



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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IN REPLY . B-115398,33
REFER TO:

May 1, 1978

The Honorable Strom Thurmond
United States Senate

Dear Senator Thurmond:

This replies to your letter of April 17, 1978, in which you requested that we provide proposed language that could be introduced as an amendment to the Fiscal Year 1979 Military Procurement Authorization Bill. The amendment would provide for prior congressional review and disapproval of Executive branch decisions to curtail certain Federal programs.

It is understood from Mr. Edward B. Kenney of the Senate Committee on Armed Services staff that the amendment is to be proposed as permanent legislation and is to be restricted to those projects, activities, or weapons systems within the jurisdiction of the Committees on Armed Services of the Senate and the House of Representatives. Mr. Kenney indicated that a comprehensive amendment be provided including, among other things: an enforcement mechanism; provisions for reports by our Office in the absence of Executive branch proposals; as well as a mechanism by which the Congress could express its disapproval of the specific curtailment proposed.

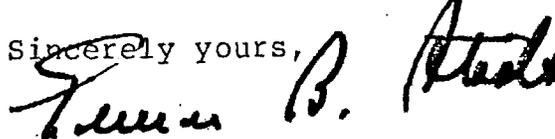
In this light, we have drafted legislation under which the Executive branch would be required to submit to the Congress its decisions to curtail those programs that have been made expressly subject to the congressional review procedure of the bill. These decisions could not be implemented for a period of, for example, 14 legislative days during which time the Congress would have an opportunity to review them. If, within the 14-day period, a concurrent resolution of disapproval were passed opposing a curtailment decision, the decision could not be implemented. Provisions are made to allow the Comptroller General to bring a civil action to compel the implementation of a program as required by the bill as well as for the Comptroller General to notify the Congress about unreported Executive branch decisions to curtail programs that should have been, but were not, submitted by the President. The draft legislation and an explanation statement are enclosed.

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You will note that the draft amendment does not include the detailed parliamentary procedure by which the Congress would review curtailment plans. We believe this is an area that should be decided by the Congress. We point out, however, that such a procedure could be patterned after section 1017 of the Impoundment Control Act of 1974, 31 U.S.C 1407.

Should you have any questions or wish to discuss the matter further, please do not hesitate to call upon us.

Sincerely yours,



Comptroller General
of the United States

Enclosures - 2

PROPOSED AMENDMENT

Sec. _____. (a) For purposes of this section--

(1) "program" means any project, activity, or weapons system within the jurisdiction of the Committees on Armed Services of the House of Representatives and the Senate and expressly made subject to this section by law, in amounts specified in appropriation acts.

(2) "Comptroller General" means the Comptroller General of the United States;

(3) "curtail" means to discontinue, in whole or in part, the execution of a program, resulting in the application of less budget authority in furtherance of the program than provided by law.

(4) continuity of a session of the Congress shall be considered as broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in the computation of the 14-day period referred to in subsection (b) (2) of this section. If a special proposal is transmitted under subsection (b) of this section during any Congress and the last session of such Congress adjourns sine die before the expiration of 14 calendar days of continuous session (or a special proposal is so transmitted after the last session of the Congress adjourns sine die), the message shall be deemed to have been retransmitted on the first day of the succeeding Congress and the 14-day period referred to in subsection (b)(2) of this section (with respect to such special proposal) shall commence on the day after such first day.

(5) "disapproval resolution" means a concurrent resolution which expresses disapproval of a special proposal transmitted under subsection (b) of this section.

(6) "special proposal" means a proposal sent by the President to the Congress pursuant to subsection (b) of this section notifying the Congress of the Executive branch's determination to curtail a program.

(b) Proposals to curtail programs.

(1) Whenever the Executive branch has determined to curtail any program the President shall transmit to both Houses of Congress a special proposal specifying--

- (A) the program proposed to be curtailed;
- (B) the department or establishment of the Government which is responsible for implementing the program;
- (C) the reasons why the program should be curtailed;
- (D) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effects of the proposal; and
- (E) all facts, circumstances, and considerations relating to or bearing upon the proposal, and to the maximum extent practicable, the estimated effect of the proposal upon the purposes which the program was to accomplish.

(2) No actions shall be taken to curtail any program for a period of 14 days of continuous session after the date on which a special proposal is received by the Congress. If, during this 14-day period, a disapproval resolution is passed, the curtailment shall not be implemented.

(3) Passage of a disapproval resolution shall have the same force and effect as an impoundment resolution passed pursuant to section 1013(b) of the Impoundment Control Act of 1974.

(4) Passage of a disapproval resolution shall terminate the 45-day period referred to in section 1012(b) of the Impoundment Control Act of 1974.

(c) Transmission of messages; publication

(1) Each special proposal transmitted under subsection (b) of this section shall be transmitted to the House of

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Representatives and the Senate on the same day, and shall be delivered to the Clerk of the House of Representatives if the House is not in session, and to the Secretary of the Senate if the Senate is not in session. Each special proposal shall be printed as a document of each House.

(2) A copy of each special proposal transmitted under subsection (b) shall be transmitted to the Comptroller General on the same day it is transmitted to the House of Representatives and the Senate. In order to assist the Congress in the exercise of its functions under subsection (b) of this section the Comptroller General shall review each special proposal and inform the House of Representatives and the Senate as promptly as practicable with respect to the facts surrounding the proposal.

(3) If any information contained in a special proposal transmitted under subsection (b) of this section is subsequently revised, the President shall transmit to both Houses of Congress and the Comptroller General a supplementary special proposal stating and explaining such revision. Any such supplementary special proposal shall be delivered and printed as provided in (1) of this subsection. The Comptroller General shall promptly notify the House of Representatives and the Senate of any changes in the information submitted by him under (2) of this subsection which may be necessitated by such revision.

(4) Any special proposal transmitted under subsection (b) of this section and any supplementary special proposals transmitted under (3) of this subsection, shall be printed in the first issue of the Federal Register published after such transmittal.

(d) Reports by Comptroller General

If the Comptroller General finds that the President, the Director of the Office of Management and Budget, the head of any department or agency of the United States, or any other officer or employee of the United States has determined to curtail a program with respect to which the President is required to transmit a special proposal under subsection (b) and that the President has failed to transmit a special proposal with respect to such determination, the Comptroller

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General shall make a report thereon. Such report of the Comptroller General shall have the same effect as if it were a special proposal transmitted by the President under subsection (b) of this section, and, for purposes of this section, such report shall be considered a special proposal transmitted under subsection (b) of this section.

(e) Suits by Comptroller General

If under subsection (b)(2) of this section, a curtailment proposal is disapproved, the Comptroller General is hereby expressly empowered, through attorneys of his own selection, to bring a civil action in the United States District Court for the District of Columbia to enforce the requirements of subsection (b)(2) through (4) of this section, as applicable, and the court is hereby expressly empowered to enter in the civil action, against any department, agency, officer, or employee any order which is necessary or appropriate to compel compliance with such requirements.

(f) This section may be cited as the "Program Curtailment Control Act of 1978."

"PROGRAM CURTAILMENT CONTROL ACT OF 1978"

EXPLANATORY STATEMENT

The draft legislation would provide a mechanism for prior congressional review and potential disapproval of Executive branch decisions to curtail programs within the jurisdiction of the Committees on Armed Services. This mechanism would afford Congress a preliminary, expedited review at the decision stage. The purpose of the expedited review is to alleviate potential shortcomings in the operation of the Impoundment Control Act either where a curtailment decision does not involve an impoundment subject to that Act or where unilateral implementation of a curtailment decision would lessen the effectiveness of later congressional review of any impoundment which is involved.

Program coverage. The legislation enacts as permanent law a curtailment review procedure, but it does not identify the programs subject to the procedure. This is left for congressional action in other laws. Thus the only criteria in the definition of "program" (subsection (a)(1)) are that a project, activity or weapons system be within the jurisdiction of the Committees on Armed Services, be expressly made subject to the curtailment procedure by another statute, and that the program amount be specified in an appropriation act.

It would be extremely difficult to define in general terms what types of programs should be subject to the curtailment procedure, or even to define "program" in the abstract. The identification of covered programs is really a matter of congressional preferences and priorities at any given time. The assumption underlying the legislation is that Congress, applying whatever criteria it sees fit, will list in other statutes the specific programs to be covered. This could probably be done most conveniently through the annual budget process. Likewise, requiring that the program amount be specified by law avoids problems in ascertaining the funding level desired by Congress where budget authority for a covered program is provided by means other than a discrete line-item appropriation.

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Application of curtailment procedure. The review procedure is triggered by an Executive branch decision to "curtail" a program which has been made subject to the bill. The definition of "curtail" (subsection (a)(3)) requires that the Executive branch decision result in a reduction of budget authority applied in furtherance of the program. As noted above, the level of budget authority for this purpose would be the amount so specified in an appropriation act. The reduction relates to the use of funds "in furtherance of the program." Thus, although the full amount of budget authority may be spent in some manner, e.g., to pay contract termination costs or other liabilities incident to the curtailment, such a use of funds still involves a reduction in funding for affirmative program purposes which triggers the review provisions.

Curtailment review procedure. The review procedure would generally be similar to the procedure for reviewing deferrals of budget authority under the Impoundment Control Act, except that congressional disapproval would take the form of a concurrent resolution. The President would report a proposed curtailment decision to Congress, together with appropriate information (subsection (b)), and supplementary reports would be made for any revisions (subsection (c)(3)). The proposal, and any supplementary reports, would be printed in the Federal Register (subsection (c)(4)).

A copy of the proposal and any revision would also be transmitted to the Comptroller General, who would submit comments to the Congress (subsection (c)(2)). The Comptroller General would report to the Congress for review and action proposed curtailment decisions which the Executive Branch fails to report (subsection (d)). The Congress would have 14 days of continuous session in which to disapprove a proposed curtailment (subsections (b)(2), (a) (4)-(5)). After a proposal is disapproved, the Comptroller General could bring judicial enforcement actions if necessary to effect compliance with the disapproval and assure that any impounded funds are made available (subsection (e)).

Relationship to impoundments. The curtailment review procedure would not diminish congressional review opportunities under the Impoundment Control Act; rather, the two

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procedures would be complementary. When the curtailment proposal involves a deferral or rescission of budget authority, the requirements of the Impoundment Control Act would also attach. If Congress disapproves the curtailment, this action would, in addition to precluding implementation of the curtailment as such, require that any impounded budget authority be made available (subsection (b)(3) and (4)). On the other hand, even if Congress fails to disapprove the curtailment within 14 days, the Impoundment Control Act review period would continue to run for the remainder of the statutory 45 days. Thus Congress would retain in full its present review authority over any impoundments involved in a curtailment proposal.