

# CRS Report for Congress

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## Legislative Line Item Veto Act and Other Expedited Rescission Bills: Brief Overview

Virginia A. McMurtry  
Specialist in American National Government  
Government and Finance Division

### Summary

Under current law, if the President wants to rescind (cancel) funding provided in an appropriations act, he must transmit a special message to Congress and obtain the approval of both houses within 45 days of continuous session, or the funds must be released. Instead of allowing Congress to ignore presidential rescission requests, “expedited rescission” requires at least one house to vote on his proposals. A draft measure from the Bush Administration incorporating expedited rescission has been introduced as H.R. 4890 and S. 2381; and H.R. 2290 (Section 311), H.R. 4699, and S. 2372 contain similar provisions. Expedited rescission bills have attracted supporters over the years, because the approach is generally regarded as transferring less power from Congress to the President than most other ways to alter the rescission framework. This report will be updated as events may warrant.

### Background

Under the framework established by the Impoundment Control Act (ICA) of 1974 (P.L. 93-344, 88 Stat. 297), whenever the President wants to rescind (cancel) budget authority, he must transmit a special message to Congress and obtain the support of both houses within 45 days of continuous session. If denied congressional approval during this time period, the President has to make the budget authority available to executive agencies for obligation and expenditure.

President George W. Bush had access to the item veto as Governor of Texas and has called repeatedly for similar authority for the President, most recently in his State of the Union address on January 31, 2006, when he noted, “We can tackle this problem [of too many special interest ‘earmark’ projects] together, if you pass the line-item veto.”<sup>1</sup> An

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<sup>1</sup> Constitutions in 43 states provide an item veto to allow the Governor to eliminate discrete items in a bill before signing the measure into law, but a constitutional amendment would be necessary to give the President such “true” line item veto authority. Various statutory alternatives such as expedited rescission are sometimes referred to as giving the President a “line item veto”; this is not entirely accurate, but calls attention to some functional similarities.

Administration draft bill, titled the Legislative Line Item Veto Act of 2006 (LLIVA), was introduced as H.R. 4890 and S. 2381 on March 7, 2006. Hearings were held by two House committees the following week.<sup>2</sup>

Instead of allowing Congress to ignore presidential recommendations for rescissions, “expedited rescission” would require at least one house to vote on his proposals. If one house disapproves the request, the other house need take no action because approval by both houses would be necessary to make the rescission permanent. In contrast, “enhanced rescission,” briefly available under the Line Item Veto Act of 1996, altered the rescission framework to create a presumption favoring the President.<sup>3</sup> Under enhanced rescission, spending reductions identified in special presidential messages were to remain permanently cancelled unless Congress enacted a disapproval bill, likely requiring a two-thirds majority in both chambers to override a presidential veto.

Expedited rescission bills focus on procedural changes in Congress and typically contain a detailed schedule to ensure immediate introduction of a measure to approve the Presidents’ rescission request, prompt reporting by committee or automatic discharge, special limits on floor amendments and debate, and so on. Under expedited rescission, congressional approval would still be necessary to cancel the funding, but the fast-track procedures would help to ensure an up-or-down vote on the President’s message.

## **Major Provisions in the Legislative Line Item Veto Act of 2006**

In addition to the existing rescission authority accorded the President under the 1974 ICA framework, the LLIVA (H.R. 4890/ S. 2381) would amend the ICA by inserting a new “Part C — Legislative Line Item Veto.” The provisions would authorize the President, in a special message to Congress, to propose (1) rescission of any dollar amount of discretionary budget authority in an appropriations act; (2) rescission of any item, in whole or part, of direct spending; or (3) repeal of targeted tax benefits. The contents of the special message are specified, including a draft bill to approve the President’s request. The LLIVA would grant the President considerable flexibility in the submission and packaging of the special messages. There are no time constraints, and a single message may include any number of rescissions. Further, the LLIVA does not stipulate that a special message be confined to a single public law; therefore, one message may encompass budget authority or items of direct spending from several laws. Any amounts rescinded must be used for deficit reduction. Within five days of enactment of a rescission approval bill, the chairmen of the Budget Committees would be required to adjust committee allocations accordingly, and the Office of Management and Budget

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<sup>2</sup> On Mar. 15, 2006, the House Rules Subcommittee on Legislative and Budget Processes held a hearing on H.R. 4890. For the Subcommittee’s testimony in electronic form, see [[http://www.rules.house.gov/legbudg/hearings/lineitemveto/109\\_lpb\\_lineitemveto\\_index.html](http://www.rules.house.gov/legbudg/hearings/lineitemveto/109_lpb_lineitemveto_index.html)]. On Mar. 16, 2006, the House Budget Committee held a hearing on “Budget Process Overhaul,” including expedited rescission proposals. For the Committee’s testimony in electronic form, see [<http://www.house.gov/budget/hearings/ryunstmnt031606.htm>].

<sup>3</sup> The Supreme Court struck down this previous statutory effort (P.L. 104-130, 110 Stat. 1200), to create item-veto-like authority for the President via enhanced rescission, in *Clinton v. City of New York*, 524 U.S. 417 (1998).

would be required to adjust spending caps under the Balanced Budget and Emergency Deficit Control Act (P.L. 99-177, 99 Stat. 1037).

Rescission requests from the President would be considered under fast-track procedures. The President's proposed bill could be introduced by the House and Senate leadership within two days following receipt of the special message, after which any Member could introduce the President's proposal. The committee to which the bill is referred would have five days to report the bill without substantive revision, and with or without recommendation; if the reporting deadline were not met, the bill would be automatically discharged and placed on the calendar. A vote on final passage would have to occur by the 10<sup>th</sup> day of session following introduction of the approval bill. Debate would be limited to four hours in the House and 10 hours in the Senate. No amendments to the approval bill would be in order in either chamber. Additional expedited procedural rules are detailed for consideration of the approval bill.

The LLIVA would allow the President to withhold any budget authority proposed for rescission for up to 180 days following transmittal of the special message. Likewise, the President could suspend the execution of any item of direct spending contained in a special message for 180 days. The bills would allow, but not require, the President to release the funds before the expiration of the 180 days.

Language in the LLIVA states that its provisions are severable. For purposes of judicial review, this means that if a court found a portion of the measure to be unconstitutional, the remainder of its provisions would remain in force. The act would become effective upon signing and would apply only to spending or tax provisions contained in bills enacted after its passage.

## **Expedited Rescission Bills Previously Passed in the House**

The expedited rescission approach, as seen in the LLIVA, has attracted support over the years, because it is generally regarded as transferring less power from Congress to the President than most other approaches that would modify the ICA framework. In 1992, 1993, and 1994, the House passed an expedited rescission bill each year.<sup>4</sup> In the 102<sup>nd</sup> Congress, H.R. 2164, passed by the House in 1992, would have allowed the President to transmit special rescission messages within three days of signing an appropriations act; each message could have proposed rescissions from one act. A proposed rescission could not have reduced a program below the budget level of the previous year or by more than 25% for a new program. The bill included expedited procedures to ensure a floor vote within 10 days of introduction, with no amendments allowed.

In the 103<sup>rd</sup> Congress, H.R. 1578, as passed by the House in 1993, had no limit on the amount that could be rescinded, allowing the President to request rescission of 100%

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<sup>4</sup> For further discussion of efforts to grant the President expanded impoundment authority and of related floor votes, see CRS Issue Brief IB89148, *Item Veto and Expanded Impoundment Proposals* (hereafter cited as CRS Issue Brief IB89148); and CRS Report RL30223, *Presidential Rescission Authority: Efforts to Modify the 1974 Framework*, both by Virginia A. McMurtry. As described therein, the Senate voted on bills using other approaches, such as enhanced rescission.

of a program's funding, thereby effectively eliminating it. H.R. 1578 also contained provisions for expedited judicial review. In a significant departure from previous expedited rescission measures, H.R. 1578, as approved by the House, detailed fast-track procedures for expedited consideration of a rescission's substitute, as reported by the Appropriations Committee, to provide an alternative to the President's package.

In the second session of the 103<sup>rd</sup> Congress, H.R. 4600 came to the floor and passed the House in 1994 with a substitute amendment, characterized by its supporters as strengthened expedited rescission. H.R. 4600, as approved by the House, would have allowed submission of a special rescission message at any time. The House-passed version of H.R. 4600, however, retained the requirement to prepare a separate special message and accompanying draft bill for each appropriations subcommittee having jurisdiction over accounts in a given appropriations act from which rescissions were requested. Further, H.R. 4600, as passed in 1994, would have authorized special messages from the President proposing the repeal of any targeted tax benefit within 20 days following enactment. During floor debate under the expedited procedures, a motion to strike any proposed rescission or repeal of targeted tax benefit would have been in order if supported by 50 Members in the House, or by 15 in the Senate.

## **Other Expedited Rescission Bills in the 109<sup>th</sup> Congress**

Similar bills are pending in addition to H.R. 4890 and S. 2381. An omnibus budget reform measure, H.R. 2290, sponsored by Representative Jeb Hensarling and others, contains provisions for expedited rescission in Section 311, "Enhanced Consideration of Certain Proposed Rescissions." The provisions would authorize the President to propose rescission of any budget authority in an appropriations act that he identifies as "wasteful." Along with the proposed rescission, the President could also propose to reduce the appropriate discretionary spending limits for new budget authority and outlays under the Balanced Budget and Emergency Deficit Control Act of 1985 by an amount not exceeding the proposed rescission. Provisions for the special message and accompanying draft approval bill are similar to those in the LLIVA; however, H.R. 2290 would have just one message for each appropriations act, unless the act included accounts falling within the jurisdiction of more than one appropriations subcommittee, in which case the President would send a separate special message and accompanying draft bill for accounts within the jurisdiction of each subcommittee.<sup>5</sup>

Representative Mark Udall has introduced three expedited rescission measures in the 109<sup>th</sup> Congress,<sup>6</sup> the most recent of which is H.R. 4699. The stated purpose of H.R. 4699, the "Stimulating Leadership in Cutting Expenditures Act (or SLICE Act) of 2006," is "to enable the President to require Congress to debate and vote on certain presidential

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<sup>5</sup> A floor amendment containing similar provisions for expedited rescission was considered by the House in the 108<sup>th</sup> Congress and rejected by vote of 174-237. See CRS Issue Brief IB89148.

<sup>6</sup> The other expedited rescission bills introduced by Mr. Udall are less comprehensive than H.R. 4699. The first measure, H.R. 982, the Expedited Rescissions Act of 2005, introduced on Feb. 17, 2005, provides for rescission of budget authority only in appropriations acts. H.R. 3966, also titled the SLICE Act and introduced on Sept. 29, 2005, provides for rescission of budget authority both in appropriations acts enacted before Jan. 1, 2006, and in P.L. 109-59, 119 Stat. 1144, in order to offset spending for natural disasters occurring during 2005.

proposals for reducing spending.” The provisions for special messages and expedited procedures in H.R. 4699 would apply to any budget authority provided in an appropriations act or in P.L. 109-59 (119 State. 1144, the omnibus transportation authorization act). As seen in previous measures, the President would submit more than one special message and approval bill if the appropriations act contained accounts under the jurisdiction of various appropriations subcommittees. For messages proposing rescission of funds provided in the transportation act, the draft bill would be broken down into sections corresponding to specific projects.

Senator John Kerry has introduced S. 2372, the Expedited Budget Item Veto Review Act of 2006. This bill is similar in coverage to the Line Item Veto Act of 1996. S. 2372 would allow the President to suspend and propose for cancellation (1) any dollar amount of discretionary budget authority, (2) any item of new direct spending, and (3) any limited tax benefit. Not later than three calendar days after the date of enactment of the applicable law, the President could submit a special message proposing such cancellations and a draft bill for each item to be cancelled. Provisions for identifying limited tax benefits also reflect those in the 1996 law. Expedited procedures would seek to ensure a vote on final passage of an approval bill by the close of the 10<sup>th</sup> legislative day following its introduction. Items proposed for cancellation in a special message would be made available for obligation or take effect on the date upon which the draft bill accompanying the special message were to be defeated in either the House or the Senate.

## **Legislative Line Item Veto Act of 2006 in Perspective**

The provisions for expedited consideration of special messages from the President proposing rescissions of funds have remained quite similar over the years. Various versions of expedited rescission bills pending in the 109<sup>th</sup> Congress all seek to ensure a vote on final passage of the approval bill within 10 days after its introduction in the chamber. In the early 1990s, there were bills with provisions to allow for consideration of a substitute package of rescissions reported by the Appropriations Committee as an alternative to the President’s package, or to allow a motion to strike a particular rescission from the approval bill with sufficient support. None of the expedited rescission bills in the 109<sup>th</sup> Congress contains such provisions.

Expedited rescission bills have differed in scope of coverage over the years. Some earlier bills confined the special messages to proposed rescissions of discretionary budget authority (appropriations). Subsequently, items of direct spending (entitlements) and limited or targeted tax benefits were added. In the 109<sup>th</sup> Congress, H.R. 4699 would add certain transportation projects to the universe of possible cancellations available to the President. The LLIVA arguably would grant the President among the most expansive scopes of coverage seen in an expedited rescission bill, by encompassing rescission of any dollar amount of discretionary budget authority or the rescission, in whole or part, of any item of direct spending. With respect to direct spending, the Line Item Veto Act of 1996 and S. 2372 would limit potential cancellations to any *new* item of direct spending (emphasis added). The LLIVA, along with some other measures, would also cover targeted tax benefit provisions.

In comparison with other expedited rescission bills over the years, the LLIVA would grant the President greater flexibility in the submission and packaging of special messages; for example, it stipulates no deadline for submission of a special message

following the signing of an appropriations act. Special messages are generally confined to a single appropriations act, with separate messages and approval bills to be prepared for each appropriations subcommittee with jurisdiction over accounts affected by the rescission proposals; the LLIVA has no such stipulations, so a special message could include proposed cancellations from several laws.

The LLIVA, as developed by the Administration, contains some provisions not previously seen in expedited rescission bills. The new components would allow the President to withhold funds proposed for rescission or to suspend the execution of an item of direct spending for up to 180 days. Supporters of these provisions contend that they would provide for a temporary withholding or suspension until Congress had a chance to consider a President's request, and that such a mechanism is necessary so that Congress would have the opportunity to act on a President's rescission proposal received just before an extended recess or period of adjournment. Others see these provisions as subject to abuse and unnecessary, with the expedited procedures in LLIVA usually ensuring a final vote on the President's request within a month; in their view, a period considerably shorter than 180 days would suffice to give Congress the opportunity to act on a special message.

Critics of the 180-day withholding mechanism may view the provisions arguably as sanctioning the return of policy deferrals, originally provided for in the ICA, subject to a one-house veto, but invalidated by the *I.N.S. v. Chada* (462 U.S. 919 (1983)) and *City of New Haven v. United States* (809 F.2d 900, D.C. Cir. 1987) decisions, as well as the statutory provisions in P.L. 100-119.<sup>7</sup> Supporters of the 180 day provision stress that this is the maximum period that the funding could be deferred, and the bill language would allow the President to release the funds earlier "if the President determines that continuation of the deferral would not further the purposes of this Act." The language, however, would not require early release of funds, even if one chamber voted to reject the approval bill.

The Line Item Veto Act of 1996, with its enhanced rescission framework, was considered even by some of its supporters to have possible constitutional flaws, and the measure contained provisions for expedited judicial review. In contrast, observers tend to view the expedited rescission approach, at least as applied to items of discretionary spending, as passing muster on constitutional grounds. The severability provision in the LLIVA creates further statutory insulation; if one provision were to be found unconstitutional, the remainder of the act would not be affected. For example, if one type of cancellation, such as targeted tax benefits, were to be overturned, the President's authority to submit special rescission messages for expedited consideration, covering items of discretionary budget authority or direct spending, might continue to be available.

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<sup>7</sup> For further discussion of policy deferrals, see CRS Issue Brief IB89148. For further discussion of possible constitutional issues, see CRS Report RL33365, *Line Item Veto: A Constitutional Analysis of Recent Proposals*, by Morton Rosenberg.