

## B. LINE ITEM VETO AUTHORITY, §§ 1021–27

[P.L. 104–130]

## LINE ITEM VETO AUTHORITY

In *Clinton v. City of New York*, 524 U.S. 417 (1998), the Supreme Court held that the cancellation procedures of the Line Item Veto Act violated the presentment clause of article I, section 7 of the Constitution. During the period between the January 1, 1997, effective date of the Act and the Court decision, the President exercised his authority under the Act to cancel dollar amounts of discretionary budget authority (see *e.g.*, H. Doc. 105–147), new direct spending (H. Doc. 105–115), and limited tax benefits (H. Doc. 105–116). Cancellations were effective unless disapproved by law (P.L. 105–159). The congressional review procedures remained in the law until their expiration on January 1, 2005, but were not invoked following the Court’s decision. Accordingly their text is omitted here but may be found in pp. 1029–45 of the House Rules and Manual for the 105th Congress. The procedures may be summarized as follows: The cancellations were transmitted to the Congress by the President by a special message within five calendar days after the enactment of the law to which the cancellation applied. The Act provided for a congressional review period of 30 calendar days of session with expedited House consideration of bills disapproving the cancellations including: (1) prescribing the text (section 1026(6)); (2) referral to committee with directions to report within seven calendar days subject to a motion to discharge (section 1025(d)); (3) consideration of a disapproval bill in the Committee of the Whole with no amendment in order (except that a Member, supported by 49 other Members, could offer an amendment striking cancellations from the bill), and consideration of the bill for amendment limited to one hour (section 1025(d)); and (4) one-calendar-day availability for a conference report (section 1025(f)). The Act also provided for expedited procedures in the Senate.

### 7. Foreign Spent Nuclear Fuel [Department of Energy Act of 1978—Civilian Applications, § 107 (22 U.S.C. 3224a)]

SEC. 107. \* \* \* *Provided*, That notwithstanding any other provision of law, that none of the funds made available to the Secretary of Energy under any other authorization or appropriation Act shall be used, directly or indirectly, for the repurchase, transportation or storage of any foreign spent nuclear fuel (including any nuclear fuel irradiated in any nuclear power reactor located outside of the United States and operated by any foreign legal entity,

government or nongovernment, regardless of the legal ownership or control of the fuel or the reactor, and regardless of the origin or licensing of the fuel or the reactor, but not including fuel irradiated in a research reactor, and not including fuel irradiated in a power reactor if the President determines that (1) use of funds for repurchase, transportation or storage of such fuel is required by an emergency situation, (2) it is in the interest of the common defense and security of the United States to take such action, and (3) he notifies the Congress of the determination and action, with a detailed explanation and justification thereof, as soon as possible) unless the President formally notifies, with the report information specified herein, the Committee on Energy and Natural Resources of the Senate and the Committee on Science, Space, and Technology of the House of Representatives of such use of funds thirty calendar days, during such time as either House of Congress is in session, before the commitment, expenditure, or obligation of such funds: *And provided further*, That, notwithstanding any other provision of law, that none of the funds appropriated pursuant to this Act or any other funds made available to the Secretary of Energy under any other authorization or appropriation Act shall be used, directly or indirectly, for the repurchase, transportation, or storage of any such foreign spent nuclear fuel for storage or other disposition, interim or permanent, in the United States, unless the use of the funds for that specific purpose has been (1) previously and expressly authorized by Congress in legislation hereafter enacted, (2) previously and expressly authorized by a concurrent resolution, or (3) the President submits a plan for such use, with the report information specified herein, thirty days during which the Congress is in continuous session, as defined in the Impoundment Control Act of 1974, prior to such use and neither House of Congress approves a resolution of disapproval of the plan prior to the expiration of the aforementioned thirty-day period. If such a resolution of disapproval has been introduced, but has not been reported by the Committee on or before the twentieth day after transmission of the presidential message, a privileged motion shall be in order in the respective body to discharge the Committee from further consideration of the resolution and to provide for its immediate consideration, using the procedures specified for consideration of an impoundment resolution in section 1017 of the Impoundment Control Act of 1974 (2 U.S.C. 688).

This provision should be read in light of *INS v. Chadha*, 462 U.S. 919 (1983).

### 8. Pension Reform Act, § 4006(b) [29 U.S.C. 1306(b)]

SEC. 4006. REVISED SCHEDULE; CONGRESSIONAL PROCEDURES APPLICABLE— \* \* \* (b)(1) In order to place a revised schedule (other than a schedule described in subsection (a)(2) (C), (D), or (E) of this section) in effect, the corporation shall transmit the proposed schedule, its proposed effective date, and the reasons for its proposal to the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives, and to the Committee on Finance and the Committee on Labor and Human Resources of the Senate.

(2) The succeeding paragraphs of this subsection are enacted by Congress as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described in paragraph (3). They shall supersede other rules only to the extent that they are inconsistent therewith. They are enacted with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any rule of that House.

(3) For the purpose of the succeeding paragraphs of this subsection, “resolution” means only a joint resolution, the matter after the resolving clause of which is as follows: “The proposed revised schedule transmitted to Congress by the Pension Benefit Guaranty Corporation on \_\_\_\_\_ is hereby approved.”, the blank space therein being filled with the date on which the corporation’s message proposing the rate was delivered.

(4) A resolution shall be referred to the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives and to the Committee on Finance and the Committee on Labor and Human Resources of the Senate.

(5) If a committee to which has been referred a resolution has not reported it before the expiration of 10 calendar days after its introduction, it shall then (but not before) be in order to move to discharge the committee from