

# NOTES

## AMENDING THE CONGRESSIONAL BUDGET ACT OF 1974

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### INTRODUCTION

Article I, Section nine of the U.S. Constitution clearly assigns the spending power of the United States to Congress: “[n]o money shall be drawn from the Treasury, but in consequence of appropriations made by law.”<sup>1</sup> Yet in 1973, the House Rules Committee concluded that Congress was not adequately discharging its spending responsibilities.<sup>2</sup> Specifically, the committee asserted that existing congressional budget procedures left Congress unable to fulfill the “two main . . . purposes of the budget process: to manage the economy and to determine public priorities.”<sup>3</sup> The Rules Committee enumerated several deficiencies in the budget process. First, the committee noted Congress’ lack of knowledge concerning the total amount of federal money spent in any given year.<sup>4</sup> Second, the committee pointed out that over half of federal spending was done outside the annual appropriations process, thus making much of the federal budget “relatively uncontrollable.”<sup>5</sup>

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1. U.S. CONST. art. I, § 9, cl. 7.

2. H.R. REP. NO. 658, 93d Cong., 1st Sess. 19, *reprinted in* 1974 U.S. CODE CONG. & AD. NEWS 3462, 3466 [hereinafter cited as HOUSE REPORT].

3. *Id.* at 21, *reprinted at* 3468. While the determination of public priorities has been a function of the congressional budget process since the inception of our Constitution, the impact of the federal budget on the general economy has become significant particularly in the last fifty years. Following World War I, federal spending was as low as \$3 billion. By 1973, when budget reform was being considered, the budget had grown to over \$400 billion. The national debt had also risen from \$1 billion to more than \$700 billion. STAFF OF HOUSE COMM. ON THE BUDGET, 97TH CONG., 1ST SESS., THE CONGRESSIONAL BUDGET PROCESS: A GENERAL EXPLANATION 4 (Comm. Print 1981) [hereinafter cited as BUDGET PROCESS].

4. HOUSE REPORT, *supra* note 2, at 24, *reprinted at* 3470. The committee concluded that “Congress has no way to determine how much will be spent in a single year (d)espite the significance of the budget totals. . . .” Senator William Roth (R-Del.) has explained the reason for this: “Before 1974, the appropriations and tax committees of the Senate and the House did their work in splendid isolation, spending money and raising revenues with little or no reference to each other or the various external forces affecting the Nation’s economy.” *Review of the Congressional Budget and Impoundment Control Act of 1974: Hearings Before the Senate Committee on Governmental Affairs*, 97th Cong., 1st Sess. 2 (1981) (opening statement of Senator Roth) [hereinafter cited as *Hearings*].

5. HOUSE REPORT, *supra* note 2, at 22, *reprinted at* 3469. The committee explained that budget uncontrollability is tied to the use of “backdoor spending,” that is, spending outside of the appropriations process:

Backdoor spending comes in a variety of forms. One type is contract authority where

Third, the Committee cited Congress' failure to complete its spending measures before the fiscal year begins.<sup>6</sup>

In the early 1970's, President Nixon initiated unprecedented impoundments of congressionally appropriated funds, claiming that his actions were necessitated by Congress' ineffectiveness in federal budgeting.<sup>7</sup> These impoundments, together with the three deficiencies in the budget process noted above, moved Congress<sup>8</sup> to enact the Congressional Budget and Impoundment Control Act of 1974.<sup>9</sup> With this Act, Congress imposed upon itself a comprehensive new budget process designed to: "provide a system of impoundment control"; "assure effective congressional control over the budgetary process" and "establish national budget priorities."<sup>10</sup>

Nine years after its enactment, the future of the Congressional Budget Act is unclear. Congress has been unsuccessful in meeting Budget Act timetables,<sup>11</sup> and has departed in some important ways from the budget process established by the act.<sup>12</sup> Despite these departures from procedure, the Budget Act has remained unchanged. Hence, recently there have been numerous proposals to amend the Budget Act.<sup>13</sup> Senate Bill 20,<sup>14</sup> introduced by Senator William Roth (R-Del.) in 1982 and again in 1983, incorporates the proposals most

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Congress authorizes an executive agency to enter into obligations. In this form, an appropriation is made only when cash is needed to liquidate the obligation. Another type of backdoor is loan authority where an agency is authorized to borrow funds (usually from the Treasury) . . . . A third type of backdoors [sic] are mandatory entitlements which usually are open-ended commitments by the United States to designated parties. The amount of the obligation depends on circumstances beyond the immediate control of Congress such as the condition of the economy, the costs of medical assistance, and the size of the welfare rolls.

*Id.* at 23, reprinted at 3469.

6. *Id.* at 24, reprinted at 3470-71. The committee noted that "[i]n an average year, half or more of the appropriation bills are awaiting action on July 1 (start of the fiscal year until 1976)." As a result, the committee continued, "Congress has turned to continuing resolutions as a means of funding Federal agencies and programs." The committee further explained that continuing resolutions "expand the amount of uncertainty about spending" and "can generate inefficient spending tactics in agencies."

7. *Id.* at 25, reprinted at 3471.

8. *Id.* at 19-26, reprinted at 3466-72. See also BUDGET PROCESS, *supra* note 3, at 3-5.

9. Pub. L. No. 93-344, 88 Stat. 297 (1974) (codified at 1 U.S.C. § 105 (1982), 2 U.S.C. §§ 621-88 (1982), and scattered sections of 31 U.S.C. (1976)). Section 1 of the Act provides that titles I through IX may be cited as the Congressional Budget Act of 1974 [hereinafter cited as Budget Act], and Title X may be cited as the Impoundment Control Act of 1974, [hereinafter cited as Impoundment Control Act].

10. Budget Act, *supra* note 9, § 2, 2 U.S.C. § 621 (1982).

11. See *infra* text accompanying notes 70-151.

12. See *infra* text accompanying notes 152-89.

13. In 1981 alone, nineteen bills were introduced in the Senate "which would radically revise in one way or another the Budget Act." *Hearings, supra* note 4, at 40 (prepared statement of Sen. Pete Domenici, R-N.M.). Also in 1982, the House Rules Committee Chairman appointed a sixteen member task force to study the budget process for the purpose of recommending reforms. *Id.* The Senate Governmental Affairs Committee held hearings on the Budget Act in 1981 and on Senator Roth's bill (See S. 20, *infra* note 14) in 1982. See *Hearings, supra* note 4.

14. S. 20, 98th Cong., 1st Sess., 129 CONG. REC. S212 (daily ed. Jan. 26, 1983). The bill was originally introduced in the second session of the 97th Congress as S. 2629, 128 CONG. REC. S6799 (daily ed. June 15, 1982).

likely to be discussed in any legislative effort to reform the budget process. This note will summarize the Budget Act's congressional budget process, consider deficiencies therein, and analyze and critique Senate Bill 20.

### THE BUDGET ACT

Until 1976, each fiscal year began on July 1. Because Congress had not been completing action on spending and revenue bills before the start of the fiscal year,<sup>15</sup> the Budget Act advanced the start of the fiscal year to October 1, beginning with fiscal 1977.<sup>16</sup> Following is a chronological summary of the Budget Act's timetable for congressional action on the budget.

#### Preparation and Adoption of the First Budget Resolution

##### *Submission of the President's Budget*

Prior to 1921, the departments and agencies of the Federal Government submitted their budget requests directly to Congress and simply notified the President of their requests.<sup>17</sup> In 1921, the Budget and Accounting Act centralized authority to request funds for federal agencies in the President and forbade federal agencies from directly seeking funds from Congress.<sup>18</sup> To aid the President in compiling his budget requests, the Act established the Bureau of the Budget,<sup>19</sup> renamed the Office of Management and Budget (OMB) in 1970.<sup>20</sup> The Budget and Accounting Act directed the President to submit the administration budget to Congress on the first day of each regular session of Congress.<sup>21</sup>

15. See HOUSE REPORT *supra* note 6 and accompanying text.

16. Budget Act, *supra* note 9, § 501, 31 U.S.C. § 1102 (1982 Supp.). The House Rules Committee stated that the "revised timetable . . . allows more time for the consideration of major policy choices and substantially reduces the likelihood of continuing resolutions because of failure to complete action on the appropriation bills before the start of the fiscal year." HOUSE REPORT, *supra* note 2, at 16, *reprinted* at 3463.

17. HOUSE REPORT, *supra* note 2, at 20-21, *reprinted* at 3467.

18. Budget and Accounting Act of 1921, ch. 18, § 206, 42 Stat. 21 (current version at 2 U.S.C. § 1108 (1982 Supp.)).

19. *Id.* § 207, 42 Stat. 22.

20. OMB, THE WORK OF THE OFFICE OF MANAGEMENT AND BUDGET 4 (May, 1982).

21. Budget and Accounting Act of 1921, ch. 18, § 201, 42 Stat. 20. Formulation of the President's budget begins nineteen months prior to the beginning of a fiscal year. For example, assume that a fiscal year (FY-3) begins October 1 of Year-2. Preparation of the budget for FY-3 would begin March 1 of Year-1. At that time, the President's senior economic advisors would gather to review the economic outlook for current and future fiscal years. On the basis of their conclusions, the President would then establish a general budget policy for FY-3. In April and May, OMB would begin to implement the President's budget policy by issuing guidelines to agencies for making their budget requests. During July and August, the agencies would prepare their FY-3 budget requests for transmittal to OMB in September. In September and October, the OMB staff would analyze the agency budgets and hold hearings with agency officials. During October and November, the President's economic advisors would meet to reconsider the economic outlook for FY-3 and the OMB Director would consider the agency budget requests and decide on recommendations to the President. In December, the President would review the recommendations and decide on totals for agencies and programs. Following preparation of budget documents by OMB, the President's budget

The Budget Act of 1974 still required the President to submit his budget proposal in January, but additionally required the President to submit a current services budget in November of the previous year.<sup>22</sup> The current services budget provides Congress with a statistical base from which to estimate the budget authority and outlays<sup>23</sup> needed to continue existing programs at current statutory levels.<sup>24</sup> As agreed upon by Congress and the OMB, the President now submits the current services budget in January in conjunction with his budget proposal.<sup>25</sup>

### *Budget Committee Hearings and Standing Committees' Estimates*

During February and March of each year, the Budget Act directs Congress to take three steps to prepare its first budget resolution. First, both the House and Senate Budget Committees must hold hearings on the budget for the upcoming fiscal year to receive testimony from members of Congress, departmental and agency officials, and the general public.<sup>26</sup> Second, by March 15, each standing committee of Congress must submit to the Budget Committee of its House "views and estimates" on all matters within its jurisdiction which are pertinent to the upcoming budget resolution.<sup>27</sup> Finally, by April 1, the Congressional Budget Office (CBO) must submit to the Budget Committees a report analyzing various budgetary alternatives available to Congress for the upcoming fiscal year.<sup>28</sup>

### *Reporting and Adopting the First Budget Resolution*

The House and Senate Budget Committees, utilizing the President's budget requests, the CBO report, the reports of the standing committees, and their own hearings, must report a first concurrent resolution on the budget ("first resolution") to their respective Houses of Congress

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requests would be transmitted to Congress in January of Year-2 for the beginning of the congressional budget process. See OMB, *supra* note 20, at 13-14.

22. Budget Act, *supra* note 9, at 22 § 605(a), 31 U.S.C. § 1109 (1982 Supp.). In 1950, Congress changed the date of submission of the budget from the first day of each regular session of Congress to any time during the first fifteen days. Budget and Accounting Procedures Act of 1950, ch. 946, § 102(a), 64 Stat. 832, (current version at 31 U.S.C. § 1105 (1982 Supp.)).
23. These terms are defined *infra* note 33.
24. BUDGET PROCESS, *supra* note 3, at 111.
25. *Id.* According to current OMB Director David Stockman, this change in the timetable was made largely because OMB found the November submission took a lot of work and the Congress did not find the November submission useful. The President's January budget was inevitably based on later information about the economy, actual spending, and congressional action than the November submission. One of the main uses of current services is to provide a yardstick against which to measure the President's budget proposals. A November submission does not provide the basis to do so. *Hearings, supra* note 4, at 67 (response to written questions submitted by Sen. Roth, R-Del.).
26. Budget Act, *supra* note 9, at 301(d), 2 U.S.C. § 632(d) (1982). The Budget Committees of Congress were created by Title I of the Budget Act.
27. *Id.* at 301(c), 2 U.S.C. § 632(c) (1982).
28. *Id.* at 202(f), 2 U.S.C. § 602(f) (1982). The Congressional Budget Office was created by Title II of the Budget Act. Its primary function is to provide budgetary information to the Budget Committees and other committees of Congress. It also provides its personnel to the Budget Committees on a temporary basis. *Id.* at 202(a)-(d), 2 U.S.C. § 602(a)-(d) (1976).

by April 15.<sup>29</sup> Congress must then adopt a first resolution by May 15.<sup>30</sup>

The first resolution is a concurrent resolution of Congress which does not require presidential approval. As such, it does not become public law, but rather is a device Congress uses to govern its own activities.<sup>31</sup>

Pre-budget congressional procedures illustrate the need for the first resolution. Prior to enactment of the Budget Act, Congress examined programs and considered appropriations individually, so that it had neither a coherent view of aggregate levels of federal spending nor a view of how individual programs fit into those aggregate spending levels.<sup>32</sup> Consequently, the Budget Act now requires the Budget Committees to report resolutions to the House and Senate setting forth: (1) appropriate levels of total budget authority and outlays;<sup>33</sup> (2) appropriate levels of new budget authority and estimated outlays for each functional category;<sup>34</sup> (3) the anticipated budget surplus or deficit;<sup>35</sup> (4) the recommended levels of federal revenue;<sup>36</sup> and (5) the appropriate level of public debt.<sup>37</sup> (See figure 1.)

29. *Id.* at 301(d), 2 U.S.C. § 632(d) (1982).

30. *Id.* § 301(a), 2 U.S.C. § 632(a) (1982).

31. CONSTITUTION, JEFFERSON'S MANUAL AND RULES OF THE HOUSE OF REPRESENTATIVES, H.R. DOC. NO. 398, 96th Cong., 2d Sess. 174 (1981).

32. See *Hearings*, *supra* note 4.

33. Budget Act, *supra* note 9, § 301(a), 2 U.S.C. § 632(a) (1982). Budget authority as defined by the Budget Act means "authority provided by law to enter into obligations which will result in immediate or future outlays involving Governmental funds. . . ." *Id.* § 3(a)(2), 2 U.S.C. § 622 (1982). Budget authority may take one of three basic forms. The first and most common type is an appropriation act which "permits federal agencies to incur obligations and to make payments out of the Treasury for specified purposes." BUDGET PROCESS, *supra* note 3, at 105. A second type is borrowing authority which "permits a Federal agency to incur obligations and to make payments for specified purposes out of borrowed moneys." *Id.* at 105-06. A third type of budget authority is contract authority, which permits obligations to be incurred in advance of appropriations or in anticipation of receipts. *Id.* at 106. Borrowing authority and contract authority are sometimes referred to as types of backdoor authority. See *discussion*, *supra* note 5.

Outlays are defined by the Budget Act as "expenditures and net lending of funds under budget authority" during a given year. Budget Act, *supra* note 9, § 3(a)(1), 2 U.S.C. § 622 (1982). Outlays made during a given fiscal year may be for payment of obligations incurred in prior years or in the current year. BUDGET PROCESS, *supra* note 3, at 123-24. Thus, outlays flow in part from unexpended balances of budget authority granted in prior years and in part from budget authority provided for the year in which the money is spent. *Id.* For example, in fiscal year 1982, 63% of outlays were the result of budget authority granted in prior years. *Hearings*, *supra* note 4, at 42 (prepared statement of Sen. Pete Domenici, R-N.M.).

34. Budget Act, *supra* note 9, § 301(a)(2), 2 U.S.C. § 632(a)(2) (1982). The federal budget is classified by function so that budget authority, outlays and other budgetary items "can be related in terms of the national needs being addressed." BUDGET PROCESS, *supra* note 3, at 117. There are 19 functional categories including headings such as national defense, international affairs, general science, space and technology. *Id.* at 20-30.

35. Budget Act, *supra* note 9, § 301(a)(3), 2 U.S.C. § 632(a)(3) (1982).

36. *Id.* § 301(a)(4), 2 U.S.C. § 632(a)(4) (1982).

37. *Id.* § 301(a)(5), 2 U.S.C. § 632(a)(5) (1982). The appropriate level of the public debt is to be accompanied by "the amount, if any, by which the statutory limit on the public debt should be increased or decreased by bills and resolutions to be reported by the appropriate committees. . . ." *Id.* House of Representatives Rule XLIX now links the public debt limit to the budget process. Upon adoption by Congress of any concurrent resolution on the budget which sets as the appropriate level of the public debt an amount different from the statutory debt limit in effect for the period to which the budget resolution relates, House Rule XLIX requires the House enrolling clerk to prepare a joint resolution increasing (or decreasing) the

The primary function of the first resolution is to set targets for subsequent congressional action on spending bills. The Budget Act therefore prohibits the House and Senate from considering any new spending, revenue, or entitlement bills prior to adopting the first resolution.<sup>38</sup> The first resolution is nonbinding, however, and only serves to provide targets for later action on spending and revenue bills. Thus, the resolution cannot be invoked to block consideration of bills which would push aggregate spending or revenue above or below target levels.<sup>39</sup>

To facilitate application of first resolution targets to action on spending bills, the Budget Act provides, that in the joint statement of the managers accompanying a first resolution's conference report, total budget authority and total outlays are to be allocated among the appropriate House and Senate Committees.<sup>40</sup> These allocations are often referred to as "302(a) allocations" since they are mandated by Section 302(a) of the Budget Act. (See figure 2.) Following these allocations, the receiving committees make further allocations among their respective subcommittees in what are referred to as "302(b) allocations."<sup>41</sup> Consequently, as Representative Leon Panetta (D-Cal.) has explained: "When an appropriation bill comes to the floor we can determine through the 302(b) allocations whether it breaches the ceilings set by the first resolution."<sup>42</sup>

### Congressional Action on Spending Bills

One of the basic divisions of legislative tasks in both Houses of Congress is between the authorizing committees and the spending committees. Authorizing committees are those standing committees which have jurisdiction over "the subject matter of those laws, or parts of laws, that set up or continue the legal operations of federal programs or agencies."<sup>43</sup> Spending committees are those standing committees which have jurisdiction over "legislation that permits the obligation of funds."<sup>44</sup> The House and Senate Appropriations Committees serve as the spending committees for most federal programs.<sup>45</sup> For some pro-

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debt limit by an amount equal to the difference between the current limit and the appropriate limit specified by the budget resolution. The joint resolution is deemed to have passed the House by the vote by which the House adopted the conference report on the budget and is transmitted to the Senate for action.

38. Budget Act, *supra* note 9, § 303, 2 U.S.C. § 634 (1982). This prohibition does not apply to budget authority or revenue changes which would become effective after the fiscal year to which the concurrent resolution applies. The Act also provides for waiver of this provision by the Senate in certain circumstances. *Id.*

39. *But see infra* text accompanying notes 146-7 for a description of the fiscal 1982 budget process when the first resolution became the second, binding resolution.

40. Budget Act, *supra* note 9, § 302(a), 2 U.S.C. § 633(a) (1982). *But see infra* text accompanying notes 146-147.

41. Budget Act, *supra* note 9, § 302(b), 2 U.S.C. § 633(b) (1982).

42. *Hearings, supra* note 4, at 176 (statement of Rep. Leon Panetta, D-Cal.).

43. BUDGET PROCESS, *supra* note 3, at 103.

44. *Id.* at 130.

45. *Id.*

grams, however, the authorizing committee also serves as the spending committee because the legislation itself provides budget authority in the form of permanent appropriations, borrowing authority, or contract authority.<sup>46</sup> This longstanding dichotomy in legislative functions enables Congress:

[t]o respond to conflicting pressures to guard the Treasury and to finance government programs. The authorizing committees generally behave as advocates; their job is to assess the needs of programs within their jurisdiction, not to tend to the overall fiscal condition of the United States. The principal role of the Appropriation Committees is to guard against spending.<sup>47</sup>

Before a program can be funded by an appropriation committee, in most cases, it must be legislatively approved by an authorizing committee.<sup>48</sup> The Budget Act provides that all legislation authorizing new budget authority, with the exception of entitlement bills and social security legislation, must be reported out of authorizing committees by May 15, the same deadline set for congressional adoption of the first resolution.<sup>49</sup> Failure to report authorizing legislation by May 15 subjects the legislation to a point of order.<sup>50</sup>

The Budget Act allows Congress almost four months from the time when the first resolution is adopted and the authorizing legislation is reported to enact its spending bills.<sup>51</sup> Congress must complete action on all new budget authority and new entitlement bills by the seventh day after Labor Day.<sup>52</sup> The Act requires all budget authority bills reported during this four month period to compare the proposed amounts of new budget authority with the relevant figures in the first resolution, and to project outlays for a five year period based on the proposed budget authority.<sup>53</sup> Furthermore, the Act directs the CBO to provide Congress with periodic "scorekeeping" reports comparing congressional action with the first resolution.<sup>54</sup>

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46. *Id.*

47. *Hearings, supra* note 4, at 79 (prepared statement of Sen. Mark Hatfield, R-Or., quoting Allen Schick).

48. "No appropriation shall be reported in any general appropriation bill or shall be in order as an amendment thereto, for any expenditure not previously authorized by law, except to continue appropriations for public works and objects which are already in progress." Rules of the House of Representatives, Rule XXI, cl. 2. "[N]o amendments shall be received to any general appropriation bill the effect of which will be to increase an appropriation already contained in the bill, or to add a new item of appropriation, unless it be made to carry out the provisions of some existing law. . . ." STANDING RULES OF THE SENATE, Rule XVI, cl. 1, 98th Cong., 1st Sess.

49. Budget Act, *supra* note 9, § 402(a)-(c), 2 U.S.C. § 652 (1982). However, the Act does waive this rule in certain situations.

50. *Id.*

51. *Id.* § 300, 2 U.S.C. § 631 (1982).

52. *Id.* § 309, 2 U.S.C. § 640 (1982).

53. *Id.* § 308(a), 2 U.S.C. § 639(a) (1982).

54. *Id.* § 308(b), 2 U.S.C. § 639(b) (1982).

### Adopting the Second Budget Resolution and Reconciliation

The Budget Act provides for adoption of a second concurrent budget resolution ("second resolution") following completion of action on spending bills.<sup>55</sup> The second resolution, slated for adoption no later than September 15,<sup>56</sup> either "reaffirms or revises" the first resolution in accordance with changes in economic circumstances and outlook at late summer.<sup>57</sup> Functionally, the second resolution differs from the first resolution in two ways: (1) the second resolution is binding on both Houses of Congress, and (2) the second resolution may initiate a legislative process known as "reconciliation."

The second resolution is binding in the sense that legislation which would cause the resolution's level of total budget authority or outlays to be exceeded is subject to a point of order.<sup>58</sup> Additionally, legislation reducing total revenues below the levels set in the second resolution is subject to a point of order.<sup>59</sup> The second resolution's binding effect applies only to aggregate levels, and not to spending levels set for individual budget functions.<sup>60</sup>

Reconciliation is the Budget Act's response to the possibility that congressional action during the summer may not agree entirely with the second resolution which is adopted.<sup>61</sup> For example, if congressional spending bills exceed the resolution's total levels of budget authority or outlays, or if new projections show that revenues will not meet the targeted levels, Congress may direct specific committees to reconcile the discrepancies by September 25.<sup>62</sup> The "reconciliation in-

55. *Id.* § 310, 2 U.S.C. § 641 (1982).

56. *Id.* § 310(b), 2 U.S.C. § 641(b) (1982).

57. *Id.* § 310(a), 2 U.S.C. § 641(a) (1982). The Senate Rules and Administration Committee Report accompanying S. 1541, the original Senate version of the Budget Act detailed the purpose of the second resolution:

The [second resolution] is to be the vehicle for reassessment of the actions Congress has taken to date (as well as actions not yet completed but which appear probable and which will affect the budget picture in the ensuing fiscal year) in light of the latest estimates relating to the state of the economy, revenues, outlays and other relevant variables. It will set forth revised or reaffirmed allocations by function as well as revised or reaffirmed totals so that when and if, during that budget year, Congress must consider a measure or measures providing additional new budget authority for such year it will be possible to compare the budget authority contained in such measures with the appropriate level of total new budget authority and the recommended allocation of new budget authority by function as set forth in the budget resolution adopted most recently. It will, in other words, be possible to determine whether any particular bill providing additional budget authority for the then-current year (such as a supplemental appropriation) was anticipated and planned for. Thus, the same discipline achieved through the guidelines in and comparison with the initial budget resolution will obtain through the fiscal year itself by virtue of the guidelines in and continued comparison with the second required budget resolution (or any later budget resolution that may have been enacted).

S. REP. NO. 688, 93d Cong., 2d Sess. 51 (1974), reprinted in 1974 U.S. CODE CONG. & AD. NEWS 3504, 3551-52.

58. Budget Act, *supra* note 9, § 311(a), 2 U.S.C. § 642(a) (1982).

59. *Id.*

60. *Id.*

61. *Id.* § 310(c)-(e), 2 U.S.C. § 641(c)-(e) (1982).

62. *Id.* § 310(c), 2 U.S.C. § 641(c) (1982).



structions" included in the second resolution would direct committees to recommend changes in laws, bills, and resolutions within their jurisdiction in an attempt to reach a specified amount of savings or increased revenues.<sup>63</sup> The instructions may specify dollar amounts, but may not specify the programs to be effected. (See figure 3.)

### Subsequent Resolutions

The Conference Report on the Budget Act states:

The managers anticipate that there will be instances in which Congress may deem it appropriate to revise its earlier spending or revenue determinations. But such revisions should be made in the context of the congressional budget process and with full awareness of their relationship to the levels set forth in the latest budget resolution.<sup>64</sup>

Pursuant to these objectives, the Budget Act provides that previous budget resolutions may be revised during a fiscal year.<sup>65</sup> The managers of the Conference Report expected that at least one additional budget resolution revising the second resolution would be necessary each year to reflect updated figures for the current fiscal year, or the enactment of supplemental appropriations for particular agencies.<sup>66</sup>

### Enforcement of the Budget Act

The Budget Act states that it is "enacted by the Congress as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively."<sup>67</sup> The Act therefore affirms the constitutional right of either House to change the Budget Act provisions insofar as they relate to that House of Congress.<sup>68</sup> Furthermore, the Act explicitly affirms the right of the Senate to waive or suspend any of the Budget Act provisions.<sup>69</sup> Thus, Congress' failure to abide by the provisions of the budget process does not violate the law. Consequently, the success of the process ultimately rests on Congress' willingness to observe the self-imposed requirements of the Budget Act.

## THE BUDGET ACT IN OPERATION

### Application: 1976-1982

#### *1976: First Full Application of the Budget Act*

"Congress has designed a new budget system that works," said Chairman Edmund Muskie (D-Me.) of the Senate Budget Committee,

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63. *Id.* § 310(a), 2 U.S.C. § 641(a) (1982).

64. S. CONF. REP. NO. 924, 93d Cong., 2d Sess. 64, reprinted in 1974 U.S. CODE CONG. & AD. NEWS 3591, 3606 [hereinafter cited as CONFERENCE REPORT].

65. Budget Act, *supra* note 9, § 304, 2 U.S.C. § 635 (1982).

66. CONFERENCE REPORT, *supra* note 64, at 61, reprinted at 3603.

67. Budget Act, *supra* note 9, § 904(a), 2 U.S.C.A. § 621 (1982).

68. *Id.* Article I, Section 5 of the Constitution provides: "Each House may determine the Rules of its Proceedings. . . ."

69. Budget Act, *supra* note 9, § 904(b), 2 U.S.C.A. § 621 (1982).

regarding Congress' preparation of the fiscal 1977 federal budget. "We can make and enforce the hard choices necessary to achieve fiscal discipline and a balanced budget in the foreseeable future . . . and pursue a fiscal plan to restore vigor to our economy."<sup>70</sup>

Muskie's optimism about the future of the new budget process did indeed seem to be justified, based on Congress' initial close adherence to the self-imposed mandates of the Budget Act. Congress passed the first budget resolution on May 13,<sup>71</sup> two days before the deadline, and the second resolution on September 16,<sup>72</sup> only one day after the deadline. More impressive than its close adherence to the deadlines was that the budgetary levels set in the second resolution differed little from the target figures set in the first resolution.<sup>73</sup> This has been attributed to the accuracy of the economic projections underlying the first resolution and the committees' close adherence to the first resolution targets when drafting their spending bills.<sup>74</sup> The only deviation from Congress' close adherence to the Budget Act in preparing for fiscal 1977 was the necessity on October 1, 1976 of enacting a continuing resolution<sup>75</sup> to provide temporary funding for several categories of health, education, and jobs programs for which regular fiscal 1977 appropriations had not yet been enacted.<sup>76</sup>

Fiscal year 1977 demonstrated, however, that the "binding" levels

70. 1976 CONG. Q. ALMANAC 673.

71. S. Con. Res. 109, 94th Cong., 2d Sess. 122 CONG. REC. 13756 (1976). As an illustration of how the Budget Act enabled Congress to play a decisive role in formulation of the federal budget, consider the following summation which appeared in the CONGRESSIONAL QUARTERLY ALMANAC:

The policies outlined in the May targets and upheld by the second resolution differed significantly from those proposed by [President] Ford in his January budget message. The congressional budget called for more federal spending for a greater stimulus to the economy, with small reductions in federal taxes on businesses and individuals. Congress rejected many of Ford's proposals for cutbacks and consolidations in domestic programs, and it targeted much of the increase in federal spending for an assortment of jobs programs to combat high unemployment. One area where Congress and the White House agreed was on increased defense spending, with the Defense Department getting virtually all Ford had requested.

1976 CONG. Q. ALMANAC 673. The first resolution also included binding targets for the July 1-September 30, 1976 transition quarter. *Id.*

72. S. Con. Res. 139, 94th Cong., 2d Sess., 122 CONG. REC. 30433 (1976).

73. 1976 CONG. Q. ALMANAC 673.

74. *Id.*

75. A continuing resolution is:

[L]egislation enacted by Congress to provide budget authority for Federal agencies to continue in operation until the regular appropriations are enacted. Continuing resolutions are enacted when action on appropriations is not completed by the beginning of a fiscal year. The continuing resolution usually specifies a maximum rate at which the obligations may be incurred, based on the rate of the prior year, the President's budget request, or an appropriation bill passed by either or both houses of Congress.

BUDGET PROCESS, *supra* note 3, at 106. A continuing resolution is a joint resolution of Congress, and is "treated exactly the same as . . . [a] numbered bill. Except for constitutional amendments, it also must be approved by the President. The traditional use of . . . [a] joint resolution] is to either change a minor item in an existing law or handle a matter of urgency which requires speedy action." MANUAL ON LEGISLATIVE PROCEDURE IN THE UNITED STATES HOUSE OF REPRESENTATIVES (PREPARED UNDER THE AUSPICES OF THE REPUBLICAN LEADER) 89 (January 1982) [hereinafter cited as REPUBLICAN MANUAL].

76. H.R. Res. 1105, 94th Cong., 2d Sess. (1976); 1976 CONG. Q. ALMANAC 789.

of a second budget resolution could easily succumb to changes in economic policy. Early in 1977 Congress adopted an unprecedented third budget resolution,<sup>77</sup> raising the binding levels of the second resolution to accommodate an economic stimulus program requested by President Carter.<sup>78</sup> Later that spring, after President Carter had revised his stimulus plan,<sup>79</sup> Congress incorporated in the first resolution for fiscal 1978<sup>80</sup> a fourth set of fiscal 1977 budget totals.

*1979: Policy Differences Strain the Process*

In the words of a commentator, "[the] fiscal 1980 budget was conceived in inflation, nurtured in the politics of the balanced budget, and born on the edge of recession."<sup>81</sup> With the beginnings of our current economic recession on the horizon, ideological differences on how best to deal with the economy caused the first serious breach of the new budget process. The first resolution,<sup>82</sup> adopted "after a long and arduous battle," only missed the May 15 deadline by nine days.<sup>83</sup> But Congress' deviations from the new process grew more severe.

By the beginning of fiscal 1980, the second resolution was not close to passage and work on ten out of thirteen regular appropriations bills had not been completed.<sup>84</sup> Congress was forced to adopt continuing resolutions on October 12<sup>85</sup> and again on November 16<sup>86</sup> to provide paychecks for federal workers. Congress finally passed its second budget resolution on November 28,<sup>87</sup> fifty-nine days after the beginning of the fiscal year and seventy-four days after the deadline set by the Budget Act.<sup>88</sup>

*1980: Deviation Continues But Modified Reconciliation Is Invoked*

Faced with high inflation, a deepening recession, and the rising tide of political conservatism,<sup>89</sup> Congress missed the first resolution deadline by almost a month in its efforts to forge a balanced budget<sup>90</sup> for

77. S. Con. Res. 10, 95th Cong., 1st Sess., 123 CONG. REC. 6053 (1977).

78. House Budget Committee Chairman Robert N. Giomo (D-Conn.) explained the economic circumstances which necessitated the revision of the fiscal 1977 budget levels: "[The] extraordinary economic slowdown of the past six months has made [a third resolution] necessary. Nearly everyone agrees that additional economic stimulus measures are needed, and those measures cannot be accommodated within the now out-of-date revenue floor and spending ceilings set in the September resolution." 1977 CONG. Q. ALMANAC 97.

79. S. Con. Res. 19, 95th Cong., 1st Sess., 123 CONG. REC. 15126 (1977).

80. 1977 CONG. Q. ALMANAC 189.

81. 1979 CONG. Q. ALMANAC 163.

82. H. Con. Res. 107, 96th Cong., 1st Sess., 125 CONG. REC. 11987 (1979).

83. 1979 CONG. Q. ALMANAC 163.

84. *Id.* at 275.

85. H.J. Res. 412, 96th Cong., 1st Sess., 125 CONG. REC. 28103 (1979).

86. H.J. Res. 440, 96th Cong., 1st Sess., 125 CONG. REC. 32861 (1979).

87. S. Con. Res. 53, 96th Cong., 1st Sess., 125 CONG. REC. 32962 (1979).

88. 1979 CONG. Q. ALMANAC 163.

89. Inflation had risen to an annualized rate of 18.2% in January, 1980. 1980 CONG. Q. ALMANAC at 107. *See generally id.* at 271-72.

90. The first resolution predicted a surplus of \$200 million. *Id.* at 107.

fiscal 1981. The first resolution was finally adopted June 12,<sup>91</sup> but as a commentator said, "many lawmakers approved the controversial budget for procedural rather than philosophic reasons."<sup>92</sup> By the time the resolution was adopted, the economy had begun to slide into recession, making the resolution's prediction of a balanced budget unrealistic.<sup>93</sup> Thus, Senate Budget Committee Member Pete Domenici (R-N.M.) observed: "This budget is only technically in balance."<sup>94</sup>

Despite Congress' apparent lack of discipline in adopting a first resolution on schedule, Congress showed a determination to be fiscally disciplined by invoking the reconciliation process, for the first time, to achieve spending reductions. Rather than incorporating the reconciliation instructions in the second resolution as provided by the Budget Act, Congress included the instructions in the first resolution.<sup>95</sup> No illegality resulted from this deviation from the Budget Act, however, because Congress may at any time alter the budget process through its rulemaking powers.<sup>96</sup>

The objective of the reconciliation instructions was to produce a balanced federal budget for fiscal 1981.<sup>97</sup> The first resolution directed eight House and ten Senate committees to recommend changes in laws within their jurisdiction which would result in savings of \$4.95 billion in budget authority, savings of \$6.4 billion in outlays, and a \$4.2 billion increase in revenues.<sup>98</sup> Following the largest conference in the history of Congress, involving more than one hundred conferees and lasting two months, Congress passed the Omnibus Reconciliation Act of 1980 on December 3.<sup>99</sup> As estimated, the reconciliation changes saved approximately \$3.1 billion in budget authority and \$4.7 billion in outlays, and produced \$3.6 billion in additional revenues.<sup>100</sup>

The reconciliation spending cuts were in entitlement programs.<sup>101</sup> Entitlements refer to "spending authority . . . to make payments . . .

91. H. Con. Res. 307, 96th Cong., 2d Sess., 126 CONG. REC. 44204 (daily ed. May 22, 1980).

92. 1980 CONG. Q. ALMANAC 108. Rep. David R. Obey, D-Wis., urged his colleagues to support the resolution on grounds that "we have to lay to rest one stage of the budget resolution and move on to another stage." *Id.*

93. *Id.* at 109.

94. *Id.*

95. *Id.* at 125.

96. See *supra* text accompanying notes 67-69.

97. 1980 CONG. Q. ALMANAC 125.

98. BUDGET PROCESS, *supra* note 3, at 13.

99. H.R. 7765, 96th Cong., 2d Sess., 126 CONG. REC. 11687 (1980).

100. BUDGET PROCESS, *supra* note 3, at 13.

101. 1980 CONG. Q. ALMANAC 125. Representative Leon Panetta, D-Cal., Chairman of the House Budget Committee's Reconciliation Task Force, observed:

[F]ederal programs can be divided into two categories: direct spending programs, basically entitlements, and programs which require yearly appropriations. The difference between these two types of programs is that the appropriated programs are examined by Congress every year through the appropriations process, while the direct spending programs are not required to be reviewed at all. Reconciliation is ideal for direct spending programs because it forces committees to conduct some sort of review of these programs for effectiveness and efficiency, with an eye towards cutting spending.

Hearings, *supra* note 4, at 175-76 (statement of Rep. Leon Panetta).

the budget authority for which is not provided for in advance by appropriation acts, to any person or government if, under the provisions of the law containing such authority, the United States is obligated to make such payments to persons or governments who meet the requirements established by law."<sup>102</sup> Examples of entitlements include Social Security benefits and veterans' compensation. Because entitlement recipients, if denied funding, may sue in court to receive their entitlement payments, Congress must either permanently appropriate funds for such programs or make sufficient annual appropriations to meet projected costs.<sup>103</sup>

When fiscal 1981 began on October 1, 1980, Congress had completed action on only three of the thirteen regular appropriations bills.<sup>104</sup> Consequently, Congress began fiscal 1981 by passing a continuing resolution which extended spending authority for federal agencies to December 15, 1980.<sup>105</sup> Passage of the continuing resolution was urgent because early in 1980 Attorney General Benjamin R. Civiletti had ruled that when budget authority runs out for federal programs, only functions that protect life and property and those necessary for winding down federal activities may legally continue.<sup>106</sup> On December 15, 1981, five appropriation bills had still not yet been enacted.<sup>107</sup> Never-

102. Budget Act, *supra* note 9, § 401(c)(2)(C), 2 U.S.C. § 651(c)(2)(C) (1982).

103. BUDGET PROCESS, *supra* note 3, at 115.

104. 1980 CONG. Q. ALMANAC 169. Two of the three bills were not actually passed until the first day of the fiscal year. Therefore, technically only one bill had been passed when fiscal 1981 began.

105. H.J. Res. 610, 96th Cong., 2d Sess., 126 CONG. REC. 10146 (1980). There was a short hiatus in federal funding when fiscal 1981 began. The continuing resolution was not passed until noon on October 1 and President Carter did not sign it until 4 p.m. that afternoon—sixteen hours after the Federal Government technically ran out of money. However, there were no significant effects on government operations. 1980 CONG. Q. ALMANAC 169.

106. 1980 CONG. Q. ALMANAC 169. Funding had run out for the Federal Trade Commission, which was forced to shut down for one day on May 1, 1980. *Id.* at 233. Faced with the prospect of a shutdown, Attorney General Benjamin R. Civiletti on April 25 issued legal guidelines for lapses in funding, based on an 1870 Act of Congress. Section 7 of that Act states that:

it shall not be lawful for any department of the government to expend in any one fiscal year any sum in excess of appropriations made by Congress for that fiscal year, or to involve the government in any contract for the future payment of money in excess of such appropriations.

Act of July 12, 1870, ch. 251, 16 Stat. 230, 251. (current version at 31 U.S.C. § 665(a) (1976)). Civiletti's April 25 guidelines provided that agencies must begin an orderly shutdown in the absence of appropriations and that violations of the shutdown would be prosecuted. However, in a memorandum dated January 16, 1981, Civiletti eased the guidelines stating that "[t]he Constitution and the Antideficiency Act itself leave the executive leeway to perform essential functions and make the government 'workable.'" 1981 CONG. Q. ALMANAC 298. The Antideficiency Act amended the 1870 Act of Congress by providing: "Nor shall any Department or any officer of the Government accept voluntary service for the Government or employ personal services in excess of that authorized by law," except in cases of sudden emergency involving the loss of human life or the destruction of property. Act of March 3, 1906, ch. 511, 34 Stat. 49. (current version at 31 U.S.C. § 1342 (1982 Supp.)).

107. 1980 CONG. Q. ALMANAC 176, 197, 210, 222, 227. The five appropriations categories were legislative, foreign aid, state-justice-commerce, labor-HHS-education, and treasury-postal. Congress had passed a state-justice-commerce appropriations bill which President Carter had vetoed on December 13, because it "contained a provision preventing the Justice Department from bringing lawsuits that could lead to court-ordered school busing for desegre-

theless, the hiatus in funding for the affected agencies lasted only a few hours; Congress passed a second continuing resolution for fiscal 1981 on December 16.<sup>108</sup>

*1981: "Reaganomics," Reconciliation, and Continuing Resolutions*

Ironically, the evolution of the congressional budget process in 1981 resulted more from presidential action than congressional action. Having swept into office on a political mandate to balance the federal budget, President Reagan asked Congress in January to cut \$41.4 billion from President Carter's final budget proposals.<sup>109</sup> David Stockman, the new OMB Director, proposed using the reconciliation process which had been used on a small scale the previous year to achieve the desired cuts in federal spending.<sup>110</sup> By consolidating the cuts into a single reconciliation package, the Administration "hoped to prevent congressional committees and interest groups from chipping away at the president's budget plan."<sup>111</sup> After incorporating reconciliation instructions into the first resolution<sup>112</sup> adopted on May 21, 1981, Congress passed the Omnibus Reconciliation Bill of 1981 on July 31 of that year.<sup>113</sup>

Reconciliation in 1981 was notable for several reasons. First, the reconciliation bill was massive in scope.<sup>114</sup> Whereas the fiscal 1981 reconciliation procedure had cut an estimated \$4.7 billion from federal outlays,<sup>115</sup> the fiscal 1982 procedure cut an estimated \$35.2 billion from outlays.<sup>116</sup>

Second, the reconciliation instructions required committees to report legislation designed to impact over a three-year period.<sup>117</sup> Representative Leon Panetta (D-Cal.), Chairman of the House Budget Committee's Reconciliation Task Force, complained that those instructions left "committees in a quandary over how to achieve cuts in programs they had traditionally authorized for only one or two years."<sup>118</sup> Although the Budget Committee and the authorization committees resolved these problems, Panetta argued that "the confusion created al-

gation." *Id.* at 210. However, the spending provisions of the vetoed bill were included in the December 16 continuing resolution. *Id.*

108. H.J. Res. 644, 96th Cong., 2d Sess., 126 CONG. REC. H12542 (1980).

109. 1981 CONG. Q. ALMANAC 245.

110. *Id.* at 256.

111. *Id.* at 245.

112. H. Con. Res. 115, 97th Cong., 1st Sess., 127 CONG. REC. 2413 (1981).

113. H.R. 3982, 97th Cong., 1st Sess., 127 CONG. REC. 5758 (1981).

114. House Budget Committee Chairman James R. Jones, D-Okla., referred to the reconciliation bill as "clearly the most monumental and historic turn-around in fiscal policy that has ever occurred." 1981 CONG. Q. ALMANAC 256.

115. See figures cited, *supra* text accompanying note 100.

116. 1981 CONG. Q. ALMANAC 245. "Outlays" in this context refers to the amount they would have been if fiscal 1981 services had been extended into fiscal 1982 and adjusted for inflation.

117. *Id.* at 257. The final version of the reconciliation bill provided for an estimated \$130.6 billion in savings for fiscal years 1982-84. *Id.*

118. *Hearings, supra* note 4, at 177 (statement of Rep. Leon Panetta).

most brought the reconciliation process to a halt.”<sup>119</sup> However, Alice Rivlin, Director of the CBO, asserted that the multiyear reconciliation instructions “enhanc[ed] the effectiveness of the multiyear targets contained in the first resolution.”<sup>120</sup>

Third, committees were instructed to recommend changes in authorizing legislation, in addition to changes in entitlements.<sup>121</sup> In its final form, the sweeping Reconciliation Act of 1981 included provisions to:

[t]ighten income eligibility for food stamps and public assistance, eliminate minimum Social Security benefits, cut funds requested for subsidized housing programs, reduce school lunch subsidies, institute a needs test for guaranteed student loans, cut federal Medicaid payments to the states . . . consolidate various health and education programs into block grants . . . establish a framework for ending Conrail subsidies, provide longer terms for radio and TV licenses, reauthorize the Consumer Products Safety Commission, terminate public service employment programs, limit pay raises for federal workers, [and] increase interest rates in lending programs for farmers and small businesses. . . .<sup>122</sup>

A final noteworthy aspect of the 1981 reconciliation procedure was the speed with which this legislation was drafted.<sup>123</sup> After Congress adopted the reconciliation instructions, House Committees were given just over three weeks to report more than \$35 billion in budget cuts.<sup>124</sup> The reconciliation conference was of unusually short duration. Whereas House and Senate conferees had spent over six weeks working out differences over an estimated \$4.7 billion in outlay reductions, in 1981, the conferees settled budget cuts totaling more than \$35 billion in

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119. *Id.* at 178.

120. *Id.* at 138 (prepared statement of Director Alice Rivlin).

121. *Id.* at 78 (prepared statement of Sen. Mark Hatfield, R-Or.). Senator Hatfield explained the application of reconciliation to authorizations:

Another unprecedented step taken this year was the requirement that legislative committees reduce authorization levels. The Joint Explanatory Statement of the Committee on Conference on the Budget Act stated that the authorization of budget authority was beyond the reach of the Budget Committees. But because this language applied only to a first concurrent resolution, and the resolution in question was technically the third budget resolution for fiscal year 1981, such action by the Budget Committee was permitted.

I might add that the House Budget Committee did not adopt this same approach. The concurrent resolution reported by that Committee directed [sic] legislative committees only to make reductions in the direct spending programs within their jurisdiction. The argument of that committee was that the actual spending level for authorized programs is set in the appropriation, rather than authorization act. However, the Gramm-Latta substitute offered on the House floor also contained authorization reductions, and with the acceptance of that substitute, the survival of instructions to reduce multi-year authorizations was assured. Incidentally, on the House floor, this instruction was termed “an astounding usurpation of the function of the legislative committees . . . and way beyond the authority of the Budget Act.”

*Id.* at 78-79.

122. 1981 CONG. Q. ALMANAC 256.

123. *Id.* at 257.

124. *Hearings, supra* note 4, at 184 (statement of Rep. Leon Panetta, D-Cal.).

fifteen days.<sup>125</sup> Some congressmen argued that this summary process breached legislative responsibility because it left very little time available for hearings, staff study, and debate.<sup>126</sup> Others argued, however, that the conference produced a well-drafted bill.<sup>127</sup>

Throughout the latter half of 1981, Congress passed a series of continuing resolutions. On September 24, President Reagan announced his desire for an additional \$13 billion in budget cuts and an additional \$3 billion in revenues.<sup>128</sup> Opposition within his own party to this new initiative delayed the enactment of spending bills.<sup>129</sup> When fiscal 1982 began on October 1, none of the thirteen regular appropriation bills had been enacted.<sup>130</sup> Thus, Congress was forced to adopt a continuing resolution to fund the government through November 20, 1982.<sup>131</sup>

In early November, since only one of the regular appropriations bills had been enacted,<sup>132</sup> Congress drafted another continuing resolution to avoid a government shutdown. Dissatisfied with its savings measures, President Reagan vetoed the resolution.<sup>133</sup> At midnight, on Friday, November 20, 1982, the government technically ran out of money.<sup>134</sup> Pursuant to a 1980 ruling by the Attorney General, the Federal Government began shutting down on Monday, November 23, 1981,<sup>135</sup> in the first broadly-based federal shutdown.<sup>136</sup> Later that day, Congress approved an emergency continuing resolution which extended funding through December 15.<sup>137</sup> A third continuing resolution for fiscal 1982 was passed by Congress on December 11.<sup>138</sup> The resolution provided funding through March 30, 1983 for programs covered under the three appropriation bills that had still not been enacted by

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125. 1981 CONG. Q. ALMANAC 257.

126. *See, e.g., Hearings, supra* note 4, at 174 (statement of Rep. Leon Panetta).

127. 1981 CONG. Q. ALMANAC 257.

128. *Id.* at 267.

129. *Id.* at 245.

130. *See id.* at 245-380. However, a full-year legislative branch appropriation was included in the October 1 continuing resolution. *Id.* at 286.

131. H.J. Res. 325, 97th Cong., 1st Sess., 127 CONG. REC. H6698 (1981).

132. 1981 CONG. Q. ALMANAC 294. This was the legislative branch appropriation included in the first continuing resolution.

133. *Id.*

134. *Id.*

135. Based on the Attorney General's January 16, 1981 memo (*see* BUDGET PROCESS, *supra* note 3, at 115), OMB administered the November 23 shutdown in the following way. Generally, all government functions were to cease. Exempted from the shutdown were: presidential activities dealing with national security and foreign relations, government activities funded by multi-year appropriations or authorized by law to operate in advance of appropriations, and activities involving the safety of human life or the protection of property. (The latter exemption is based on 2 U.S.C. § 1342 (1982 Supp.)). As for employees engaged in non-exempted activities, President Reagan decreed that furloughs should be handed out "as soon as possible." However, the furloughs proceeded at varying paces depending on the agency, and some agencies did not wind down at all during the one-day shutdown. 1981 CONG. Q. ALMANAC 298-99.

136. The Federal Trade Commission had been forced to shut down for one day, and again for two days, in 1980. 1980 CONG. Q. ALMANAC 233.

137. H.J. Res. 368, 97th Cong., 1st Sess., 127 CONG. REC. 8828 (1981).

138. H.J. Res. 370, 97th Cong., 1st Sess., 127 CONG. REC. H9102 (daily ed. Dec. 10, 1981).



mid-December.<sup>139</sup>

The second budget resolution for fiscal 1982<sup>140</sup> was adopted on December 10, 1981, nearly three months after the deadline. The resolution failed to reflect the country's worsening economic conditions, and was simply a *pro forma* affirmation of the first resolution.<sup>141</sup> The second resolution in fiscal 1982 proved in fact to be unrealistic. By the spring of 1982, federal spending had exceeded the aggregate budget totals established by the second resolution.<sup>142</sup> During that spring Congress faced a dilemma: federal programs were nearly out of money and needed supplemental appropriations, yet Congress realized that any new spending bills would breach the second resolution aggregate spending limits, and subject the legislation to a point of order. Congress therefore revised the fiscal 1982 second budget resolution in its first budget resolution for fiscal 1983.<sup>143</sup>

*1982: Difficulty Adopting a First Resolution and Abandoning the Second Resolution*

With the deepening recession and deficit projections of more than a hundred billion dollars, in the spring of 1982<sup>144</sup> Congress faced a great deal of political pressure while it worked on its first fiscal 1983 budget resolution. The House of Representatives rejected eight budget proposals before finally adopting a first resolution on June 23, 1982.<sup>145</sup>

A distinctive feature of the 1983 first resolution provided that it would automatically become the binding second resolution if Congress failed to adopt a second resolution by October 1.<sup>146</sup> This provision became effective when Congress, amid an election year and an economic recession, chose to avoid a politically explosive battle over the second resolution.<sup>147</sup>

The fiscal 1983 reconciliation procedures instituted by the House of Representatives also distinguished the 1983 budget process from that of previous years.<sup>148</sup> Despite the Budget Act's mandate to consider all

139. The three appropriations categories still not funded were labor-HHS-education, state-justice-commerce, and treasury-post office. 1981 CONG. Q. ALMANAC 244, 246.

140. S. Con. Res. 50, 97th Cong., 1st Sess. 127 CONG. REC. H9192 (daily ed. Dec. 10, 1981).

141. 181 CONG. Q. ALMANAC 267. The resolution affirmed the first resolution figures which had estimated a combined \$57 billion deficit for fiscal 1982 and 1983 and a slight surplus for 1984, estimates which were "totally out of line" with projections being made at the time the second resolution was adopted. *Id.*

142. 1982 CONG. Q. WEEKLY REP. 861.

143. S. REP. NO. 478, 97th Cong., 2d Sess. 3 (1982).

144. 1982 CONG. Q. WEEKLY REP. 660, 2718.

145. S. Con. Res. 92, 97th Cong., 2d Sess., 128 CONG. REC. 7318 (1982) and 1982 CONG. Q. WEEKLY REP. 1243.

146. S. Con. Res. 92, § 7, *supra* n.145. This same procedure was incorporated in the budget resolution for fiscal 1984. H. Con. Res. 91, § 5(a), 98th Cong., 1st Sess. (1983).

147. 1982 CONG. Q. WEEKLY REP. 242.

148. Congress passed the fiscal 1983 reconciliation bill, H.R. 6955, on August 18. The bill provided for an estimated \$13.3 billion in spending cuts over three years, much less than the previous year's cuts which totaled an estimated \$130.6 billion for fiscal years 1982-1984. 1982 CONG. Q. WEEKLY REP. 2047.

reconciliation items in a single bill, the House of Representatives voted to consider federal pension spending cuts separately from other fiscal 1983 budget reductions.<sup>149</sup> House Democrats argued that the change would allow the public to see how House members voted on each of the proposed budget cuts and would prevent surreptitious changes in authorization laws.<sup>150</sup> In contrast to the House Democrats, House Minority Leader Robert H. Michel (R-Ill.) asserted that the Democrats' action was designed "to embarrass and frustrate those in this House who supported the budget resolution in June."<sup>151</sup>

### Status of the Budget Process

#### *Budget Resolutions*

Congress has had more success in meeting the first budget resolution deadline than the second resolution deadline (See Figure 4.) Of the nine first resolutions adopted by Congress, two resolutions have been passed on time and four have been acted upon within nine days after the deadline. In 1980, 1982, and 1983, the May 15 deadline was significantly breached.<sup>152</sup> Congress has been increasingly dilatory in meeting the September 15 deadline for the second resolution. In 1976, 1977, and 1978, Congress adhered to the deadline fairly closely. During this period, the greatest delay was in 1978, when Congress exceeded the deadline by eight days.<sup>153</sup> In 1979 and 1980, however, Congress missed the second resolution deadline by over two months, and in 1981, by almost three months.<sup>154</sup> In 1982 and 1983, Congress abandoned the second resolution altogether.<sup>155</sup>

Congressional committees' submission of "views and estimates" on the upcoming fiscal year by March 15 has proved ineffective in aiding the Budget Committees' preparation of the first budget resolution. Noting the "unreasonably short period of time after the session starts"<sup>156</sup> to prepare the views and estimates, Senate Budget Committee Chairman Domenici observed:

Since it is nothing more than a recommendation, few official hearings are now held by the committees nor do the committees make any real in-depth analyses to support their recommendations. I regret to say the end product has turned out just to be something procedurally you must have but for the most part it is ignored.<sup>157</sup>

The importance accorded the first resolution now exceeds that of the second resolution. The delays in adopting the resolution, the *pro*

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149. *Id.* at 1809.

150. *Id.*

151. *Id.*

152. *See infra* figure 4.

153. *Id.*

154. *Id.*

155. *See supra* text accompanying notes 146-47.

156. *Hearings, supra* note 4, at 38 (testimony of Sen. Pete Domenici, R-N.M.).

157. *Id.* at 39.

*forma* second resolution for fiscal 1982, and the decision to abandon the second resolution for fiscal 1983 and fiscal 1984,<sup>158</sup> exemplify the second resolution's decline in importance. In the opinion of CBO Director Rivlin, the relative preeminence of the first resolution is easily explained since:

[t]he major budgetary issues facing the Congress each year must be hammered out in the first resolution. By the time the second resolution is considered, the Congress is much too close to . . . the start of the fiscal year to decide any important questions.<sup>159</sup>

For this reason, in Rivlin's view, reconciliation instructions have been included in the first resolution for the past three years.<sup>160</sup> One Senator has argued that inclusion of reconciliation instructions in the first resolution has, in effect, converted the first resolution's non-binding targets into binding ceilings to which congressional authorizing and spending committees must conform their actions.<sup>161</sup>

A final noteworthy aspect of the budget resolution is that no legislation has yet been subjected to a point of order for breaching the binding second resolution.<sup>162</sup> Several factors may account for this. First, and most importantly, the Budget Act allows for subsequent budget resolutions to revise the second resolution.<sup>163</sup> Subsequent resolutions have been adopted in five fiscal years.<sup>164</sup> Second, spending shortfalls may, to some extent, have provided leeway within the budget aggregates for spending measures which would otherwise have been subjected to a point of order.<sup>165</sup> Third, the Budget Act conveniently places the binding resolution after Congress takes action on spending bills. Thus, as recounted by the House Republican Manual, "the second resolution has become an 'adding up' exercise wherein the measures adopted over the summer are added together to arrive at the 'appropriate' levels in the second resolution."<sup>166</sup>

### *Reconciliation*

Aptly summing up the evolution of reconciliation, Senator Mark Hatfield (R-Or.), Chairman of the Senate Appropriations Committee, stated:

From a last gasp mechanism designed to bring spending within congressional ceilings just a week prior to the beginning of a new fiscal year, reconciliation has been converted to the preeminent device to establish budget levels in advance.<sup>167</sup>

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158. See *supra* text accompanying notes 140-41, 146-47; see *infra* figure 4.

159. *Hearings, supra* note 4, at 139 (prepared statement of Director Alice Rivlin).

160. See *supra* text accompanying notes 95-96, 109-13, 148-51.

161. *Hearings, supra* note 4, at (opening statement of Sen. Carl Levin, D-Mich.).

162. REPUBLICAN MANUAL, *supra* note 75, at 242.

163. Budget Act, *supra* note 9, § 304, 2 U.S.C. § 635 (1982).

164. In 1977, 1980, 1981, 1982, and 1983, Reconciliation Bills were adopted. See *infra* figure 4.

165. REPUBLICAN MANUAL, *supra* note 75, at 242.

166. *Id.*

167. *Hearings, supra* note 4, at 78 (prepared statement of Sen. Mark Hatfield, R-Or.).

The reconciliation procedure gained preeminence when its position in the congressional budget process shifted. As a brief procedure following the second resolution, reconciliation could only have been a procedure of primarily technical utility.<sup>168</sup> As a procedure initiated by the first resolution, reconciliation has become a vehicle for major restructuring of government programs.<sup>169</sup>

During the past three years, the use of reconciliation as a vehicle for major legislative changes has produced mixed reactions. Some Congressmen have complained vigorously about the summary way in which scores of substantive changes in federal programs have been made. Referring to the mammoth reconciliation effort of 1981, Congressman Jamie Whitten (D-Miss.), Chairman of the House Appropriations Committee, said:

Reconciliation sets a very dangerous precedent for the legislative committees to be required to set aside the public review process in very complex issues. The Congress rushed through a bill that affected programs two or three years down the road without even an opportunity to fully understand its effects. . . . How far we have come from the intent of the Budget Act.<sup>170</sup>

Office of Management and Budget Director David Stockman, architect of the 1981 reconciliation process, voiced two concerns about the ramifications of the speed with which reconciliation procedures have been carried out. "First," Stockman said, "the reconciliation bill must be formulated so quickly that it will be amazing if there are not defects here or there because of the lack of time to analyze the full implications, both legal and programmatic as well as budgetary, of all the measures enacted."<sup>171</sup> Stockman also pointed out that under reconciliation "there is a natural selection process under which relatively simple budget reduction proposals tend to be favored over relatively complex or perhaps even more appropriate ones given the severe time restraint under which the process is operating."<sup>172</sup>

Advocates of reconciliation have argued that, despite its flaws, reconciliation has become a necessary vehicle for bringing federal spending, especially entitlement spending, under control. Congressional Budget Office Director Rivlin has asserted that "Congress will continue to face in the years ahead the need to make changes in the levels of mandatory spending programs (i.e., entitlements). Reconciliation is very likely to remain a necessary, though unpleasant, part of the budget process for the next few years."<sup>173</sup>

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168. See *supra* text accompanying notes 61-63.

169. Commenting on the 1981 reconciliation procedure, Chairman Pete Domenici of the Senate Budget Committee observed that reconciliation "is obviously now a tool—a process for budget restraint, inordinate budget restraint—that you use when you want to do something very different." 1981 CONG. Q. ALMANAC 257.

170. *Hearings, supra* note 4, at 88 (Statement of Rep. Jamie Whitten, D-Miss.).

171. *Id.* at 46 (testimony of OMB Director David Stockman).

172. *Id.*

173. *Id.* at 139 (statement of CBO Director Alice Rivlin).

In addition to its major impact on federal programs, reconciliation has also affected the government's structure. Both OMB Director Stockman and Stuart Eizenstat, a former aide to President Carter, have observed that reconciliation possesses some characteristics of a parliamentary system of government.<sup>174</sup> Their observation focuses on the centralized character of reconciliation, especially as used in 1981 by the Reagan Administration and Republican congressional leaders.<sup>175</sup> The 1981 reconciliation instructions and the final reconciliation bill were drafted by Republican party leaders and passed by Congress with a degree of party discipline highly unusual in the United States.<sup>176</sup> The parliamentary character of reconciliation may have shown some strain, though, in 1982 when the House voted to consider one piece of its reconciliation bill separately.<sup>177</sup> Without its omnibus approach, a reconciliation bill might not be able to attract the kind of party discipline which the President mustered in 1981.

Reconciliation additionally affected another facet of government organization: the committee structure of Congress. Specifically, the appropriations committees, traditionally viewed as institutional restraints on federal spending,<sup>178</sup> have lost power to the budget committees and authorizing committees. This transpired in the 1981 reconciliation procedure when the budget committees instructed the authorizing committees to effect massive budget cuts through alterations of authorizing legislation.<sup>179</sup> Senator Mark Hatfield (R-Or.), Chairman of the Senate Appropriations Committee, argued that reduction of authorizations was unnecessary because "appropriations committees have their own Section 302 allocations which cover these same programs."<sup>180</sup> Congressman Leon Panetta (D-Cal.) asserted that:

Another problem with reconciling authorizations is that Congress has to decide twice what spending levels will be for a particular program. This is because the appropriation committees are not required to fund a program at the exact level set by the authorization committees—it can be funded at a lower level, or in some rare cases at a higher level.<sup>181</sup>

Yet, defenders of reconciliation believe that using reconciliation to reduce authorizations is necessary to overcome the parochial interests of program constituencies and subcommittees.<sup>182</sup> Furthermore, Senate Budget Committee Chairman Pete Domenici (R-N.M.) argued that:

the revisions in authorizations reflect Congress' conclusion that autho-

174. *Id.* at 50 (testimony of OMB Director David Stockman); 1982 CONG. Q. WEEKLY REP. 117 (1982).

175. *See supra* text accompanying notes 109-13.

176. 1981 CONG. Q. ALMANAC 245, 256.

177. *See supra* text accompanying notes 148-51.

178. *See supra* text accompanying notes 43-47.

179. *See supra* text accompanying notes 122-23.

180. *Hearings, supra* note 4, at 79.

181. *Id.* at 178.

182. *See supra* text accompanying notes 109-11.

rizations are a limitation on appropriations. . . . If we were to appropriate routinely without regard to the decisions of the authorizing committees, their participation in the fiscal policy and national priority decisions of the Congress would become largely superfluous.<sup>183</sup>

### *Appropriations and Continuing Resolutions*

In providing that Congress could not act on spending bills prior to the first resolution, the drafters of the Budget Act nevertheless did not anticipate any problems in meeting the September deadline for enacting the spending bills.<sup>184</sup> Unfortunately, seven years of experience with the new budget process has belied the drafter's expectations. Not since 1978 has Congress been able to pass all thirteen appropriation bills on time.<sup>185</sup> Since then, Congress has passed no more than four appropriation bills before the start of the fiscal year.<sup>186</sup> Consequently, since 1979, continuing resolutions have become a principal source of funding for federal programs.<sup>187</sup>

Congress' inability to meet the September deadline for spending bills has had two noteworthy effects. First, Congress' failure to pass timely spending bills creates a proliferation of continuing resolutions that causes problems for recipients of federal funds. The delay adversely affects schools, federal agencies and other levels of government in planning their budgets.<sup>188</sup>

Second, the failure to pass spending bills on time has created, over the past few years, a periodic risk of government shutdown like the debacle of November 23, 1981. Shutdowns waste time and money, interrupt governmental services, and dampen federal employee's morale.<sup>189</sup>

### *General Impact of the Budget Process*

Aside from the obvious impact of the congressional budget process on the federal budget and the economy as a whole, the budget process also affects Congress' nonbudgetary efforts. As already noted, during the past three years reconciliation has significantly affected legislation

183. *Hearings, supra* note 4, at 44.

184. CONFERENCE REPORT, *supra* note 64, at 62, *reprinted* at 3604.

185. *See infra* figure 4.

186. *Id.* By October 1, 1983, four of the 13 appropriations bills had been passed. These bills were for the following appropriations categories: housing and urban development, legislative, energy-water and transportation.

187. *See supra* text accompanying notes 85-87, 104-08, 128-39.

188. United States Comptroller General Charles Bowsher has commented that the passage of a continuing resolution, followed by an appropriation bill, and still later a supplemental appropriation, causes agencies to "apportion, allocate, and administer their funds three times for the fiscal year instead of one." *Budget Reform Act of 1982: Hearings on S. 2629 Before the Senate Committee on Governmental Affairs*, 97th Cong., 2d Sess. 44 (1982) (testimony of Charles Bowsher, Comptroller General of the United States) [hereinafter cited as Bowsher Testimony].

189. *Id.* at 9-10.

authorizing federal programs.<sup>190</sup> Moreover, the budget process as currently operating has affected nonbudgetary legislation by precluding Congress from devoting adequate time to nonbudgetary matters,<sup>191</sup> particularly because Congress has concentrated on one stopgap funding measure after another. For example, during the second session of the 97th Congress, Congress failed to act on such pressing matters as proposals governing bankruptcy courts, President Reagan's Caribbean Basin Initiative, a new immigration bill, and the expiring Clean Air and Clean Water Acts.<sup>192</sup>

### Deficiencies in the Budget Act

The foregoing review of the congressional budget process points out several deficiencies in the Budget Act. First, the Budget Act unnecessarily provides for a second concurrent budget resolution. While originally intended to serve as a binding instrument of fiscal discipline which would adjust the previous spring's budget resolution to economic conditions in late summer, the second resolution has instead become an afterthought in the budget process. The resolution's formulation through an adding-up process, the delays in adoption of the resolution, the *pro forma* resolution for fiscal 1982, and the abandonment of the resolution for fiscal 1982 and fiscal 1983 illustrate this phenomenon. Moreover, the drafters of the Budget Act should have anticipated the resolution's ineffectiveness. A resolution scheduled for adoption only two weeks before the start of the fiscal year and following action on all of the spending bills, cannot realistically play a significant role in the budget process. At most, the drafters should have expected the second resolution to hold the line on supplemental appropriations during a fiscal year. Practically though, when Congress desires additional funds, the second resolution does not serve as a constraint.

Second, congressional committees do not effectively participate in formulating the first budget resolution. Specifically, the provision requiring the transmission of views and estimates to the budget committees by March 15 allows inadequate time for development of significant committee input. The need to allay tensions between the budget committees, authorizing committees, and appropriations committees highlights this deficiency.

Third, the Budget Act failed to recognize where the reconciliation process would be of most value. The reconciliation process has not materialized as the drafters anticipated. Nevertheless, the budget preparation for fiscal years 1980, 1981, and 1982 demonstrates that reconcil-

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190. See *supra* text accompanying notes 97-100, 112-13, 148.

191. *Hearings Before the House Rules Committee Task Force on the Budget Process*, 97th Cong., 2d Sess. (September 29, 1982) (statement of Sen. William Roth, R-Del.) [hereinafter cited as Roth Testimony].

192. Isaacson, *Not Our Finest Hour*, TIME, Jan. 3, 1983 at 43.

iation can be an extremely effective procedure when used in conjunction with the first budget resolution.

Fourth, the Budget Act has failed to motivate Congress to enact timely spending bills. A government by continuing resolution has resulted, which has in turn placed agencies and other levels of government receiving federal funds in an uncertain position. Moreover, continuing resolutions are the antithesis of the Budget Act's goal to establish procedures for a deliberate, disciplined crafting of the federal budget prior to the start of each fiscal year.

Finally, in providing for an extensive annual budget process, the Budget Act has not allowed sufficient time for congressional action on nonbudgetary matters.

## SENATE BILL 20: A PROPOSAL TO AMEND THE BUDGET ACT

### Revisions of the Budget Act

#### *Biennial Budget*

Senator William Roth (R-Del.), Chairman of the Senate Governmental Affairs Committee, introduced S. 20 on January 25, 1983.<sup>193</sup>

The most significant change S. 20 proposes for the congressional budget process is a two-year fiscal period. Senate Bill 20 proposes that the fiscal period begin on January 1 of each even-numbered year, incorporating the second session of a Congress and the first session of the succeeding Congress.<sup>194</sup> Congress would adopt a federal budget during its first session and devote the second session to committees' oversight on various programs and activities.<sup>195</sup>

#### *Single Binding Budget Resolution*

The second significant change S. 20 proposes is elimination of the second budget resolution.<sup>196</sup> Like the Budget Act's second resolution, the Roth bill's single budget resolution would be binding. Consequently, consideration of any appropriation measure which would cause the resolution's level of total new budget authority to be exceeded would be subject to a point or order.<sup>197</sup> If no point of order were raised, such a bill, resolution, or amendment could still be invalidated under a provision of S. 20 prohibiting their enrollment.<sup>198</sup> The bill adds additional force to the budget resolution by providing that a subsequent resolution could only be adopted by a two-thirds vote of

193. S. 20, 98th Cong., 1st Sess., 129 CONG. REC. 212-13 (1983). The bill was originally introduced June 15, 1982 as S. 2629, 97th Cong., 2d Sess., 128 CONG. REC. 6749-6807 (1982).

194. S. 20, 98th Cong., 1st Sess. § 3(b)(3) (1983).

195. *Id.* § 3(d).

196. *Id.* § 3(m).

197. *Id.* § 3(n).

198. *Id.* § 3(n)(2). The bill would amend section 904(b) of the act to prohibit the Senate from waiving this provision; whereas, currently the Senate may waive any provision of Titles III and IV. *Id.* § 3(r).



both Houses of Congress (a “super-majority”).<sup>199</sup> The deadline for adoption of the budget resolution would be two weeks later than for the current first budget resolution—May 31 (of each odd-numbered year) instead of May 15.<sup>200</sup> The resolution would be reported by the budget committees on April 30 (of each odd-numbered year) instead of on April 15.<sup>201</sup>

### *Reconciliation*

Senate Bill 20 does not provide for reconciliation instructions in the single binding budget resolution. Rather, the bill provides that Congress can invoke the reconciliation procedure by a concurrent resolution any time after it has adopted the single binding budget resolution.<sup>202</sup> Within sixty days following adoption of a concurrent resolution invoking reconciliation,<sup>203</sup> Congress would be required to complete action on the resolution.

### *Omnibus Appropriations Bill*

The fourth major change S. 20 proposes is to replace the current thirteen separate appropriations bills with one omnibus appropriations bill.<sup>204</sup> On June 15 of each odd-numbered year, the House Appropriations Committee would report the omnibus bill for the two-year fiscal period. The full House would complete action regarding the omnibus bill by July 31.<sup>205</sup> The Senate Budget Committee would report its omnibus bill the seventh day after Labor Day of each odd-numbered year, and the full Senate would complete its action on the bill by September 30.<sup>206</sup> Congress would then have until October 15 to complete action on the omnibus appropriations bill.<sup>207</sup>

### *Analysis of Senate Bill 20*

#### *Biennial Budget*

Several reasons have been suggested for adopting a two-year fiscal period. First, large segments of the federal budget can be influenced only over several years, thus making a biennial budget preferable to an annual budget. Office of Management and Budget Director Stockman has argued that “both the Congress and Executive need to view the

199. *Id.* § 3(h). The bill would amend section 904(b) of the Act to prohibit the Senate from waiving this provision; whereas, currently the Senate may waive any provision of Titles III and IV. *Id.* § 3(r).

200. *Id.* § 3(e)(2).

201. *Id.* § 3(e)(5).

202. *Id.* § 3(m)(2).

203. *Id.* § 3(m)(4).

204. *Id.* § 3(j).

205. *Id.*

206. *Id.*

207. *Id.* The bill would also amend section 309 of the Act to provide that all legislation providing new entitlement spending authority be completed no later than September 30 of each odd-numbered year. *Id.* § 3(i).

budget in a multi-year perspective [because] a large portion of the budget cannot be changed quickly [due to] long lags between policy changes and actual outlay effects.”<sup>208</sup>

Second, as CBO Director Rivlin suggested, utilizing “creative accounting” to minimize deficit projections would become more difficult under a biennial budget.<sup>209</sup>

Third, the development of budget resolutions in odd-numbered years would allow difficult budget votes to arise in a nonelection year.<sup>210</sup> Congress highlighted the difficulty of making tough budgeting decisions during congressional election years when in 1982 it abandoned the second budget resolution and postponed any action on Social Security reform until after the election.<sup>211</sup>

Fourth, under the S. 20 scheme, the biennial budget would be “adopted during the first year of a President’s term, when there is more chance of consensus between the President and the Congress.”<sup>212</sup> The overwhelming success of President Reagan’s budget initiatives in 1981 supports this contention.<sup>213</sup> The proposed timetable could disadvantage a new President, however, because it would afford him little time to develop comprehensive budgetary policies or to alter the budget submitted by his predecessor.<sup>214</sup> Perhaps S. 20 should be altered to delay adoption of the budget resolution from May 31 until mid- or late June.

A suggested institutional advantage of the S. 20 timetable is that it would leave each Congress free to perform “the searching review of major policy actions that is so needed”<sup>215</sup> in its second session. This alteration would permit Congress to review federal spending, inquire into whether particular programs are achieving their purposes, and examine the respective roles and responsibilities of federal and state government.<sup>216</sup>

A final, and perhaps most compelling argument supporting the S. 20 timetable, is the stability it would lend to federal funding and to the budget process as a whole. Federal agencies would be able to make

208. *Hearings, supra* note 4, at 67 (OMB Director Stockman’s Responses to Written Questions Submitted by Senator Roth). The House Rules Committee Report on the Budget Act explained that the lag between policy changes and actual outlay effects is attributable to “carry-over balances.” For another example of the lag time involved in efforts to reduce outlays, see *Hearings, supra* note 4, at 58 (testimony of OMB Director Stockman).

209. *Budget Reform Act of 1982: Hearing on S. 2629 Before the Senate Committee on Governmental Affairs*, 97th Cong., 2d Sess. 17 (1982) (statement of CBO Director Alice Rivlin) [hereinafter cited as Rivlin Testimony].

210. Bowsher Testimony, *supra* note 188, at 4.

211. See *supra* text accompanying notes 146-47, 192.

212. Bowsher Testimony, *supra* note 188, at 40.

213. See *supra* text accompanying notes 109-13.

214. Bowsher Testimony, *supra* note 188, at 41.

215. Rivlin Testimony, *supra* note 209, at 23. See also Roth Testimony, *supra* note 191, at 3; and Bowsher Testimony, *supra* note 188, at 54.

216. Rivlin Testimony, *supra* note 209, at 24-25. Though S. 20 would retain May 15 of the budget preparation year as the deadline for program authorizations, CBO Director Rivlin has suggested that all authorizations be made during the second session of each Congress since “[a]uthorizing legislation is an activity that is more closely linked to the oversight and broad policy role that the bill places in the second session.” *Id.*

longer range plans without the fear of losing funds at the end of the year,<sup>217</sup> or during the year as threatened by the recent wave of stopgap funding.<sup>218</sup> State and local governments, especially those governments with biennial budgets, could plan their own budgets more efficiently.<sup>219</sup> Indeed, a General Accounting Office study of timing problems between the federal, state, and local budget processes found that "most state and local governments must have definitive federal information six months before the start of their fiscal years."<sup>220</sup> Comptroller General Charles Bowsher stated, "It is for this reason that we recommend that consideration be given . . . for funding decisions to operate on a two-year cycle, with advance funding by one year."<sup>221</sup> Additionally, schools receiving federal funds would benefit from more stable governmental budgeting.<sup>222</sup> Finally, more stable governmental budgeting could have a positive effect on financial markets and interest rates.<sup>223</sup>

### *Single Binding Budget Resolution*

Because a single budget resolution is more realistic, it is preferable to the two resolutions mandated by the Budget Act. Presently the second resolution follows too closely after the first resolution to allow Congress to respond to any significant economic developments. Furthermore, the second budget resolution is scheduled too close to the start of the fiscal year to accommodate any important changes in policy.

Because the proposed single budget resolution is binding, it has been suggested that it could enable Congress to "more effectively measure and implement its spending decisions" than the present procedure of issuing 302(a) targets to the committees.<sup>224</sup> Aggregate restraints imposed upon congressional spending prior to enactment of spending legislation would control government spending more effectively than the present system of establishing target levels for the spending committees. A shift of power from the appropriations committees to the budget committees could result from this proposal because the appropriations committees would be subject to the spending ceilings set by the budget committees rather than to the less effective targets currently provided under the Budget Act. If, however, the appropriations committees were accorded a greater role in oversight of federal spending, the inter-committee tensions resulting from this shift of power might be alleviated.

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217. Rivlin Testimony, *supra* note 209, at 23.

218. See *supra* text accompanying notes 85-86, 104-08, 128-39.

219. Bowsher Testimony, *supra* note 188, at 50-51.

220. *Id.*

221. *Id.* at 51.

222. *Hearings, supra* note 4, at 2 (opening statement of Sen. William Roth).

223. Roth Testimony, *supra* note 191, at 3.

224. 1982 CONG. Q. WEEKLY REP. 118 (quoting Senate Budget Committee Chairman Pete Domenici).

The requirement of a "super-majority" in both Houses for alteration of the single binding budget resolution is grounded in the desire to strengthen the binding nature of the budget resolution. Arguably without this additional requirement, the budget resolution could be easily replaced by subsequent resolutions, and thus weaken the resolution's disciplinary effect.<sup>225</sup> However, CBO Director Rivlin explains that only three situations justify changing a budget resolution: (1) a change in the economy, (2) a technical change in spendout rates or tax collection rates, and (3) a congressional desire to make a change in policy.<sup>226</sup> Rivlin asserts that a change in the economy and a technical change in spendout rates should not require a super-majority. Rivlin's assertion has merit because no special obstacles should prevent adjustments to the budget resolution necessitated by unavoidable factors. Rivlin also argues that changing a budget resolution for policy reasons requires flexibility to accommodate unforeseen changes in domestic and foreign policy needs.<sup>227</sup> In addition, requiring a simple majority to pass an initial budget resolution while requiring a super-majority for any subsequent revisions of that resolution invests the initial resolution majority of fifty percent plus one with a degree of power not commensurate with its size. This scheme, in effect, gives the members of the fifty percent plus one majority weighted votes relative to subsequent, larger majorities who wish to alter the resolution, but who are unable to muster the votes required for a super-majority.

### *Reconciliation*

The two month reconciliation procedures set forth in S. 20 is a compelling procedure. First, it remedies the Budget Act's failure to recognize the importance of the reconciliation procedure. Second, S. 20 provides sixty days, a sufficient amount of time, for the reconciliation procedure, unlike the Budget Act which provides only ten days.<sup>228</sup> Finally, the bill provides flexibility by allowing Congress to invoke the procedure any time during preparation for a fiscal year, or during a fiscal year. Limiting the procedure to strictly monetary issues might, however, be a sensible addition to the proposal.<sup>229</sup>

### *Omnibus Appropriations Bill*

Several arguments support the omnibus appropriations bill. First, the omnibus bill would insure compliance with the budget resolution.<sup>230</sup> Senate Bill 20 would prohibit enrollment of any bill which would breach the single binding budget resolution; thus an omnibus

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225. Roth Testimony, *supra* note 191, at 8.

226. Rivlin Testimony, *supra* note 209, at 25-26.

227. *Id.*

228. Rivlin Testimony, *supra* note 209, at 21-22.

229. *Id.*

230. Rivlin Testimony, *supra* note 209, at 22.

bill would force Congress to reconcile federal spending with the budget ceilings. Failure to reconcile the two would leave the entire Federal Government without funding. Moreover, Congress would be reluctant to waive a budget ceiling which it had adopted four and a half months earlier.<sup>231</sup>

Second, an omnibus appropriations bill would promote timely adoption of appropriations measures by reducing the number of bills to be enacted.<sup>232</sup> The counter argument is that time would be saved at the expense of the examination of detail that goes into the adoption of thirteen separate appropriations bills. However, S. 20 provides Congress with four months to consider the details of the omnibus bill which is certainly preferable to the summary way in which Congress has handled its stopgap funding measures in recent years. Nevertheless, to alleviate potential problems with its time frame, S. 20 should be amended to provide the House Appropriations Committee more time to formulate the omnibus bill before it reports the bill to the House floor. As proposed, S. 20 denies the Appropriations Committee sufficient time following adoption of the budget resolution.<sup>233</sup>

Finally, the omnibus approach to appropriations incorporates the advantage of "clearly expos[ing] in one place the trade-offs that need to be made among programs."<sup>234</sup> Members of Congress should be able to see all the individual programs juxtaposed. To live within a frugal budget, Congress must prioritize federal expenditures on a program-by-program basis; however, prioritizing requires a substantial amount of time and effort. The omnibus bill provides the House of Representatives with one and a half months to consider the bill, but provides the Senate with only fifteen days.<sup>235</sup> To avoid the summary review accorded the 1981 Omnibus Reconciliation Bill by the House of Representatives, the Senate needs more than fifteen days to consider the new omnibus bill. Therefore, the October 15 deadline for the omnibus bill should be extended.

### CONCLUSION

An effective congressional budget process is vital to today's economy. As CBO Director Rivlin testified, "unless the process deals effectively with slowing spending growth in national defense and entitlement programs as well as discretionary accounts and unless it is effective in phasing in some growth in revenues, the budget deficit outlook will not improve."<sup>236</sup>

The Budget Act of 1974, however, is in trouble. The Act has failed

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231. See *supra* text accompanying note 201.

232. Rivlin Testimony, *supra* note 209, at 22.

233. See *supra* text accompanying note 206.

234. Rivlin Testimony, *supra* note 209, at 22.

235. See *supra* text accompanying notes 204-07.

236. Rivlin Testimony, *supra* note 209, at 14.

to produce timely spending bills;<sup>237</sup> the reconciliation procedure has deviated substantially from the Act;<sup>238</sup> the second budget resolution has been abandoned;<sup>239</sup> and Congress has not had sufficient time for important nonbudgetary processes such as oversight.<sup>240</sup> Nevertheless, the Budget Act has produced a healthy concern for, and awareness of, the impact of the federal budget on our national economic health. To avoid losing this crucial advance in its budgetary procedures, Congress should amend the Budget Act promptly and alleviate its deficiencies. Senate Bill 20 provides a vehicle for the necessary changes.

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237. *See supra* text accompanying notes 184-89.

238. *See supra* text accompanying notes 167-83.

239. *See supra* notes 146-47 and accompanying text.

240. Roth Testimony, *supra* note 191, at 4.

## FIGURE 1: EXAMPLE OF A FIRST RESOLUTION

*That the Congress hereby determines and declares that the Second Concurrent Resolution on the Budget for Fiscal Year 1982 is hereby revised, the First Concurrent Resolution on the Budget for Fiscal Year 1983 is hereby established, and the appropriate budgetary levels for Fiscal years 1984 and 1985 are hereby set forth.*

*(a) The following budgetary levels are appropriate for the fiscal years beginning on October 1, 1981, October 1, 1982, October 1, 1983, and October 1, 1984:*

*(1) The recommended levels of Federal revenues are as follows:*

*Fiscal year 1982: \$628,400,000,000.*

*Fiscal year 1983: \$665,900,000,000.*

*Fiscal year 1984: \$738,000,000,000.*

*Fiscal year 1985: \$821,400,000,000.*

*and the amounts by which the aggregate levels of Federal revenues should be changed are as follows:*

*Fiscal year 1982: —\$200,000,000.*

*Fiscal year 1983: +\$20,900,000,000.*

*Fiscal year 1984: +\$36,000,000,000.*

*Fiscal year 1985: +\$41,400,000,000.*

*(2) The appropriate levels of total new budget authority are as follows:*

*Fiscal year 1982: \$777,672,000,000.*

*Fiscal year 1983: \$822,390,000,000.*

*Fiscal year 1984: \$878,473,000,000.*

*Fiscal year 1985: \$960,611,000,000.*

*(3) The appropriate levels of total budget outlays are as follows:*

*Fiscal year 1982: \$734,100,000,000.*

*Fiscal year 1983: \$769,818,000,000.*

*Fiscal year 1984: \$821,928,000,000.*

*Fiscal year 1985: \$881,356,000,000.*

*(4) The amounts of the deficits in the budget which are appropriate in the light of economic conditions and all other relevant factors are as follows:*

*Fiscal year 1982: \$105,700,000,000.*

*Fiscal year 1983: \$103,918,000,000.*

*Fiscal year 1984: \$83,928,000,000.*

*Fiscal year 1985: \$59,956,000,000.*

*(5) The appropriate levels of the public debt are as follows:*

*Fiscal year 1982: \$1,143,100,000,000.*

*Fiscal year 1983: \$1,290,200,000,000.*

*Fiscal year 1984: \$1,420,219,000,000.*

*Fiscal year 1985: \$1,533,491,000,000.*

*and the amounts by which the current temporary statutory limits on such debt should be accordingly increased are as follows:*

*Fiscal year 1982: \$63,300,000,000.*

*Fiscal year 1983: \$147,100,000,000.*

*Fiscal year 1984: \$130,019,000,000.*

*Fiscal year 1985: \$113,272,000,000.*

*(6) The appropriate levels of total Federal credit activity for the fiscal years beginning on October 1, 1981, and October 1, 1982, are as follows:*

*Fiscal year 1982:*

- (A) New direct loan obligations, \$63,600,000,000.*
- (B) New primary loan guarantee commitments, \$74,900,000,000.*
- (C) New secondary loan guarantee commitments, \$69,000,000,000.*

*Fiscal year 1983:*

- (A) New direct loan obligations, \$59,700,000,000.*
- (B) New primary loan guarantee commitments, \$101,900,000,000.*
- (B) New secondary loan guarantee commitments, \$68,300,000,000.*

SOURCE: CONFERENCE COMMITTEE, FIRST CONCURRENT RESOLUTION ON THE BUDGET—FISCAL YEAR 1983, S. REP. NO. 478, 97th Cong., 2d Sess. 37 (1982).



## FIGURE 2: EXAMPLE OF 302(a) ALLOCATIONS

ALLOCATION OF SPENDING RESPONSIBILITY TO HOUSE  
COMMITTEES PURSUANT TO SEC. 302(a) OF THE  
CONGRESSIONAL BUDGET ACT—FISCAL YEAR 1982

[in millions of dollars]

	Direct spending jurisdiction	
	Budget authority	Outlays
750 Administration of Justice.....	4,526	4,630
800 General Government .....	8,693	8,533
General Purpose Fiscal		
850 Assistance .....	5,278	5,175
900 Interest .....	( <sup>1</sup> )	( <sup>1</sup> )
920 Allowances .....	2,850	800
Undistributed Offsetting		
950 Receipts .....	-25	-25
Committee total .....	459,303	433,574
HOUSE AGRICULTURE COMMITTEE		
Natural Resources and		
300 Environment .....	260	292
350 Agriculture .....	398	11,808
Community and Regional		
450 Development .....	1	518
General Purpose Fiscal		
850 Assistance .....	242	242
Committee total .....	900	12,859
HOUSE ARMED SERVICES COMMITTEE		
050 National Defense .....	11	8
400 Transportation.....	( <sup>2</sup> )	( <sup>2</sup> )
700 Veterans Benefits and Services .	( <sup>2</sup> )	( <sup>2</sup> )
General Purpose Fiscal		
850 Assistance .....	1	1
Committee total .....	12	9
HOUSE BANKING, FINANCE AND URBAN AFFAIRS COMMITTEE		
150 International Affairs .....	0	-255
370 Commerce and Housing Credit.	3,417	249
Community and Regional		
450 Development .....	221	179

Education, Training, Employment, and Social		
500 Services .....	0	-3
550 Health .....	0	0
600 Income Security .....	30	3
700 Veterans Benefits and Services .	0	-14
800 General Government .....	5	5
900 Interest .....	11	11
Committee total .....	3,684	173

#### HOUSE DISTRICT OF COLUMBIA COMMITTEE

750 Administration of Justice .....	9	9
General Purpose Fiscal		
850 Assistance .....	80	80
Committee total .....	89	89

#### HOUSE EDUCATION AND LABOR COMMITTEE

Education, Training, Employment, and Social		
500 Services .....	15	21
600 Income Security .....	30	24
Committee Total .....	44	45

#### HOUSE ENERGY AND COMMERCE COMMITTEE

Natural Resources and		
300 Environment .....	0	( <sup>2</sup> )
370 Commerce and Housing Credit.	28	28
400 Transportation .....	816	816
550 Health .....	5	5
600 Income Security .....	5,356	5,531
General Purpose Fiscal		
850 Assistance .....	5	5

SOURCE: CONFERENCE COMMITTEE, FIRST CONCURRENT RESOLUTION ON THE BUDGET—FISCAL YEAR 1983, S. REP. NO. 478, 97th Cong., 2d Sess. 37 (1982).

### FIGURE 3: EXAMPLE OF RECONCILIATION INSTRUCTIONS

#### RECONCILIATION

*Sec. 2. (a) Not later than July 20, 1982, the Senate committees named in subsection (b)(1) through (7) of this section shall submit their recommendations to the Senate Committee on the Budget and not later than August 1, 1982, the House committees named in subsection (c)(1) through (10) of this section shall submit their recommendations to the House Committee on the Budget. Those recommendations shall be sufficient to accomplish the reductions required by subsections (b) and (c) of this section. After receiving those recommendations, the Committees on the Budget shall report to the House and Senate a reconciliation bill or resolution or both carrying out all such recommendations without any substantive revision.*

#### SENATE COMMITTEES

*(b)(1) The Senate Committee on Agriculture, Nutrition, and Forestry shall report changes in laws within the jurisdiction of that committee, (A) to require reductions in appropriations for programs authorized by that committee so as to achieve savings in budget authority and outlays, or (B) which provide spending authority as defined in section 401(c)(2)(C) of Public Law 93-344, sufficient to reduce budget authority and outlays, or (C) any combination thereof, as follows: \$779,000,000 in budget authority and \$779,000,000 in outlays in fiscal year 1983; \$1,083,000,000 in budget authority and \$1,083,000,000 in outlays in fiscal year 1984; and \$1,428,000,000 in budget authority and \$1,428,000,000 in outlays in fiscal year 1985.*

*(2) The Senate Committee on Armed Services shall report changes in laws within the jurisdiction of that committee which provide spending authority as defined in section 401(c)(2)(C) of Public Law 93-344, sufficient to reduce budget authority by \$213,000,000 and outlays by \$213,000,000 in fiscal year 1983; to reduce budget authority by \$693,000,000 and outlays by \$693,000,000 in fiscal year 1984; and to reduce budget authority by \$1,231,000,000 and outlays by \$1,231,000,000 in fiscal year 1985.*

*(3) The Senate Committee on Banking, Housing and Urban Affairs shall report changes in laws within the jurisdiction of that committee which provide spending authority as defined in section 401(c)(2)(C) of Public Law 93-344, sufficient to reduce budget authority by \$0 and outlays by \$695,000,000 in fiscal year 1983; to reduce budget authority by \$0 and outlays by \$697,000,000 in fiscal year 1984; and to reduce budget authority by \$0 and outlays by \$687,000,000 in fiscal year 1985.*

SOURCE: CONFERENCE COMMITTEE, FIRST CONCURRENT RESOLUTION ON THE  
BUDGET—FISCAL YEAR 1983, S. REP. NO. 478, 97th Cong., 2d Sess.  
12 (1982).

FIGURE 4: COMPLIANCE WITH BUDGET ACT TIMETABLE — 1975-1983

1/1				5/15		6/20	7/1(FY)	9/15	10/1	12/31
1975			5/14			C	A-0			12/12
1976			F							S/C
	3/25	5/13								
	C	F								
1977	3/3	3/29	5/17					S	C/A-13	
	R	C	R/F							
1978			5/17					S	A-13	
			F							
1979			5/24					S	A-8	C
			F							
1980			6/12						A-3	C
			R/F							
1981			5/21						10/1	11/23
			R/F							
1982			6/23						C/A-0	C
			R/F							
1983			6/23						C/A-1	C
			R/F						10/1	
									C/A-4	

F: First Resolution  
R: Revised Budget Resolution for  
Current Year

S: Second Resolution  
RE: Reconciliation Bill

C: Continuing Resolution  
A-: Number of Appropriations  
Bills Passed by Start of  
Fiscal Year Out of the 13  
Regular Bills

FIGURE 5: COMPARISON OF BUDGET ACT TIMETABLE &amp; S. 20 PROPOSED TIMETABLE

SCHEDULE FOR EACH SESSION UNDER BUDGET ACT						
Jan.	3/15	4/15	5/15	9/15	10/1	
President's Budget Submission	Views and Estimates	First Resolution Reported	First Resolution Adopted	Action on Spending Bills	Second Resolution Adopted	Fiscal Year Begins
SCHEDULE FOR FIRST SESSION UNDER S. 20; SECOND SESS. = OVERSIGHT						
Jan.	3/31	4/30	5/31	6/15	7/31	9/30
Jan.	3/31	4/30	5/31	6/15	7/31	9/30
					7th Day After Labor Day	10/15
						1/1
President's Budget Submission; Oversight Reports Submitted	Views and Estimates	Budget Resolution Reported	Budget Resolution Adopted	House Approp. Committee Reports Omnibus Bill	House Completes Action on Omnibus Bill	Senate Completes Action on Omnibus Bill
					Senate Approp. Comm. Reports Omnibus Bill	Cong. Comp. Action on Omnibus Bill
						2-year Fiscal Period Begins