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The Joint Select Committee on Budget and Appropriations Process Reform

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Summary

The Bipartisan Budget Act of 2018 (P.L. 115-123), signed into law on February 9, 2018, created a joint select committee of the House and Senate. The Joint Select Committee on Budget and Appropriations Process Reform was to be made up of 16 Members from the House and Senate—4 chosen by each of the chambers’ party leaders. The act charged the joint select committee with formulating recommendations and legislative language to “significantly reform the budget and appropriations process.” The law directed the committee to make a report no later than November 30, 2018, to be submitted, along with legislative language, to the President, the Speaker of the House, and the majority and minority leaders of the House and Senate.

The act included procedures intended to allow the Senate to reach a timely vote on the question of whether or not to consider any legislation embodying the recommendations of the joint select committee. Under the terms of the act, the Senate would be able to vote on a motion to proceed to consider any reported joint committee bill before the conclusion of the 115th Congress (2017-2018). Consideration of the motion to proceed (and all debatable motions and appeals in connection therewith) was to be limited to 10 hours, equally divided and controlled by the majority and minority leaders (or their designees) with support of at least three-fifths of the Senate (60 votes if there is no more than one vacancy) necessary to approve the motion. The act did not specify any procedures governing consideration of the bill once the Senate had agreed to take it up. There were also no provisions in the act concerning the consideration of the recommendations of the joint select committee in the House nor any provisions concerning resolving any differences between the House and Senate. Such actions would have occurred under the regular procedures of each chamber.

During its lifespan, the joint select committee held five days of hearings, taking testimony from 12 outside witnesses and 27 Members, including then-Speaker of the House Paul Ryan and then-House Minority Leader Nancy Pelosi.

Formal and informal discussions among committee members resulted in draft legislation to be considered in a markup that concluded on November 29, 2018. The chief recommendation in the draft provided for the budget resolution to be adopted for a two-year cycle rather than the current annual cycle. By unanimous consent, the committee members applied a voting rule for the adoption of amendments consistent with the rule required by the act for final adoption of any recommendations requiring separate majorities of the appointees from each party. The final vote on reporting the bill as amended was not agreed to by a roll-call vote of one aye and seven noes of the Members appointed by the Speaker of the House and the Senate majority leader and seven ayes and zero noes of the Members appointed by the House minority leader and the Senate minority leader.

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What Was the Joint Select Committee and Why Was It Created?

On February 9, 2018, President Trump signed the Bipartisan Budget Act of 2018 into law (P.L. 115-123). Subtitle B of Title IV provided for the creation of a Joint Select Committee on Budget and Appropriations Process Reform. The creation of this committee echoed a number of special panels created by Congress in the past in order to study and make recommendations on various issues unconstrained by existing committee jurisdictions. Prior examples include committees tasked with studying a wide spectrum of issues, including both budget process—such as the Joint Committee to Study Budget Control (created by P.L. 92-599)—and other topics, such as the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities (also known as the Church Committee after its chairman, Senator Frank Church, created by S.Res. 2, 94th Congress).

What Was the Authority and Jurisdiction of the Joint Select Committee?

The act directed the joint select committee to “provide recommendations and legislative language that will significantly reform the budget and appropriations process.”¹

What Was the Membership of the Committee?

The act required that the committee be composed of 16 members, with 4 members appointed by each of the Speaker of the House, the minority leader of the House, the majority leader of the Senate, and the minority leader of the Senate.² Members were appointed to serve for the life of the committee, with any vacancy to be filled within 14 calendar days.³

The act further stated that the committee would be led by cochair. One cochair was to be appointed jointly by the Speaker of the House and the majority leader of the Senate, with the other cochair to be appointed jointly by the House and Senate minority leaders.

The four members of the joint select committee appointed by then-Speaker Paul Ryan were House Budget Committee Chairman Steve Womack (who served as committee cochair), House Rules Committee Chairman Pete Sessions, and Representatives Rob Woodall and Jodey Arrington. The four members appointed by then-House Minority Leader Nancy Pelosi were House Appropriations Committee ranking member Nita M. Lowey (who served as committee cochair), House Budget Committee ranking member John Yarmuth, and Representatives Lucille Roybal-Allard and Derek Kilmer.

The four members appointed by Senate Majority Leader Mitch McConnell were Senators Roy Blunt, David Perdue, James Lankford, and Joni Ernst. The four members appointed by Senate

¹ §30442(b)(2)(A).

² §30442(b)(3).

³ The vacancy is to be filled in the same manner as the original appointment was made. If a member of the joint committee ceases to be a Member of the House or the Senate, he or she is no longer a member of the joint committee, and a vacancy shall exist.

Minority Leader Charles Schumer were Senators Sheldon Whitehouse, Michael Bennet, Brian Schatz, and Mazie Hirono.

Under the act, the joint select committee terminated on December 31, 2018.⁴

How Was the Committee Staffed and Funded?

Federal agencies (including legislative branch agencies) were tasked with providing technical assistance to the committee if requested in writing by the cochairs, and employees of the legislative branch could be detailed to the committee on a nonreimbursable basis consistent with the rules and regulations of the Senate.⁵

The act provided an authorization for use of not more than \$500,000 from the appropriations account for “Expenses of Inquiries and Investigations” of the Senate with such sums to be disbursed by the Secretary of the Senate, in accordance with Senate rules and procedures, upon vouchers signed by the joint panel’s cochairs.⁶

What Were the Responsibilities of the Committee?

Meetings and Hearings

The committee was required to hold its first meeting not later than 30 calendar days after the date of enactment,⁷ with the cochairs of the committee required to provide an agenda to committee members at least 48 hours in advance of any meeting. The initial organizing meeting was held on March 7, 2018, with additional working group meetings held on August 22, September 13, and September 26, 2018, and a markup held on November 15, 27, and 29, 2018.

The committee was also authorized and expected to hold hearings and take testimony from witnesses.⁸ Each cochair was entitled to select an equal number of witnesses for each hearing. Witnesses appearing before the committee were required to file a written statement of proposed testimony at least two calendar days before his or her appearance.⁹

The law specified that nine members of the committee would constitute a quorum for purposes of voting and meeting, and five members of the committee would constitute a quorum for holding hearings.¹⁰

⁴ §30442(d). The act also provided an alternate termination of 30 days after the joint select committee submitted its report and legislative recommendations.

⁵ §30442(b)(4)(I).

⁶ §30443.

⁷ §30442(b)(4)(E)(i).

⁸ §30442(b)(4)(G). The act required the committee to hold no fewer than “five public meetings or public hearings” and a minimum of “three public hearings, which may include field hearings.”

⁹ This requirement could be waived by the co-chairs if they determined that there was “good cause” for failure to comply with the requirement.

¹⁰ §30442(b)(4)(C).

Report and Recommendations

The act stated that the committee provide recommendations and legislative language to significantly reform the budget and appropriations process. The committee was required to vote by November 30, 2018, on (1) a report containing a detailed statement of the findings, conclusions, and recommendations of the committee and (2) proposed legislative language to carry out those recommendations.¹¹

The text of any report and proposed legislative language were required to be made publicly available in electronic form at least 24 hours prior to its consideration by the joint select committee.¹² The act required the report and the proposed legislative language to be approved by a majority of each of (1) the committee members appointed by the Speaker of the House and the majority leader of the Senate and (2) the committee members appointed by the House and Senate minority leaders.¹³ The law specified that nine members of the committee would constitute a quorum for purposes of voting, with no proxy voting permitted.¹⁴

If the committee voted to report recommendations and legislative language, members were to be allowed the opportunity to file supplemental, minority, or additional views to be included in a committee report.¹⁵

What Was to Happen Once the Committee Reported?

Under the act, if the committee had approved a report and legislative language, it would have been required to make them available to the public “promptly” and submit them to the President, the Vice President, the Speaker of the House, and the majority and minority leaders of each chamber within 15 calendar days of approval.

Upon receipt of proposed legislative language, the Senate majority leader (or his designee) was required to introduce it in the Senate (by request) on the next day on which the Senate was in session.¹⁶ There were no provisions in the law concerning the introduction of the recommendations of the joint select committee in the House.

¹¹ §30442(b)(2)(B)(i).

¹² §30442(b)(2)(B)(ii)(II).

¹³ §30442(b)(2)(B)(ii).

¹⁴ §30442(b)(4)(D).

¹⁵ §30442(b)(2)(B)(iii). A member of the joint committee who gave notice of an intention to file supplemental, minority, or additional views at the time of the final joint committee vote on the approval of the report and legislative language was to be entitled to two calendar days after the day of such notice in which to file such views in writing with the co-chairs. Such views would then be included in the joint committee report and printed in the same volume, or part thereof, and their inclusion noted on the cover of the report. In the absence of timely notice, the joint committee report could be printed and transmitted immediately without such views.

¹⁶ §30444(a).

Were There Procedures Established for Congressional Consideration of the Committee's Recommendations?

The Bipartisan Budget Act established certain unique procedures for Senate consideration of any legislative language reported by the joint select committee. These procedures were intended to allow the Senate to reach a timely vote on the question of whether or not to consider legislation embodying the recommendations of the joint select committee, but the act did not specify any procedures governing consideration of the bill once the Senate agreed to take it up. There were no provisions in the act concerning the consideration of the recommendations of the joint select committee in the House. There were also no provisions concerning resolving any differences between the House and Senate or the consideration of a veto message from the President. Such actions would have occurred under the regular procedures of each chamber.¹⁷

Committee Consideration in the Senate

Once any recommendations of the joint select committee were introduced in the Senate, the bill would be referred to the Senate Committee on the Budget, which was required to report the bill favorably, unfavorably, or without recommendation within seven session days—but without any revisions. If the Budget Committee failed to report the bill within that period, it would be automatically discharged from consideration of the bill, and the bill would be placed on the Senate Calendar of Business.¹⁸

The Motion to Proceed in the Senate

Not later than two days of Senate session after a joint committee bill was reported or discharged from the Budget Committee, the majority leader (or his designee) could move to proceed to consider it. Should the majority leader (or his designee) not make such a motion within two session days, any Senator could do so.¹⁹

The motion to consider a joint committee bill—and all debatable motions and appeals in connection with the motion—would be considered for a maximum of 10 hours, evenly divided between the majority leader and the minority leader (or their designees). A nondebatable motion to further limit debate would be in order and would require a vote of three-fifths of all Senators—60 votes if there is not more than one vacancy—to pass.²⁰

In order for the recommendations of the joint select committee to be considered by the full Senate, the act required that the motion to proceed be agreed to by a vote of three-fifths of all Senators—60 votes if there is not more than one vacancy.²¹

¹⁷ §30444(d).

¹⁸ §30444(b).

¹⁹ §40444(c)(1).

²⁰ §30444(c)(2). Since the total time for consideration is limited, time spent in quorum calls or votes would count against the 10-hour total. Because the time is controlled, either side could also yield back some or all of its allocation of time if it were unused.

²¹ §30444(c)(3).

The act further specified that all points of order against the motion to proceed are waived and that a motion to postpone the motion to proceed or a motion to reconsider a vote on it are not in order.²²

Finally, the act directed that not later than the last day of the 115th Congress (2017-2018), the Senate must vote on a motion to proceed to a bill containing recommendations of the joint select committee.²³

Floor Consideration in the Senate

If the Senate approved the motion to proceed, the joint committee bill could then be considered under the regular rules of the Senate, meaning that it would be fully debatable and fully amendable (possibly including by nongermane amendments) and that cloture might need to be invoked on one or more questions (requiring the support of three-fifths of all Senators) in order to reach a final vote.

What Did the Committee Do?

Committee Hearings²⁴

The joint select committee held five days of public hearings.

- April 17: current challenges facing the budget and appropriations process in Congress and possibilities for improvement;
- May 9: challenges of the current procedural framework, particularly as it relates to the ability of Members to work effectively and in a bipartisan manner regardless of political dynamics;
- May 24: the role of the budget resolution and possible options to bolster its impact and influence on subsequent budgetary actions;
- June 27: testimony heard from 27 Members of the House and Senate (and written statements received from 5 others), including Speaker of the House Paul Ryan and House Minority Leader, Nancy Pelosi;
- July 17: former Members' historical perspective on enacting budgetary legislation in the context of the challenges presented by both the politics and the framework of the budget and appropriations process.

Committee Markup

The committee held multiple meetings, both formal and informal, to provide its members a forum to discuss reforms to the budget and appropriations process. These meetings—including working sessions on August 22, September 13, and September 26, 2018—provided the basis for the recommendations that were subsequently incorporated into draft legislation to be considered by the committee as the cochair's mark.

²² §30444(c)(4).

²³ §30444(c)(5).

²⁴ U.S. Congress, House Committee on the Budget, *Legislative History of the Joint Select Committee on Budget and Appropriations Process Reform*, committee print, 115th Cong., 2nd sess., H.Prt. 115-15 (Washington, DC: GPO, 2018).

The cochair's mark included a recommendation that the budget resolution be adopted for a two-year cycle rather than the current annual cycle. The draft also addressed a number of related concerns, such as allowing reconciliation instructions for both years of a biennium, providing for a revision of the budget resolution in the second session of a Congress to update it for scoring purposes, and revising the requirements concerning the submission and content of the President's budget in the second year of a biennium. The recommendations also provided for a change in the membership of the Senate Budget Committee to be comprised of eight members from the majority and seven members from the minority, including the chairs and ranking members from the Appropriations and Finance Committees, and for the House and Senate Budget Committees to hold a joint hearing on the fiscal state of the nation.²⁵

On November 15, 2018, the committee began marking up the draft legislation. In that markup, the committee agreed by unanimous consent to apply a voting rule for the adoption of amendments consistent with the rule required by the act for final adoption of any recommendations. This agreement required separate majorities of the appointees from each party. The markup continued on November 27 and 29. The final vote on reporting the draft bill, as amended, was not agreed to by a roll-call vote of one aye and seven noes of the Members appointed by the Speaker of the House and the Senate majority leader and seven ayes and zero noes of the Members appointed by the House minority leader and the Senate minority leader.²⁶

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²⁵ For the text of the co-chair's mark, see *ibid.*, pp. 16-38.

²⁶ For rollcall votes on amendments and on final passage of the co-chair's mark, see *ibid.*, pp. 39-51.

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