AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

CONGRESSIONAL APPROVALS AND DISAPPROVALS

The process whereby Congress attempts to approve or disapprove proposals by the executive branch has become complicated in recent years, as Congress has adjusted its laws to Supreme Court decisions. The most common instruments congressional review are the so-called legislative veto and congressional approval resolutions, usually a resolution authorized by an earlier statute—to disapprove or approve a particular proposal from the executive branch.

The time in which Congress may act following submission of a proposal from the executive branch varies widely: The usual period is 30 to 60 days, sometimes with specified days excluded from the computation. Many congressional review provisions authorize expedited consideration of the measure in the Senate (and some in the House as well) to ensure that the body has the opportunity to vote on the resolution of approval or disapproval. This is made possible by a variety of provisions which either eliminate referral to committee or limit the time during which the committees may consider the measure. The statutes often provide for automatic discharge of the resolution from the committee, or authorize a motion to discharge to be made by a Senator. A motion to proceed to the resolution is usually made nondebatable or is subject to limited debate. The resolutions themselves are usually subject to limited debate, amendments limited in number or prohibited completely. Although congressional review procedures are usually directed at proposed agency regulations, they also may apply to proposed policy decisions by the President which are effective unless disapproved by Congress, or have no effect unless approved by Congress.

The following is a list of some of the major laws of the past 25 years that have included legislative veto provisions and the changes—if any—that have been made in them by Congress since the Supreme Court struck down

the veto device in its 1983 ruling in *Immigration and Naturalization Service* v. *Chadha:*

War Powers Resolution, 1973 (Pub. L. 93–148). Absent a declaration of war, the President may be directed by a resolution enacted into law to remove U.S. armed forces engaged in foreign hostilities.

Department of Defense Appropriation Authorization Act, 1975 (Pub. L. 93–365). Applications for export of defense goods, technology or techniques may be disapproved by a resolution approved by both Chambers.

International Development and Food Assistance Act of 1975 (Pub. L. 94–161). Foreign assistance to countries not meeting human rights standards may be terminated by a resolution approved by both chambers.

International Security Assistance and Arms Control Act of 1976 (Pub. L. 94–329). The President's letter of an offer to sell major defense equipment may be disapproved by a resolution approved by both Chambers. In 1986 Congress amended this (Pub. L. 99–247) to provide for disapproval through a joint resolution submitted to the President for his signature.

National Emergencies Act of 1976 (Pub. L. 94–412). Presidentially declared national emergency may be terminated by a resolution approved by both Chambers. Amended in 1985 (Pub. L. 99–93) to provide for termination by a joint resolution submitted to the President for his signature.

International Navigational Rules Act of 1977 (Pub. L. 95–75). Presidential proclamation of International Regulations for Preventing Collisions at Sea may be disapproved by a resolution approved by both Chambers.

Act of December 28, 1977 (Pub. L. 95–223). A presidentially declared national emergency and exercise of conditional powers may be terminated by a resolution of both Chambers. This provision was effectively amended by the change Congress made in 1985 in the National Emergencies Act, above.

Nuclear Non-Proliferation Act of 1978 (Pub. L. 95–242). Cooperative agreements concerning storage and disposition of spent nuclear fuel, proposed export of nuclear facilities, materials or technology and proposed agreements for international cooperation in nuclear reactor development may be disapproved by a resolution passed by both Chambers. In 1985 Congress amended this (Pub. L. 99–64)

to provide for disapproval through a joint resolution sent to the President for his signature.

Education Amendments of 1978 (Pub. L. 95–561). Rules and regulations proposed under the act may be disapproved by a resolution passed by both Chambers.

Federal Trade Commission Improvements Act of 1980 (Pub. L. 96–252). Federal Trade Commission rules may be disapproved by a resolution passed by both Chambers. The Supreme Court on July 6, 1983, affirmed an appeals court ruling striking down these provisions as unconstitutional.

Multiemployer Pension Public Plan Amendments Act of 1980 (Pub. L. 96–364). Schedules proposed by the Pension Benefit Guaranty Corporation (PBGC) that require an increase in premiums must be approved by a resolution passed by both Chambers. Revised premium schedules for voluntary supplemental coverage proposed by the PBGC may be disapproved by a resolution passed by both Chambers. Congress amended these provisions in 1986 to substitute a joint resolution rather than a concurrent resolution (Pub. L. 99–272).

Outer Continental Shelf Lands Act Amendments of 1978 (Pub. L. 95–372). Establishment by the Secretary of Energy of oil and gas lease bidding system may be disapproved by resolution of either Chamber. Export of oil and gas may be disapproved by a resolution passed by both Chambers.

Natural Gas Policy Act of 1978 (Pub. L. 95–621). Presidential reimposition of natural gas price controls may be disapproved by a resolution passed by both Chambers. Congress may reimpose natural gas price controls by a resolution passed by both Chambers. A Federal Energy Regulatory Commission amendment to pass through incremental costs of natural gas, and exemptions from this rule, may be disapproved by resolution of either Chamber. The Supreme Court on July 6, 1983, affirmed an appeals court decision holding this latter veto provision unconstitutional.

Export Administration Act of 1979 (Pub. L. 96–72). The President's proposal for domestic production of crude oil must be approved by a resolution passed by both Chambers. Action by the Commerce Secretary to prohibit or curtail export of agricultural commodities may be disapproved by a resolution approved by both Chambers. Congress in 1985 amended this law (Pub. L. 99–64) to substi-

tute a joint resolution of approval, to be sent to the President for his signature, for the concurrent resolution.

Trade Expansion Act of 1962 (Pub. L. 87-794). Tariff or duties recommended by the Tariff Commission may be imposed by a resolution of approval passed by both Chambers.

Federal Land Policy and Management Act of 1976 (Pub. L. 94-579). Sale of public lands larger than 2,500 acres and withdrawal of public lands totaling at least 5,000 acres may be disapproved by a resolution passed by both Chambers.

National Aeronautics and Space Act of 1958 (Pub. L. 85-568). President's transfer to NASA of functions of other departments and agencies may be disapproved by a resolution passed by both Chambers.

Emergency Unemployment Compensation Extension Act of 1977 (Pub. L. 95-19). The President's recommendations on rates of salary payment may be disapproved by a resolution of either Chamber. Congress in 1985 amended this law to substitute a joint resolution for the one-House veto (Pub. L. 99-190).

Education Amendments of 1974 (Pub. L. 93-380). Department of Education regulations may be disapproved by a resolution passed by both Chambers.

Airline Deregulation Act of 1978 (Pub. L. 95-504). Rules or regulations governing employee protection programs may be disapproved by a resolution of either Chamber. This law was the subject of a case before the Supreme Court. (*Alaska Airlines* v. *Brock.*)

The Supreme Court unanimously ruled that unconstitutional legislative veto provisions do not invalidate the laws in which they appear, provided that they were not critical to Congress' decision to pass those laws in the first place.

The court reaffirmed its traditional standard for deciding when an unconstitutional provision can be dropped from a law, leaving the rest of it in effect. "The unconstitutional provision must be severed unless the statute created in its absence is legislation that Congress would not have enacted," wrote Justice Harry A. Blackmun.

The court made clear that not all laws will survive the loss of their legislative veto clauses.

"Some delegations of power to the executive or to an independent agency may have been so controversial or so

broad that Congress would have been unwilling to make the delegation without a strong oversight mechanism."

Such a case—in the eyes of two lower courts—is the 1974 budget act, which authorized the President to defer spending appropriated funds for as long as a year, unless Congress vetoed such a deferral.

The deferral authority must fall now that the legislative veto is invalid. (*City of New Haven* v. *United States*, *National League of Cities* v. *Pierce*, *City of Chicago* v. *Department of Housing and Urban Development.*)

Action Required on Measure:

Pursuant to the provisions of a statute, the Senate has voted on the House version of a measure without formally proceeding thereto, after having considered the Senate version, when the House and Senate versions were identical.[1]

The majority leader has stated that an order in a public law which requires the Senate to vote on passage of a measure by the fifth calendar day of session after the measure was reported from committee, requires a vote by midnight of the fifth day, and unanimous consent was obtained to postpone that measure for two days.[2] Two days later consent was again obtained to postpone the measure.[3]

Amendments Out of Order:

When a measure is considered under a statute which precludes amendments, the Presiding Officer must, on its own initiative, rule out of order all amendments, even those reported by the committee to which the measure was referred.[4]

Privileged Status:

The privileged status of a joint resolution of disapproval is not necessarily affected by the fact that the statutory time limit has expired during which Congress could disapprove.[5]

---

[1] July 17, 1986, 99-2, *Record*, pp. 16830-31.
[2] Sept. 22, 1987, 100-1, *Record*, p. S 12484.
[3] Sept. 24, 1987, 100-1, p. S 12725.
[4] Apr. 2, 1987, 100-2, *Record*, p. S 4434.
[5] Apr. 1, 1987, 100-1, *Record*, pp. S 4397-4400.

War Powers Resolution:

The Majority Leader has stated that a joint resolution introduced under the provisions of the War Powers Resolution of 1973 (Pub. L. 93–148) became the pending business before the Senate at that moment because it was then that it was reported from the Foreign Relations Committee. The Chair then stated in response to an inquiry from the Majority Leader that the requirement in the Resolution that a vote on the measure occur "within three calendar days" after the measure became the pending business, meant 72 hours from that moment.[6] The provisions of the War Powers Resolution which provide that any joint resolution reported by the Committee on Foreign Relations immediately becomes the pending business of the Senate has been applied to a joint resolution from which the Committee on Foreign Relations was discharged. However, all such provisions may be waived by unanimous consent.[7]

On one occasion, the Senate sustained a point of order submitted to it by the Chair, that a joint resolution introduced pursuant to the War Powers Resolution and automatically discharged from the Committee on Foreign Relations pursuant thereto, was not privileged under the statute. A unanimous consent agreement was entered into for the duration of that Congress which provided that any Senator could make a point of order against any resolution which purported to be privileged under the statute and which was initially identified as such, and the point of order would be submitted to the Senate and decided after four hours of debate. The agreement further provided that no such point of order be considered to establish a precedent for determination of future cases.[8] Six months later, a point of order was made under the terms of this agreement that a resolution was not privileged under the terms of section 6 of the War Powers Resolution, and was sustained by the Senate.[9]

---

[6] Sept. 26, 1983, 98–1, *Record*, pp. 25724, 25746.
[7] Nov. 30, 1987, 100–1, *Record*, p. S 16723.
[8] Dec. 4, 1987, 100–1, *Record*, p. S 17398.
[9] June 6, 1988, 100–2, *Record*, pp. S 7163–78.