

CBO TESTIMONY

**Statement of
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**CBO's Comments on S. 2381,
the Legislative Line Item Veto Act of 2006**

**before the
Committee on the Budget
United States Senate**

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Mr. Chairman, Senator Conrad, and Members of the Committee, I am pleased to appear before you today to discuss S. 2381, the proposed Legislative Line Item Veto Act of 2006, which would provide for expedited legislative consideration of certain Presidential proposals to rescind budget authority and targeted tax benefits.

In my testimony this morning, I offer the following thoughts:

- The current process of rescissions (cancellations of budget authority) has generally had very little net impact on the overall budget.
- S. 2381 would address some of the reasons that the current process is believed to be limited in its ability to reduce deficits.
- In analyzing such legislation, it is important to distinguish between the visible, direct effects that the legislation may have (the rescissions that are proposed and enacted) and the subtle, indirect effects it may have on the legislative process and fiscal policies.
- It is difficult to predict how S. 2381 would affect the legislative process and, consequently, whether the changes proposed in the bill would actually improve fiscal discipline or would simply shift spending priorities to those favored by the President.

The Current Rescission Process

Following increasingly frequent conflicts between Presidents and the Congress over funding priorities, which peaked during the Nixon Administration, the legislative branch reasserted its constitutional control over the power of the purse with enactment of the Congressional Budget and Impoundment Control Act of 1974. That law instituted a formal process, centered on a concurrent resolution of the budget, through which the Congress could develop, coordinate, and enforce its own budgetary priorities independently of the President. The budget law created legislative institutions to implement the new Congressional budget process: the House and Senate Budget Committees to oversee execution of the budget process and the Congressional Budget Office (CBO) to provide the budget committees and the Congress with an independent, nonpartisan source of budgetary and economic information. As a check on unilateral action by the President to impound or cancel appropriated funding, the law established a new rescission process for controlling Presidential impoundments of funds.

Under the provisions of the 1974 law, the President can propose to rescind spending authority previously enacted into law. The Congress has 45 days of continuous session to approve the President's requests, but it does not have to act on the proposals. During the 45-day period, the President can withhold the funds

Table 1.**Rescissions of Budget Authority, Fiscal Years 1976 to 2005**

(Billions of dollars)

	1976- 1980	1981- 1985	1986- 1990	1991- 1995	1996- 2000	2001- 2005	Total, 1976- 2005
Rescissions Proposed by the President ^a							
Dollar amount	9.3	27.3	16.7	17.5	2.0	0	72.8
Dollar amount enacted by the Congress	3.0	15.5	0.2	4.7	1.3	0	24.6
Percentage enacted	32	57	1	27	63	n.a.	34
Rescissions Initiated by the Congress (Dollar amount)	3.5	11.7	24.3	47.4	25.4	29.8	142.1
Total Dollar Amount of Rescissions	6.5	27.2	24.5	52.1	26.7	29.8	166.7
Congressionally Initiated Rescissions as a Percentage of Total Rescissions	54	43	99	91	95	100	85
Memorandum:							
Total Discretionary Budget Authority	1,291.8	1,965.1	2,304.7	2,614.5	2,708.0	4,140.6	15,024.6
Total Rescissions as a Percentage of Discretionary Budget Authority	0.5	1.4	1.1	2.0	1.0	0.7	1.1

Source: Congressional Budget Office based on data from the Government Accountability Office and the Office of Management and Budget.

Note: n.a. = not applicable.

a. "Rescissions proposed by the President" include proposals submitted under 1974 Act procedures and do not include other proposed budget authority cancellations.

proposed for rescission. But once that period has expired, the funds must be made available for obligation.

Presidents have made very little use of the authority to recommend rescissions. From 1976 through 2005, Presidents proposed about \$73 billion in rescissions, about one-half of 1 percent of the more than \$15 trillion in total discretionary budget authority legislated in those years (see Table 1). Moreover, in dollar terms, the Congress enacted only about one-third of the proposed rescissions. At the same time, the Congress initiated considerably more rescissions (that were ultimately signed into law by the President) than those proposed by the Administration.

President Clinton operated under the Line Item Veto Act of 1996, effective on January 1, 1997, until it was declared unconstitutional by the Supreme Court in June 1998. That statute had authorized the President to cancel discretionary appropriations, any new item of direct spending, and certain new limited tax benefits. In order to overturn such a veto, the Congress would have to pass a resolution of disapproval within 30 days. The President could veto that resolution and force an override vote in each House. President Clinton's 82 cancellations would have saved about \$355 million in 1998 and just under \$1 billion from 1998 to 2002. The total savings over five years from cancellations that were not overturned (by the Congress or the courts) were less than \$600 million. By comparison, total spending and revenues in 1998 were both about \$1.7 trillion. The experience under President Clinton may not indicate how the line-item veto might have been used in other situations by other Presidents; nevertheless, President Clinton's use of the 1996 line-item veto statute is consistent with how little the 1974 law's rescission system has been used.

There are a number of reasons for the limited budgetary impact of the current process. First, under current law, the Congress need not act on the President's rescission proposals. Members never have to go on record in favor of or against items that the President has identified as unnecessary or wasteful. Proponents of a more effective rescission process believe that strengthening the President's role could serve as a deterrent to lawmakers' inserting into broader legislation provisions of little benefit to the general public interest. A more effective rescission process, proponents contend, would make it easier for the President to eliminate "pork-barrel" provisions that benefit narrow constituencies.

Second, the 1974 law applies to a limited portion of the budget. Presidents may propose to rescind only discretionary spending, which currently makes up just 38 percent of federal spending—a share that may decline even further if mandatory spending continues its rapid growth.

Third, under current practice, rescissions seem to have been used primarily to pay for other spending, rather than to reduce spending overall.

Fourth, and perhaps related to the third reason, rescissions often appear to be focused on spending items for which outlays would be significantly less than budget authority—at least in the first years and possibly altogether. Such budget authority could be most easily used to offset additional spending without compromising existing programs.

In assessing the impact of rescissions enacted from 2000 to 2005, CBO estimates that about half of the amounts rescinded will not result outlay savings. The bulk of such rescissions applied to the Department of Housing and Urban Development's Housing Certificate Fund, which accounted for about one-third of all rescissions during that period. Those rescissions of housing funds generally canceled excess budget authority from one of two sources: funds that had

originally been provided to finance vouchers for the tenant-based program but had not been used and funds that had been obligated for long-term contracts for project-based units but ultimately were not needed to pay for those contracts. Just how much of those funds would have been spent in subsequent years had they not been rescinded is unclear. (Congressionally initiated across-the-board reductions in discretionary spending enacted in six out of the past seven years are examples of rescissions under current law that have clearly reduced outlays.)

Proposals for Change

Persistent deficits and rapid growth in federal spending in the 1980s, most of the 1990s, and now in the 2000s have generated interest in changing the rescission process to enhance fiscal discipline and improve accountability.

Generally, proposals to reform the rescission process would shift authority back to the executive branch by enhancing the President's power to cancel budget authority. Every President for the past 25 years has advocated some form of line-item veto. President Reagan advocated such a veto, which he had used while Governor of California. President George H.W. Bush called for expanded rescission authority. President Clinton advocated a line-item veto as a candidate for President and after his election operated under the Line Item Veto Act of 1996 until it was held to be unconstitutional. President George W. Bush advocated a line-item veto as a candidate and has continued to do so in several of his budget submissions, including the one for fiscal year 2007.

Reform proposals have taken several forms:

- A constitutional amendment to allow the President to veto portions of bills presented for his signature.
- Separate enrollment of funding provisions as discrete "bills" once a larger bill is passed by the Congress. Each provision would be presented separately to the President for signature, allowing the President to veto some "bills" according to constitutional procedures while signing the rest.
- Enhanced rescission, which would allow the President to continue to withhold funds unless the Congress acted to overturn the rescission proposals. That was the approach adopted in the Legislative Item Veto Act of 1996 and later found unconstitutional.
- Expedited rescission, which would establish "fast-track" procedures to help ensure that the President's proposed cancellations received an up-or-down vote by the Congress within a specified period of time. Expedited rescission would not shift as much power to the executive branch as other approaches described above. Although the President would not have unilateral authority

to cancel provisions of law, Presidential proposals could not be ignored by the Congress. This is the approach of S. 2381.

However, most of the proposals for strengthening the rescission process, including S. 2381, would be unlikely to have a significant effect on overall spending.

S. 2381, the Legislative Line Item Veto Act of 2006

S. 2381 includes provisions to address many aspects of the current system that are thought to limit its effectiveness for deficit reduction, including these:

- Provisions intended to prevent rescinded funds from being used to offset additional spending. The legislation would require that, after enactment of a rescission bill, the budget committees adjust committee allocations in the budget resolution to reflect the rescissions and the appropriations committees revise allocations to subcommittees.
- Explicit authority for the President to propose rescission of new authority for mandatory spending and targeted tax benefits in addition to discretionary budget authority.
- Expansion of the definition of budget authority that may be proposed for rescission to include matters generally referred to as earmarks in legislative language and committee reports—thus addressing concerns about “pork-barrel” spending.
- Fast-track procedures that would require the Congress to vote expeditiously on rescissions proposed by the President.

In addition, the bill would authorize the President to defer for up to 180 calendar days the obligation of any discretionary budget authority that he proposed to be rescinded. Similarly, the President could defer for up to 180 days execution of any direct spending proposed for rescission. Those deferrals would not end upon the Congress’s rejection of the rescission proposals. In contrast, under current authority, the President may withhold from obligation funds proposed for rescission for only 45 days (or until the Congress approves a rescission bill if that occurs sooner).

To the extent that the Legislative Line Item Veto Act would shift power from the Congress to the President, it might change behavior in subtle ways that are difficult to predict and observe. For example, the fast-track process for Congressional consideration of rescission proposals would decrease Congressional leaders’ control over the legislative process by forcing the President’s requests to the top of the list of matters for consideration.

The threat of the President's authority to propose rescission of discretionary budget authority and items of direct spending could restrain the Congress from including some provisions in legislation that it might otherwise have incorporated. They could even include items of direct spending that might have been added in order to generate support for overall reductions in direct spending, as is sometimes the case with reconciliation bills. Conversely, the Congress might accommodate some of the President's priorities in exchange for a pledge not to propose rescission of certain provisions, thereby increasing total spending. As CBO has previously testified, studies of the line-item veto at the state level have documented similar devices employed by state legislatures over the years to limit the budgetary impact of governors' item-veto authority. Additionally, Members might find it difficult to obtain support for a bill by including items favored by other Members but opposed by the President, who might propose rescinding them. The President's power to unilaterally defer spending for six months, thereby effectively canceling some budget authority and some programs altogether (for which the funding would lapse at the end of the fiscal year), would be a powerful tool to negotiate passage of the Administration's spending priorities.

Moreover, the President's inclination to exercise his authority to propose rescissions and to defer obligation and spending may depend on a host of political factors, including whether he and the Congressional majorities are of the same or opposing political parties.

Finally, although S. 2381 includes the authority to propose rescissions of new mandatory spending, it would not apply to existing mandatory spending authority. Some mandatory programs must be periodically reauthorized, and thus, the authority in S. 2381 could be used to propose rescissions of the newly reauthorized spending. However, the largest mandatory programs are permanently authorized, and, therefore, existing provisions of those programs would not be within the scope of S. 2381. Those programs now constitute the majority of the federal budget and are likely to pose significant fiscal challenges in coming years.

Conclusion

Additional budgetary tools can assist in bringing about budgetary restraint, and improved accountability is desirable, whether the budget is in surplus or deficit and whether the amounts involved are large or small. Such tools, however, cannot establish fiscal discipline unless there is a political consensus to do so, competing priorities can make such consensus difficult to reach. In the absence of that consensus, the proposed changes to the rescission process included in S. 2381 are unlikely to greatly affect the budget's bottom line.

Moreover, in contemplating the bill, the Congress will have to weigh the potential for possibly modest budgetary benefits against possible drawbacks, which include a shift of power to the executive branch and effects on the legislative process.