RSC
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Legislative Bulletin……………………………..…………June 22, 2006

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H.R. 4890—The Legislative Line Item Veto

H.R. 4890—The Legislative Line Item Veto (Ryan)

Order of Business: The bill is scheduled to be considered on Thursday, June 22nd, subject to a closed rule (H.Res. 886). H.Res. 886 is a self-executing rule, providing for the adoption of the manager's amendment. The changes made by that amendment are incorporated below.

Background: In 1996, the Line Item Veto Act (P.L. 104-130) was signed into law to give the President the authority to rescind targeted spending and tax items from larger pieces of legislation. Such rescissions took effect automatically and did not need approval by Congress. President Clinton used the authority 82 times before the Supreme Court in 1998 struck the law down in *Clinton v. New York*. The central defect of the Line Item Veto Act was that it ran afoul of the presentment clause of Article I, Section 7. That clause states that all legislation passed by Congress be presented to the President and "if he approve he shall sign it, but if not he shall return it, with his objections." The Court reasoned that allowing the President to essentially amend a statute unilaterally was not consistent with the Constitution's specific procedures for enacting a law. The Legislative Line Item Veto (H.R. 4890) is an attempt to remedy the Constitutional defect identified by the Court by establishing a process whereby Congress can expeditiously approve of a President's rescissions package.

Summary of H.R. 4890:

- Authorizes the President to propose "the cancellation of any dollar amount of such discretionary budget authority, item of direct spending, or targeted tax benefit" within 45 days of enactment of any spending or tax legislation. The President would transmit a "special message" to Congress identifying the proposed rescissions and a description of why each item ought to be cancelled.

- Restricts the number of special messages (or rescission packages) to five per bill—unless the bill is an omnibus reconciliation or appropriation bill which could be accompanied by ten special messages.

- Prohibits the President from proposing the same rescissions or "substantially similar" rescissions more than one time. In other words, the President could not include the same earmark in all five of the packages he sent to Congress (assuming he offered the maximum number).

- Provides that if Congress approves the President's rescission package, by enacting the "approval" bill that receives expedited consideration in Congress (see below), the savings will be directed toward deficit reduction. However, the rule (H.Res. 886) self-executes a change with regard to highway spending. If a highway earmark is rescinded by Congress, the money would flow back into the Highway Trust Fund to be spent through the normal formula-driven process. The change was made due to concerns that otherwise the Highway Trust Fund would be subsidizing deficit reduction even though it is largely funded by gas taxes for highway construction.

- Allows the Chairmen of the Budget Committees to adjust the budget resolution to reflect any rescissions that Congress approves. In addition, the Office of Management and Budget is directed to adjust the statutory spending caps as well (although currently none are in effect, having expired in 2002).

- Requires the majority leader of each chamber to introduce an approval bill, within five days of receiving a President's rescissions package, consisting of the rescissions proposed in the President's "special message." The bill could only include those items that CBO scores as meeting the definition of discretionary budget authority, items of direct spending, or targeted tax benefits.

  For instance, the approval bill could not repeal a pro-life legislative rider that was contained in an appropriations bill because it is not discretionary budget authority that CBO could or would score. In fact, the bill also explicitly states that "any restriction, condition, or limitation in an appropriation law, or the accompanying statement of managers…on the expenditure of budget authority for an account, program, project, or activity, or on activities involving such expenditures" cannot be included in the President's rescissions package nor be given expedited consideration through Congress.

- Provides (in the House) that the approval bill would be referred to the committees of jurisdiction who would be required to report the bill favorably or unfavorably within seven days. If a committee failed to report the bill, a motion to discharge the bill from committee would be in order. The approval bill would then receive up to five hours of consideration; no amendments would be in order.

- Provides (in the Senate) that the approval bill *not* be referred to the committees of jurisdiction and ensures that the motion to proceed to the bill is not debatable (so that it cannot be filibustered). The approval bill itself would be debated for up to 10 hours; no amendments would be in order to the bill.

- Allows the President to defer from spending an amount of discretionary budget authority or implementing an item of direct spending or targeted tax benefit for 45 days from the date the special message was sent to Congress. The President could then extend the deferral period by an additional 45-day period—but not more than once—by sending a separate special message to Congress. In effect, this additional 45-day period ensures that the President can defer up to 90 calendar days to adequately navigate the legislative calendar and any long Congressional recesses.

- Requires the Chairmen of the Ways and Means and Finance Committees to review any conference report to amend the Internal Revenue Code and identify any targeted tax benefits. A targeted tax benefit is defined as "any revenue-losing provision that provides a Federal tax deduction, credit, exclusion, or preference to only one beneficiary." This definition does not cover industry wide tax preferences.

- Clarifies that all of the proposed rescissions will take effect only upon enactment of the approval bill. Congress must approve and the President must sign the rescissions packages.

- Instructs GAO to report on whether any proposed rescissions are still not being spent or implemented after the expiration of any deferral period.

- Requires that the new law sunset on October 1, 2012.

- Includes a Sense of Congress that "no President or executive branch official should condition the inclusion or exclusion of any proposed cancellation in any special message under this section upon any vote cast or to be cast by any Member of either House of Congress."

Committee Action: On March 7, 2006, H.R. 4890 was referred to the House Budget and Rules Committees, which reported the bill on June 14th and June 15th respectively for consideration by the full House of Representatives.

Cost to Taxpayers: None.

Does the Bill Expand the Size and Scope of the Federal Government?: No, the bill is designed as a tool for Congress and the President to reduce the size and scope of the federal government.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Constitutional Authority: The Budget Committee cites constitutional authority in Article I, Section 8, Clause 18 (granting Congress the power to make all laws which shall be necessary and proper for carrying out the powers vested by Congress or in any department). The Rules Committee cites Article I, Section 5, Clause 2 (relating to each House of Congress determining the rules of its proceedings).

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