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REQUIRING JOINT BUDGET RESOLUTION COULD LEAD TO GRIDLOCK ON APPROPRIATIONS AND SHIFT POWER TO THE EXECUTIVE BRANCH

By Richard Kogan and James Horney

Representative Diane Black (R-TN) has introduced a bill (H.R. 3575)¹ that would bar Congress from considering annual appropriations bills — or any other legislation that would affect the budget — until Congress has passed, and the President has signed, a joint budget resolution for the fiscal year, regardless of how many months it takes for the Senate, House, and the President to agree on one.

Currently, under the Congressional Budget Act of 1974, budget resolutions are “concurrent resolutions” that do not go to the President for his signature or veto and are not laws. Also under current rules, if Congress has not approved a budget resolution by May 15, appropriations bills may be brought to the House floor so that the appropriations process may move forward. Converting the concurrent budget resolution into a joint resolution that the President would sign and would have the force of law would likely delay the consideration of appropriations bills. It also could lead to efforts to combine major legislation into a single massive annual budget bill and bypass most congressional committees.

The House Rules Committee amended and passed H.R. 3575 on January 23, and it may come quickly to the House floor. It is one of ten bills altering the budget process that Budget Committee Paul Ryan endorsed on December 7² and is similar to other proposals introduced in previous years.

Requirement Would Create New Delays in the Budget Process

Developing a congressional budget resolution already can be long and arduous, and Congress often does not complete it within budget deadlines. It can take time to work out agreement between the House and Senate. Requiring the President’s agreement as well would almost certainly make the process more difficult and protracted.

¹ Introduced December 7, 2011, and cosponsored by Representative Paul Ryan, Chairman of the House Budget Committee, Representative Jeb Hensarling, and others. The bill is available at <http://www.gpo.gov/fdsys/pkg/BILLS-112hr3575ih/pdf/BILLS-112hr3575ih.pdf>.

² Paul Ryan, *Repairing Washington’s Broken Budget Process*, December 7, 2011, <http://budget.house.gov/UploadedFiles/BPRsummary.pdf>.

In years in which the President and Congress disagree seriously about the budget, they might well not resolve those issues until the waning days of the congressional session. As a result, if a joint budget resolution were required, action on appropriations bills could be held up until the final days of a congressional session. In such cases, the Appropriations Committees could lose months of valuable time and find themselves under intense pressure to assemble and pass bills in extremely compressed timeframes very late in the year.

Some have argued that a joint budget resolution would improve budget outcomes by bringing the President into negotiations with Congress over the entire budget. To be sure, much of the work to reduce projected deficits in the 1980s and 1990s occurred when the President and Congress hammered out major budget deals — in 1983, 1990, 1993, and (to a lesser extent) 1997. *But these experiences show that when the President and Congress share a desire to reduce the deficit, a joint budget resolution is not needed* to bring them to the negotiating table. Conversely, in years when Congress and the President do *not* share such a desire — or seriously disagree about how to act on it — requiring enactment of a joint budget resolution would likely slow the budget process substantially, potentially leading to hurried and less well-considered policy decisions late in the year.

To try to mitigate these problems, H.R. 3575 includes a provision under which, if the President vetoed a joint budget resolution, Congress would still be bound by its targets in the same way that budget resolutions currently establish targets that are enforced in Congress by points of order. While this fallback provision is desirable, extensive delays while congressional leaders and the White House negotiate at length before admitting failure would still slow the process when the two sides seriously disagree. Moreover, the presence of this automatic fallback would lessen the pressure on both sides to agree; in this sense, this otherwise desirable fallback also attenuates the purported value of a joint budget resolution in “forcing” the two sides to compromise on budget policy.

Requirement Would Mark Step Toward Omnibus Budget Legislation

The proposal poses another significant risk. The joint resolution apparently is not supposed to change tax, entitlement, or appropriations laws directly, as explained below. But once the President and the congressional leadership find themselves negotiating over a real statute, rather than a budget planning document, they may succumb to the strong temptation to turn the joint budget resolution into an omnibus law — enacting or amending discretionary caps or actual appropriations levels, cutting or expanding entitlement programs, and raising or lowering taxes.

If this happens, basic budget rules could be up for debate and amendment annually, budget outcomes may become even more partisan (if one party has control of both the presidency and Congress), “headline” proposals may rob resources from less glamorous but equally necessary program areas, and Congress may function more as a parliament in which a single vote on a single piece of legislation enacts much or all of the majority party’s budget platform. (It should be noted that budget resolutions cannot be filibustered in the Senate and are not subject to the Senate’s “Byrd Rule,” which limits the contents of reconciliation bills.³)

³ The Byrd rule could not simply be extended to apply to budget resolutions, because the bulk of a budget resolution — the dollar levels to be allocated to committees, the revenue floor, and procedural items — would all violate the Byrd Rule.

If the annual budget resolution gradually turns into an annual omnibus budget bill, power over major budgetary details will gravitate from the various congressional committees toward the Budget Committee, the leadership, and especially the President.

H.R. 3575 appears to limit the contents of the budget resolution, but its limits may not be meaningful. In his description of the bill, Rep. Ryan wrote that “The contents . . . would be strictly limited to prevent the joint budget resolution from becoming a vehicle for unrelated legislation,”⁴ but the actual language of the bill raises doubts as to whether that is the case. The bill states that if a joint budget resolution contains matter not required or permitted under the law, it would lose the various procedural privileges it now enjoys, such as immunity from a Senate filibuster. But that provision is vague; existing law explicitly *permits* a budget resolution to contain “such other matters . . . and such other procedures, relating to the budget, as may be appropriate to carry out the purposes of [the Congressional Budget Act].” This is known as the elastic clause, and it would be a matter of parliamentary interpretation as to how far the elastic clause stretches.

In theory, Congress could set limits on the contents of budget resolutions that are more explicit than H.R. 3575’s limit and could amend the elastic clause in the Congressional Budget Act. But it is not obvious how to draft a rule that allows budget resolutions to contain all the types of targets and procedures they may need, while at the same time preventing budget resolutions (once they have been turned into statutes) from infringing on the jurisdiction of other committees and becoming vehicles for wide-ranging changes in law. And if the congressional leadership were to negotiate an entire budget deal with the administration — especially if the same party controls Congress and the White House and that party commands 51 but not 60 votes in the Senate — then that party’s leadership will be sorely tempted to stretch the rules.

Reconciliation Directives Would Become Unamendable

A budget resolution may, but need not, contain “reconciliation directives” requiring specified House and Senate committees to draft and submit legislation to change mandatory spending and tax law within their jurisdiction by a specified date. (The directives cannot require the committees to make specific policy changes, but instead direct the committees to change outlays, revenues, or the deficit by specified amounts.) These submissions are then combined into a single “reconciliation bill,” which receives favorable procedural treatment in the House and Senate; for example, reconciliation bills cannot be filibustered. Reconciliation turns planned changes in the amount of revenues or spending within each committee’s jurisdiction from *assumptions* of budget resolutions, which Congress often ignores, into *mandates*, which Congress largely adheres to.

H.R. 3575 would move the reconciliation directives into the committee reports that accompany the joint budget resolution rather than including them in the budget resolution itself, yet the directives would continue to be mandates. This provision might appear to make little or no difference, but in reality, it would substantially strengthen the Budget Committees — and weaken the committees with jurisdiction over taxes and mandatory spending — by *preventing a member of the House or Senate from amending a reconciliation directive*, because the directive would be in the Budget Committee report, which can’t be amended.

⁴ Ryan, *Repairing Washington’s Broken Budget Process*, p. 7.

One Positive Feature: Proposal Might Facilitate Enactment of Debt Limit Increases

The bill as originally introduced appeared to have one virtue: it amended the Congressional Budget Act to permit, but not require, the joint budget resolution to “set forth the public debt limit.” However, the House Rules Committee struck this feature from the bill.

The provision as introduced appears to mean that notwithstanding the apparent intent that a joint budget resolution not contain appropriations, mandatory spending, or tax law, a joint resolution *could* increase or decrease the statutory limit on the public debt, although it isn’t clear that’s what the authors of H.R. 3575 intend.⁵ If this is what this provision means, it is desirable for two reasons.

- As a matter of accountability, if a majority of Congress and the President agree to an overall budget plan, they should also agree to debt levels that are consistent with that plan. Under existing procedures, members of Congress can vote for a budget resolution and then vote *against* a bill raising the debt limit to the levels consistent with the budget plan they supported.
- The United States, almost uniquely among nations, permits its government to make legally binding commitments for expenditures that, if not covered by revenues, will necessitate borrowing — but then may *bar* the necessary borrowing by setting an insufficient debt limit, potentially throwing the nation into default. As the *Financial Times* editorialized last year, “Sane governments do not cast doubt on the pledge to honour their debts — which is why, if reason prevailed, the debt ceiling would simply be scrapped.”⁶ Allowing the joint budget resolution to raise the debt limit to a level consistent with the agreed-upon budget plan would reduce the frequency and severity of artificial debt-limit crises.

While this provision is desirable, the inclusion of actual debt limit increases may make the enactment of budget resolutions even more difficult than it already is, and so may mean that Budget Committees would *not* choose to include such increases. In addition, if budget resolutions are too optimistic about budget estimates or Congress is unable to enact all of the deficit reduction called for in the budget plan, the increases in the debt limit ultimately will prove inadequate.

⁵ Existing law already requires a budget resolution to “set forth appropriate levels for ... the public debt.” Perhaps the language is merely duplicative and so meaningless, but a plausible interpretation is that it allows joint budget resolutions to enact a debt limit at the specified level.

⁶ *Financial Times*, May 8, 2011.