the Force

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of Law, Title I; Reserve Funds for Emergencies, Title II; and Spending Accountability Lock-Box, Subtitle C, Title VI. It is not appropriate for the Committee to recommend amendments to perfect these matters. Therefore, the Committee recommends that even though the bill might be perfected with the amendment the Committee is recommending on the automatic continuing resolution, the rest of the bill is so flawed that it should not pass.

AUTOMATIC CONTINUING RESOLUTION

Subtitle D of Title VI of H.R. 853 contains an automatic continuing resolution. It would provide funding anytime there was a lapse in appropriations for any project or activity that was funded in the preceding fiscal year at the current rate of operations. This spending authority would continue until the regular appropriations bill or a continuing resolution making appropriations for such project or activity were enacted into law.

The effect of this is to have permanently in place an appropriation for all ongoing activities at current levels if annual appropriations legislation never becomes law or is delayed in becoming law. While this might seem to some to be a sound appropriations process modification, it would have ramifications far beyond the intended goal of avoiding a government shutdown. The deadline for action on annual appropriations legislation of October 1st would be much less meaningful leading to an extension of the appropriations process even beyond its current extended completion time frame. No longer would appropriations bills be considered "must pass" legislation. Inaction would favor the status quo. The option of doing nothing or stonewalling appropriations bills would become a legitimate strategy. Those who would want to avoid a funding cut or avoid a funding increase for a program or a bill would be strengthened by the existence of an automatic continuing resolution. Their goals would not be accomplished through the legislative process, as they should be, but through a strategy of placing the government on automatic pilot.

HISTORY OF GOVERNMENT SHUTDOWNS

A review of the causes of recent government shutdowns shows that the funding policy included in short term continuing resolutions was not the reason for a presidential veto that lead to a shutdown. Rather, the reasons for shutdowns were the inclusion of extraneous matters in short term CRs that were objectionable to the President.

During late 1995 and early 1996, the funding for most of the government lapsed twice—first, due to the veto of a short term continuing resolution because it included a Medicare Part B Premium issue and, second, due to the inability of the Congress and the President to come to an agreement on the terms for submitting a seven year balanced budget plan. Neither of these instances of disagreement was related to the rates of operation included in the CRs. Both could have been easily avoided by eliminating or modifying the extraneous issues, which was eventually done.

President Reagan vetoed a short term CR in 1986 over the issue of rehiring air traffic controllers that had been terminated. President Bush vetoed a short term CR because the budget summit

agreement of 1990 had not passed Congress in a timely manner. Both of these instances resulted in preparations for a government shutdown that were never fully implemented because subsequent, clean CRs were quickly passed and signed into law.

In all of the instances cited, the result was accession to the President. The demands of the President were met, and a subsequent CR was signed absent the offending provision. As a political tool for leveraging an issue with the President, the CR has been a dismal failure for the Congress. Aside from not achieving the desired, political results, Congress also has received criticism for allowing the government to shutdown, not the President.

It could be argued that if CRs did not have to be enacted to keep government operating because of the existence of a permanent, automatic CR, then the opportunity for attaching controversial, political matters to short term CRs would be eliminated and government would never shut down. However, since the time of the Civiletti decision that said that government could not operate in the absence of appropriations in 1978, there have been a very large number of continuing resolutions that have been free of controversial, extraneous matters; have been signed into law; and have kept the government operating in a smooth, low key manner. All it takes is for Congress to maintain sufficient discipline to avoid attaching these matters to must pass CRs. Automatic continuing resolutions are not required, just clean CRs that respond to current conditions.

IMPACT ON THE APPROPRIATIONS PROCESS

The existence of an automatic continuing resolution would cause a massive change in the approach to developing annual appropriations bills. This is because all ongoing programs and projects would already have a funding level identical to the current year in place before the process even begins. Any new appropriations bill would not have to be evaluated solely on its own merits, but could be evaluated in light of status quo fallback funding compared to the new bill.

This might result in a funding priority bias towards the status quo. It might be easier to defeat attempts to reduce funding by using the tactic of not taking action on a new appropriations bill. Similarly, it might be easier to defeat attempts to increase funding by resorting to these same tactics. This would be especially true in the Senate where an individual Senator can have a major impact on the consideration of an individual bill. If there were no automatic CR, then the issues would have to be confronted more directly, and could not as easily be avoided because the new bill would still be a must pass bill in order to keep government operating.

Any program or activity operating under an automatic CR would be doing so under the last year's terms and conditions. This means that whatever special guidance was included in last year's bill would then be in effect for the new fiscal year. This would be a major shift in power to the President. If the President wanted to avoid new restrictions or maintain old ones, then vetoing any new bills would be all that was required. It would be even more difficult for Congress to influence policy matters through new and timely

restrictions in spending appropriations. This is a major element of appropriations bills. The most significant and most controversial elements in appropriations bills recently have been limitations. The issues that have been involved range all the way from abortion to war, or from agriculture commodity programs to foreign policy. This has been a major policy tool Congress has used to have a large role in the policy development of government. An automatic CR would seriously undercut the use of this tool.

In addition, the ability to change the priorities of spending for individual activities would be reduced under the influence of an automatic CR. By using tactics to assure the kick in of an automatic CR by an element of Congress or the President, new initiatives and projects can be avoided. This would also be a major shift in power to the President. The President could decide which projects to undertake administratively within existing authority, but the Congress would have a reduced capability to direct the spending of resources on individual projects. A strong power of the purse for Congress is something that the Constitution envisions. An automatic CR would cause contrary effects.

Because of the existence of an automatic CR, the importance of the timely completion of appropriations legislation would be less critical. The beginning of the fiscal year would have less significance. This might lead to even longer appropriations cycles and sessions of Congress. If there is anything needed in budget process reform, it is change that will make the process move quicker and be completed in a shorter time period. The automatic CR would cause the reverse.

TECHNICAL PROBLEMS WITH AN AUTOMATIC CR

No matter how well written an automatic CR might be, there will always be special funding situations that must be addressed to maintain total continuity of government operations. This can easily be seen by reviewing the content of the continuing resolutions that have been used for the last 20 years. Each year, different anomalies have caused special funding provisions to be included. These are for initiatives that must be started, terminations that need to be implemented, new account structures, new projects, or expiring legislation. The various issues can not be predicted so as to be included in an automatic CR, but different ones spring up each year depending on the issues in the budget. While an automatic CR would cover nearly all of government operations in the short term, a supplemental CR would need to be developed each year for the anomalies described above.

The impact of not doing a supplemental would result in a mini government shutdown. Doing a supplemental CR would take the same amount of floor time as a full blown CR. It would also give rise to the same misuses of a full blown CR that lead to government shutdowns that an automatic CR is trying to prevent. The goal of avoiding a government shutdown would still not be achieved.

OTHER PROVISIONS OUTSIDE APPROPRIATIONS JURISDICTION

Budget with the force of law

H.R. 853 includes a provision called Budget with the Force of Law at Title I. This provision would change the Budget Resolution legislative vehicle from a concurrent resolution to a joint resolution, requiring signature by the President. This is intended to encourage agreement between the White House and the Congress early in the budget process so appropriations and tax bills could proceed under agreed to spending levels. While the Committee is supportive of process changes that will make the discretionary allocation more realistic and less political, we doubt the proposal included in this bill would achieve those goals.

The current process has produced Budget Resolutions for the past several years that have included unrealistic discretionary allocations. This results in end of year spending increases beyond the allocation level or beyond the spending control mechanism that is intended to ensure fiscal discipline. It has become predictable that if the initial discretionary allocation level is too low, there will inevitably be an uncontrolled increase at the end of the process. There is general consensus that these year end increases are larger than they would have been had more modest increases been provided at the beginning of the process. More realistic spending plan could have been developed with all the control mechanisms in place throughout the process.

The current process has also produced Budget Resolutions for the past several years that have been very political documents. Rather than being restricted to only basic allocations necessary to develop spending and tax bills, Budget Resolutions have gone beyond providing allocations and included policy positions on appropriations and revenue matters that should have been left for appropriations and tax bills. Including these policy positions needlessly incites political wrangling that detracts from the development of the basic allocations. What then becomes paramount is the defense of the political rhetoric, and the allocations, which must eventually be translated into real appropriations and real cuts to real programs, become secondary and unrealistic.

Budget Resolutions need to be developed in a realistic and nonpolitical manner. The Committee favors any process change that would accomplish this. It is not at all clear that any process change could achieve these goals. It is also not at all clear that the current process can not achieve these goals. Perhaps all that is needed is for a rededication by the Committee on the Budget to proceed to accomplish its work in a realistic manner.

The intended goal of H.R. 853 is to achieve a more realistic Budget Resolution by changing the format of the Budget Resolution to a joint resolution requiring Presidential concurrence. This may have validity, if one believes that will produce a more coherent budget process. We doubt it. The first problem with the H.R. 853 proposal is that it also allows for a fallback legislative vehicle if the President vetoes the joint resolution. Under this scenario, the Congress would take the vetoed joint resolution and introduce and pass it as a concurrent resolution. The mere existence of the fallback procedure will almost certainly guarantee its use. Because the

Budget Resolution would not have to be enacted into law, the Congress would not be motivated to reach agreement with the President. Rather, for political reasons Congress would be motivated to present the President with a Budget Resolution that would provoke a veto. Then the Congress could use the fallback procedure to pass a concurrent resolution that would implement the provisions of the vetoed joint resolution.

Process changes that force all parties to compromise and reach agreement might be constructive, but if the process change includes an escape hatch, then the motivation to compromise is not real. If H.R. 853 were amended to include a straight forward joint resolution, then the motivation to reach agreement would be present. The problem with this option is that it would increase the probability that more matters beyond the basic spending and revenue allocations would be inserted into the Budget Resolution. This is based on the experience of budget summitry. Budget summits tend to produce mini-appropriations and tax bills rather than just budget allocations. Historically, budget summits included fire walls for special programs and special allocations for certain programs. These are the jurisdiction of the Committee on Appropriations.

If the annual Budget Resolution required Presidential concurrence, then the Budget Committees and the President would be motivated to lock up as much of their spending and revenue priorities as they could in the Budget Resolution rather than waiting for appropriations bills and tax bills. This is the second major problem with the joint resolution proposal included the bill. This could produce an even more confusing, chaotic, undisciplined, and unfathomable budget process. It would also be a major short circuiting of the process leading to a further intrusion into the jurisdictions of Appropriations and Ways and Means.

Again, it is not clear that this problem can be solved with a process change. Congressional Budget Resolutions can be developed in a way that can be successful under the current process if there is a desire to do so. Conversely, changing the process to a joint resolution can also be successful if there are tight restrictions on what matters are allowed in such a Budget Resolution. Without a "Byrd type rule" on the Budget Resolution that would restrict the content of a joint resolution to only the basic allocation levels, the joint resolution option would be worse than the current situation.

Reserve funds for emergencies

H.R. 853 includes a provision that would establish a reserve fund for emergency appropriations. The level of this fund would be the 5-year historical average of emergency appropriations. This proposed process change is for an area where major meaningful reform is needed and overdue.

For the past several years, the Committee has experienced major problems with the development of emergency appropriations. The Congressional Budget Act includes a procedure for making such appropriations, however, the will of the body was that emergency appropriations should be offset and even though they did not break the discretionary allocation. The major motivation for this position was that emergency appropriations increased the deficit and the

way to avoid this was to reduce a like amount of previously appropriated spending.

The proposed process change in H.R. 853 would overcome this problem. Because a certain level of emergency spending would now be recognized and provided for in the Budget Resolution, any emergency appropriations would not be increasing the deficit. This would be a major improvement. However, there are some problems with the proposal.

First, the proposal would impose a definition for emergency requirements. There is a growing concern about what are proper emergency appropriations. There is a feeling that a definition of emergency appropriations should be specified in statute. While the Committee does not have any specific problem with the proposed definition, this is an area where caution should be exercised. The Committee believes that the House floor is the best place to evaluate whether a proposed emergency appropriation is proper. This should be the ultimate test of propriety. If the House doesn't agree with the proposed appropriation, it can be stricken. Definitions in the Budget Act should not be so tight as to hinder Congress from quickly responding to these types of special needs. Congress should continue to rely on the striking amendment as the true test of emergency requirements.

Another potential problem with the emergency appropriations proposal is that when emergency appropriation proposals exceed the 5-year historical average, the bill would be referred to the Committee on the Budget. That committee would then report the bill within three days with a recommendation as to whether the additional emergency spending should be exempt from the caps.

The problem with this is that it may consume needless time in responding to a serious emergency. The very nature of using a 5-year average means that one half of the years, the emergency reserve will be exceeded. The event that triggers spending beyond the historic 5-year average will probably be a major event requiring fast response. This would not be the time for Congress to delay a response. The Committee believes that another mechanism should be developed to permit emergency appropriations beyond the 5-year reserve level. Perhaps the rule governing consideration of the emergency appropriations should be required to automatically require a separate vote on exceeding the reserve level. Perhaps the emergency bill should include a special provision authorizing an increase to the reserve that would be subject to striking on the floor. These processes would not consume important response time, and would offer the House the ability to speak on whether to exceed the 5-year average.

Spending accountability lock-box

H. R. 853 includes a provision called the Spending Accountability Lock-Box at Subtitle C of Title VI. This provision would reduce the overall allocation to the Committee if a cutting amendment were adopted to an appropriations bill and the Member offering the amendment stated that some portion of the reduction should be credited towards the lock-box. The understood goal of this provision is that when a cut is made, the lock-box would help assure that the cut could be sustained all the way through the process.

The discretionary budget allocation process has its foundation in the Budget Resolution. This is the control that gives both the House and Senate Appropriations identical overall allocations. The proposed lock-box would have the affect of unilaterally lowering the allocation through the floor amendment process. While the motivation to have the action of one bicameral legislative body dictate the outcome in the other body might have some political and procedural advantages in certain situations depending on which side is being impacted, this is typically not considered a legitimate parliamentary process for a bicameral legislature. The result could be stalemates because there is no process included to undo any lock-box action.

From a more practical standpoint, if one body cuts $1 billion for the XX Bomber putting it in the lock-box and the other body cuts $1 billion for the YY Destroyer putting it in the lock-box, both allocations are lowered. In conference both bodies insist that some portion of the respective cuts the other body made be restored. Yet there is insufficient allocation for any compromise between the bodies without cutting other objects that neither body reduced in their floor consideration. The cuts would be very difficult to restore regardless of the merits of restoring them. This situation shows how quickly this problem can be magnified. While the controlling allocation is not any lower than if only one body had made the cut, there is now twice the need to restore the allocation.

Setting the discretionary allocation level is one of the functions of the Budget Resolution. If one body makes unilateral adjustments to the allocation, then that has an undue effect on the other body and will result in improper impacts and delays for which there is no process that could provide relief. Conferencing appropriations bills at a common, unreduced allocation is difficult enough. Conferencing bills with reduced allocations when the bills are even more disparate through lock-box actions will result in major problems. Aside from the difficult process problems, it is difficult to see why either body of this legislature would want to subject itself to the decisions of the other.

RECORDED VOTES IN COMMITTEE

During consideration of H.R. 853, there were no recorded votes taken in the Committee.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds the Constitutional authority for this legislation in Article I, clause 8, section 18, that grants Congress the power to make all laws necessary and proper for carrying out the powers vested by Congress in the Government of the United States or in department or officer thereof.

OVERSIGHT STATEMENT

No summary of oversight findings and recommendations made by the Committee on Government Reform, as provided for in clause 3(c)(4) rule XIII of the Rules of the House of Representatives, was

available to the Committee with reference to the subject matter specifically addressed in the Committee amendment to H.R. 853.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Appropriations' oversight findings and recommendations are reflected in the body of this report.

ADVISORY COMMITTEE STATEMENT

No advisory committee within the meaning of section 5(b) of the Federal Advisory Committee Act will be created by the amendment recommended by the Committee on this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the recommended amendment to the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104–1).

FEDERAL MANDATES STATEMENT

The amendment recommended by the Committee on this legislation contains no unfunded mandates.

CHANGES IN EXISTING LAW

The amendment recommended by the Committee on this legislation would make no change in existing law.

CONGRESSIONAL BUDGET ACT

With respect to the requirement of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, and section 308(a) of the Congressional Budget Act of 1974, the Committee amendment would not result in the provision of any new budget authority.

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