Legislative Bulletin……………………………….………January 23, 2013

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H.R. 325 – No Budget, No Pay Act of 2013

Note: This legislation has been endorsed by RSC Chairman Scalise, and past RSC chairs Reps. Jordan, Price, and Hensarling. Click here to view their press release endorsing this bill as part of a plan to force the Senate into action, bring a budget to the House floor that balances in 10 years, and keep discretionary spending capped at the Budget Control Act stipulated post-sequester level of $974 billion (302(a) discretionary spending level). House Budget Committee Chairman Paul Ryan has also endorsed this bill.

Order of Business: The bill is scheduled to be considered on Wednesday, January 23, subject to a closed rule (H. Res. 39).

Summary: This bill extends the Federal Government's borrowing authority by suspending enforcement of the debt ceiling upon enactment of the bill through May 19, 2013, and then raising the ceiling by the amount of debt incurred over the intervening period. Debt issuance in this period is limited to what is necessary to "fund...commitment[s] incurred by the Federal Government that required payment before May 19, 2013." (Page 2, Line 14-17)

This four month time period is intended to give each chamber sufficient time to pass a budget. For reference, the Senate has not passed a budget since April 29, 2009 - more than 1,365 days.

If a chamber fails to pass a budget by April 15, 2013, its respective members will have their pay held in escrow until that chamber passes a budget or the last day of the 113th Congress, whichever comes first.

The intent of this bill is to force the Senate to do something it has failed to do for nearly four years: put down in legislative text its plan for addressing our nation's impending debt crisis.

RSC Bonus Fact: The 27th Amendment was proposed on June 8, 1789, and was not adopted until May 20, 1992.

Possible Conservative Concerns and Responses:

Concern: Some are concerned that this bill does not include spending cuts, thus violating the so-called "Boehner Rule" of dollar-for-dollar cuts with any debt ceiling increase.

Response: Proponents of the bill view it as one piece of a multi-part strategy, and not as an end in itself. With passage of this bill, Congress will face a series of spending inflection points in the following order: sequester (March 1 implementation), continuing resolution (March 27 expiration), passage of a budget (April 15 deadline), and finally the debt ceiling (May 19). Some argue that this sequence will offer Republicans a better chance at locking in cuts because the sequester - which comes first in the new sequence - goes into effect *without Congress acting*. Every other inflection point requires Congressional action in order to achieve cuts. Further, this multi-part strategy unifies House Republicans at every step, with agreement on discretionary spending at $974 billion (the post-sequester 302(a) level) and agreement on the need for a House budget that balances in 10 years.

Concern: Some are concerned that withholding member pay if a budget is not passed by April 15 is a violation of the 27th Amendment.

Response: Judicial precedent is very thin on this amendment, so most theories about what it means to vary member pay have not been adjudicated. Some argue that the prohibition on "varying" pay within a congressional term is limited to upward or downward revisions in the overall amount of compensation. By this theory, changing the pay schedule - members could be paid daily, monthly, yearly, etc. - is not a variation of the overall level of compensation and therefore is not a violation of the 27th Amendment. It is noteworthy that the debate surrounding the 27th Amendment during its ratification was almost solely around the issue of members increasing their own pay. The schedule of pay does not appear to have been at issue.[1]

Concern: Some are concerned that the mechanism used to extend the debt ceiling - because it does not set a specified amount of borrowing that is allowed - could give the White House latitude to borrow extra funds to pay bills after the May 19. 2013 expiration.

Response: Proponents of the bill argue that the language of the bill prohibits this: "An obligation shall not be taken into account...unless the issuance of such obligation was necessary to fund a commitment incurred by the Federal Government that required payment before May 19, 2013" (Page 2). Thus, debt incurred to pay bills after May 19 is specifically prohibited. However it is plausible that the Administration would use the extension in this bill to backfill the Treasury Department's "extraordinary measures." As a result, the total amount borrowed would be higher than it would otherwise be; additionally, the Administration would be given a one to two month buffer - the replenished "extraordinary measures" - to effectually extend the debt ceiling beyond May 19, 2013.

Administration Position: No Administration position available at press time.

Cost to Taxpayers: This bill does not increase direct spending and has no scorable cost.

[1] The Heritage Guide to the Constitution, Ed. Edwin Meese III, Matthew Spalding, David Forte (Page 433)

<u>Does the Bill Contain Any Federal Encroachment into State or Local Authority in Potential Violation of the 10th Amendment?</u>: No.

<u>Outside Organizations</u>:

- Heritage Action is not scoring a vote on this bill and supports the 10-year path to balance commitment made by House leadership.
- The Club for Growth is not scoring a vote on this bill.
- Americans for Limited Government opposes the bill.
- FreedomWorks is favorably scoring a "no" vote.

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