

**Calendar No. 31**

106TH CONGRESS }  
*1st Session* }

SENATE

{ REPORT  
106-15

GOVERNMENT SHUTDOWN PREVENTION ACT

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R E P O R T

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE

together with

MINORITY VIEWS

TO ACCOMPANY

S. 558

TO PREVENT THE SHUTDOWN OF THE GOVERNMENT AT THE BE-  
GINNING OF A FISCAL YEAR IF A NEW BUDGET IS NOT YET  
ENACTED



MARCH 16, 1999.—Ordered to be printed

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### GOVERNMENT SHUTDOWN PREVENTION ACT

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Mr. THOMPSON, from the Committee on Governmental Affairs,  
submitted the following

### REPORT

[To accompany S. 558]

The Committee on Governmental Affairs, to which was referred the bill (S. 558) to prevent the shutdown of the Government at the beginning of a fiscal year if a new budget is not yet enacted; having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### I. PURPOSE

The purpose of S. 558, the Government Shutdown Prevention Act, is to provide for a contingent appropriation to fund the operations of the federal government in the event that regular appropriations bills are not enacted by the beginning of the new fiscal year (October 1st). The bill is effective for fiscal year 2000 and 2001 only. By providing for such automatic appropriations Congress will eliminate the possibility of a government shutdown.

#### II. SUMMARY OF S. 558

S. 558 provides that the operations of the federal government which are funded through the annual appropriations process would continue—uninterrupted—in the event that action on any particular regular appropriations bill is not completed by the beginning of the fiscal year (October 1st). Such provisions have often been referred to as an “auto CR”. The purpose of an auto CR as set out in this bill is to remove the “threat” of a government shutdown. This bill provides for a contingent appropriation for fiscal year 2000 and fiscal year 2001—the contingency being the failure to enact any of the regular appropriations bill prior to the beginning of the fiscal year. This bill both authorizes and provides the con-

tinuing appropriation. If enacted, no further action would be required prior to the beginning of either fiscal year 2000 or fiscal year 2001 to avoid a shutdown of any part of the government.

### III. BACKGROUND AND NEED FOR LEGISLATION

Since 1981, there have been 11 funded gaps or “government shutdowns”. These shutdowns occurred when final action on any or all of the 13 regular appropriations bills was not completed before October 1st and an interim funding measure (known as a continuing resolution of “CR”) had not been signed by the President. Prior to 1981 there were a number of “funding gaps” but they did not result in the shutdown of the government or suspension of government operations. During this period the government simply continued to operate until funding was enacted. Often these funding gaps took place over a weekend, so the general public was largely unaffected. This practice ceased however in the early 1980’s upon the issuance of an opinion by then-Attorney General Civiletti (see 43 Op. Atty Gen. 293—January 16, 1981).

The “Civiletti opinion” addressed the legal and constitutional authorities which would govern the continued operations of the federal government during a temporary lapse of appropriations. Generally, pursuant to the Antideficiency Act, government operations may only continue in the absence of an appropriation: (i) where expressly authorized by law (such as the payment of Social Security benefits and other entitlements) and (ii) in emergency situations involving the safety of human life or the protection of property. In addition, the President may, in the absence of appropriations, continue to engage in activities specifically delegated to him by the Constitution such as the conduct of foreign relations. Some may point to the existence of the Civiletti opinion as the reason for Congress’ struggle with the issue of shutdowns today.

Of these “real” shutdowns, the most recent occurred in 1995 when President Clinton vetoed the second continuing resolution and debt extension bill. The 1995 shutdown was also the longest in history: lasting for 21 days, from December 16, 1995 through January 6, 1996. An estimated 284,000 federal employees were furloughed by the shutdown. After January 6th, there were a succession of short term CRs that funded the government through April, when Congress enacted (and the President signed) an appropriation to fund those agencies through the end of fiscal year 1996.

A listing of these of all the funding lapses since the full implementation of the Congressional Budget Act of 1974 is provided below:

Fiscal year	Date gap commenced	Full day(s) of gaps	Date gap terminated
1977 .....	Thursday 09-30-76 .....	10	Monday 10-11-76
1978 .....	Friday 09-30-77 .....	12	Thursday 10-13-77
	Monday 10-31-77 .....	8	Wednesday 11-09-77
	Wednesday 11-30-77 .....	8	Friday 12-09-77
1979 .....	Saturday 09-30-78 .....	17	Wednesday 10-18-78
1980 .....	Sunday 09-30-79 .....	11	Friday 10-12-79
1982 .....	Friday 11-20-81 .....	2	Monday 11-23-81
1983 .....	Thursday 9-30-82 .....	1	Saturday 10-2-82
	Friday 12-17-82 .....	3	Tuesday 12-21-82
1984 .....	Thursday 11-10-83 .....	3	Monday 11-14-83

Fiscal year	Date gap commenced	Full day(s) of gaps	Date gap terminated
1985	Sunday 9–30–84	2	Wednesday 10–3–84
	Wednesday 10–3–84	1	Friday 10–5–84
1987	Thursday 10–16–86	1	Saturday 10–18–86
1988	Friday 12–18–87	1	Sunday 12–20–87
1991	Friday 10–5–90	3	Tuesday 10–9–90
1996	Tuesday 11–13–95	6	Sunday 11–19–95
	Saturday 12–15–95	21	Saturday 1–6–96

Source: For years prior to 1996, data are from Continuing Resolutions and Funding Gaps: Selected Data for Fiscal Years 1997–1995, by Robert Keith and Edward Davis, CRS Report 95–995 GOV (Washington: September 25, 1995.)

Except as permitted under the Civiletti opinion, when there is no appropriation for a particular project or activity, the government is forced to cease that project or activity and to furlough the relevant employees. In some cases, this has the potential for causing hardship on those who depend upon the services provided by the Federal government, affected Federal employees, and those who do business with the Federal government. Providing for an automatic appropriation asset out in this legislation is clearly preferable to interrupting necessary government activities.

Shutdowns may also cause ripple effects in the economy. For instance, during a shutdown not only are federal employees furloughed, but government contractors may be forced to layoff their employees until funding is resumed. Clearly it is more desirable for the economy as a whole for the operations of government to continue without interruption when action on appropriations bills can not be completed.

The Committee recognizes the inherent political nature of the appropriations process. Yet, enactment of this legislation is intended to insulate this process against the practice of using the threat of a government shutdown as political leverage in forcing last minute negotiations over new outlays and even authorizations. Ideally, the existence of an automatic CR removes the threat of a government shutdown as a political tool. Enactment of this legislation should encourage more bipartisan discussions on appropriations bills and discourage the past practices of holding appropriations bills hostage to last-minute negotiations.

The adoption of an automatic CR is not intended to substitute for enactment of the regular appropriations bills. Rather, the existence of an automatic CR is intended to encourage the completion of the regular process. In the hopefully unusual event that this work is not completed on time, the automatic CR would serve as a “stop-gap” measure to keep the government and agencies running until the Congress and the Administration can reach agreement on the regular appropriations bills.

The adoption of CRs has become standard operating procedures in Washington. During the past 24 years, Congress has passed 82 CRs to fund the government and avoid a lapse in funding authority. While the CR is in effect, Congress and the President continue to work on adopting any remaining regular appropriations bills before the expiration of the CR. Only twice since the 1950’s has Congress passed all 13 separate appropriations bills by the deadline of September 30th without having to pass an omnibus bill or a CR. During the last two fiscal years, Congress has passed 6 continuing

resolutions each year to further fund agencies whose appropriations bills had not been adopted.

Relying upon CRs has become normal procedure during the last 50 years. Rather than relying upon the crisis-driven process of enacting a succession of temporary continuing resolutions or a huge omnibus appropriations bill, the Committee believes that it is preferable to provide a mechanism (an automatic appropriation) by which the government will continue to operate while the Congress and the President continue working on the individual regular appropriations bills. Providing interim funding on an ad hoc basis, as we have in the past, has been inefficient for both Congress and Executive branch and for the economy as a whole.

The bill, as reported from the Committee, injects some certainty into this process: it provides that sufficient resources will be appropriated while the Congress and the President resolve their differences regarding any remaining appropriations bills.

The Committee acknowledges that the provision for a contingent appropriation such as outlined in S. 558 is a new concept. Therefore, the Committee has recommended that this occur on a trial basis. The appropriation provided in this bill could only be effective for fiscal years 2000 or 2001. It is not permanent.

#### IV. HISTORY OF THE LEGISLATION DESIGNED TO PREVENT GOVERNMENT SHUTDOWNS

*104th Congress.*—Senator McCain introduced S. 2013 The Government Shutdown Prevention Act to provide for continuing appropriations in the absence of regular appropriations.

*105th Congress.*—Senator McCain introduced S. 228 The Government Shutdown Prevention Act. In order to provide funding for FY 1998 Sen. McCain also introduced S. 547 which would fund the government at 98 percent of operations provided for in FY 1997. While debating S. 672, FY 1997 Supplemental Appropriations and Rescissions Act, Senator Byrd offered an amendment that would strike title VII which provided continuing appropriations for FY 1998 at 100 percent of FY 1997 levels. At Senator Stevens motion, the Senate tabled the amendment by a 55–45 vote.

*106th Congress.*—Senators Grams and McCain separately introduced legislation intended to prevent the shutdown of the government. Senator Grams' bill (S. 104) would fund the government at 100 percent of operations provided for FY 1999 and Senator McCain's bill (S. 99) would provide funding at 98 percent of the previous year's level for FY 2000.

#### V. LEGISLATIVE HISTORY OF S. 558

1999—S. 558 was ordered to be reported as an original bill from the Committee on Governmental Affairs on March 4, 1999 and filed with the Senate on March 8, 1999. The bill provides for the continued funding of government agencies and programs if any of the regular appropriations bills are not enacted on time. Funding under this bill is provided at the lower of the President's requested level or the previous year's appropriated level.

*i. Hearings*

January 27, 1999—Joint Budget and Governmental Affairs Committee Hearing.

Governmental Affairs Committee Chairman Thompson and Budget Committee Chairman Dominici chaired a joint hearing on S. 92, the Biennial Budgeting and Appropriations Act, and S. 93, the Budget Enforcement Act of 1999. Title IV of S. 93 embodied the text of S. 558.

There were three panels of witnesses:

*Panel I*

The Honorable John McCain, United States Senator from Arizona. Senator McCain testified in favor of legislation implementing an automatic continuing resolution.

*Panel II*

The Honorable Benjamin L. Cardin, A Representative from Maryland and the Honorable Jim Nussle, a Representative from Iowa. Both witnesses testified in favor of legislation creating an automatic continuing resolution.

*Panel III*

Timothy J. Muris, Professor, George Mason University School of Law; Van Doorn Ooms, Senior Vice President and Director of Research, Committee for Economic Research; and Martha Phillips, Executive Director, the Concord Coalition.

Ms. Phillips testified in favor of legislation creating an automatic continuing resolution.

*i. Committee action*

On March 4, 1999, the Committee held a business meeting at which an original committee bill embodying of the title IV of S. 93, the Government Shutdown Prevention Act, was considered. Following discussion by the Committee, the Committee favorably ordered the committee bill to be reported to the full Senate by a roll call vote of 6 Yeas (Stevens, Collins, Voinovich, Dominici, Cochran and Thompson) and 4 Nays (Lieberman, Levin, Akaka, and Durbin).

Senators Roth, Specter and Gregg indicated their position by proxy in favor of the legislation. Senators Torricelli, Cleland and Edwards indicated their position by proxy in opposition of the legislation.

## VI. SECTION-BY-SECTION ANALYSIS

The bill provides for an automatic continuing resolution (CR) in the event appropriations bills are not enacted by the October 1st deadline.

Section 1 of the bill provides that the title of the bill may be cited as the “Government Shutdown Prevention Act.”

Section 2(a) of the bill amends title 31 of the United States Code to add a new section 1311:

Paragraph (1) of section 1311(a) appropriates funds from the Treasury if regular appropriations bills have not been enacted into law by the beginning of the fiscal year.

Paragraph (2) of section 1311(a) provides that the level of appropriations for projects and activities is the lower of: (1) the previous year's appropriated level, (2) if no amount was appropriated for the previous year, the amount provided in a continuing resolution for the previous year (3) the amount proposed in the President's budget request, or (4) the annualized level provided in a continuing resolution for the fiscal year.

Paragraph (3) of section 1311(a) provides that the appropriations provided in this section will lapse when an appropriations bill or joint resolution becomes law or at the end of the fiscal year.

Section 1311(b) provides that the appropriations made under this section are subject to the same terms and conditions as provided in the previous year's appropriations law or in current law.

Section 1311(c) provides that the appropriations made under this section will cover all obligations for the relevant project or activity for the period of time covered by this section. For example, if this authority was needed to fund the first month of the fiscal year, this section provides that the appropriation under this section covers all obligations for the relevant projects and activities for the first month of the fiscal year.

Section 1311(d) provides that expenditures made pursuant to this section shall be charged to the applicable appropriation, fund, or authorization when the regular appropriation legislation becomes law.

Section 1311(e) provides that appropriations made pursuant to this section shall not be made for projects or activities that are already funded under other laws or if another law prohibits funding for such projects or activities.

Section 1311(f) defines the term "regular appropriation bill."

Section 2(b) of the bill is a technical amendment and amends title 31 to add section 1311 to the table of contents.

Section 3 of the bill provides that this continuing appropriations authority is only available for fiscal years 2000 and 2001.

## VII. REGULATORY IMPACT STATEMENT

Enactment of S. 558 should result in no significant regulatory impact. S. 558 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

## VIII. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,  
 CONGRESSIONAL BUDGET OFFICE,  
 Washington, DC, March 12, 1999.

Hon. FRED THOMPSON,  
 Chairman, Committee on Governmental Affairs,  
 U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 558, the Government Shutdown Prevention Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mary B. Maginniss, James R. Horney, and Priscilla M. Aycock.

Sincerely,

BARRY B. ANDERSON  
 (For Dan L. Crippen, Director).

Enclosure.

*S. 558—Government Shutdown Prevention Act*

Summary: To avoid future government shutdowns, S. 558 would put in place an automatic continuing resolution for fiscal years 2000 and 2001 that would take effect if the Congress and the President fail to agree on regular or temporary appropriation bills by October 1 of each fiscal year. The appropriation for each project of activity would be the lower of (1) the previous year's appropriated level, (2) the amount proposed in the President's budget, or (3) the annualized level provided in the most recently enacted continuing resolution for that year. The bill also specifies various conditions and rules that would apply to the continuing resolution.

S. 558 would act as a fallback source of funding for activities at a restricted level, for as long as necessary, until regular appropriation bills or alternative continuing resolutions are enacted, thereby preventing a disruption in the routine activities of most federal agencies. By providing an automatic funding source for 2000 that would take effect without further legislative action, S. 558 would provide direct spending authority, and pay-as-you-go procedures would apply to the bill. CBO estimates that enacting S. 558 would provide budget authority of about \$550 billion in 2000, resulting in outlays of \$330 billion in 2000 and \$560 billion over the 2000–2004 period. By itself, the bill would not provide any new funding for 2001.

S. 558 contains no intergovernment or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 558 is shown in the following table. For the purposes of this estimate, CBO assumes the bill will be enacted by the end of fiscal year 1999. The costs of this legislation fall within multiple budget functions.

	By fiscal years, in billions of dollars—				
	2000	2001	2002	2003	2004
DIRECT SPENDING					
Estimated Budget Authority .....	550				
Estimated Outlays <sup>1</sup> .....	330	130	60	30	10

<sup>1</sup>Outlays include amounts for transportation programs that are controlled by annual obligation limitations set in appropriate acts. Such limitations are not considered budget authority.

Basis of estimate: S. 558 would provide funding for fiscal year 2000 for projects and activities funded in 1999 appropriation acts. The appropriation provided for each project or activity would be the amount sufficient to continue funding for that project and activity at the lower of the rate of operations provided for in 1999 appropriations acts or the rate that would be provided for by the President's budget request for 2000. Upon enactment of an applicable regular appropriation bill or a continuing resolution for 2000, the appropriation for a project or activity provided by S. 558 would no longer be available.

Because scorekeeping guidelines adopted by the Congress and the Administration require that estimates of a bill not take into account possible future legislation, and no regular appropriation bills or continuing resolution for 2000 have been enacted, CBO estimates the effect that S. 558 would have if on appropriation bill providing funding for 2000 are enacted. In addition, though S. 558 would provide funding for discretionary programs, budget authority provided by law other than appropriation acts is defined as direct spending for purposes of budget enforcement. (If the same provisions were enacted in an appropriation bill, the resulting spending would be considered discretionary.)

CBO estimates that continuing projects and activities funded in 1999 appropriations acts would require new budget authority of about \$550 billion in 2000. (This figure does not include almost \$10 billion already enacted as advance appropriations for 2000). CBO estimates that the new budget authority for 2000 would result in outlays of \$330 billion in 2000 and about \$560 billion over the 2000–2004 period.

S. 558 also would provide funding in 2001 to continue projects and activities funded in appropriation acts for 2000 if regular appropriation acts or a continuing resolution for 2001 are not enacted. (The bill sunsets after 2001.) Since the appropriations for 2001 provided by S. 558 are contingent on appropriation bills for 2000 that have not yet been enacted, S. 558 by itself would not provide any new funding for 2001. Under the provisions of S. 558, however, enactment of appropriation bills for 2000 would trigger appropriations for 2001 to continue the projects that and activities funded for 2000 in the appropriation acts.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays that are subject to pay-as-you-go procedures are shown in the following table. The bill would not affect governmental receipts.

	By fiscal years in billions of dollars—					
	1999	2000	2001	2002	2003	2004
Changes in outlays .....	0	330	130	60	30	10
Changes in receipts .....			Not applicable			

Intergovernmental and private-sector impact: S. 558 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Mary B. Maginniss, James R. Horney, and Priscilla M. Aycock.

Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

## IX. MINORITY VIEWS OF SENATORS LIEBERMAN, LEVIN, AKAKA, DURBIN, TORRICELLI, CLELAND, AND EDWARDS

We support the objectives of this bill, which are to prevent future government shutdowns. The partial government shutdowns during the 104th Congress were unnecessary and costly. Congress and the President should strive to ensure that they never happen again.

However, this legislation would have the effect of reducing the leverage of those who want to change appropriation levels to respond to new conditions and changing needs, or to reflect new priorities within or outside the government. By setting the default position for discretionary funding at the prior year's level, there would be less incentive for Congress to iron out compromise funding levels with the Administration. In effect, it would give a pocket veto to those supporting the status quo.

For example, under this bill, a congressional majority could decide to pass bills in which they want increases and not pass bill in which the Administration or a minority in Congress wants increases. On the other hand, programs that no longer require funds could go on receiving them while programs that have a genuine need for funding increases would continue to go without the needed funds.

One apparent effect of the bill, whether intended or not, is that for the next two fiscal years—until the end of this Administration—it gives more leverage to the congressional majority at the expense of the minority and the White House. But changing the allocation of power should not be the real issue. We believe that Congress could do more to prevent government shutdowns by passing its appropriations bills on a timely basis, and by working responsibly with the President to negotiate the compromises that are required by our political process. It is unrealistic for either party to expect it will get everything it wants simply because it controls Congress or the White House. However, appropriations and Presidents have frequently held out until the end of the fiscal year for their preferred funding levels. Often it is only the looming deadline of a new fiscal year that forces the necessary negotiations and compromises. Although the process is often not as streamlined as we would like, with one exception the parties in the past have been able to make the necessary compromises to arrive at the next year's funding levels without causing much, if any, disruption.

In fact, the list of funding lapses included in the Majority Report demonstrates that since the 1981 issuance of the Civiletti opinion (which limits government operations in the absence of an appropriation) the only government shutdowns that lasted more than three days occurred during the showdown between President Clinton and Congressional Republicans in the winter of 1995–1996. President Clinton's November 13, 1995 veto occurred because the President would not accept political conditions and funding levels

included in the continuing resolution, such as a significant increase in Medicare premiums and potentially drastic cuts in education, environmental, and other spending. The change in Medicare law was wholly unrelated to the short-term extension of government functions, and drastically cutting targeted programs as a condition of continued funding was also a break from the continuing resolutions of previous years. The November veto resulted in a government shutdown that lasted for six days. The record twenty-one day government shutdown referred to in the Majority report began on December 15, 1995, after Congress failed to send a continuing resolution to the White House that covered more than a select few federal agencies. In all the other instances of funding lapses, public services and the functioning of the government were barely affected.

In contrast, the negative effects caused by “The Government Shutdown Prevention Act” would be keenly felt by the American public. It could allocate spending in irrational ways that have little to do with the nation’s pressing needs. More ominously, it could allow the party controlling Congress to pass only those appropriation bills where it wanted increases.

By setting the default level for discretionary funding at the prior year’s level, the congressional majority would have less motivation to iron out compromise funding levels. Large portions of the federal budget could be placed on automatic pilot for years. The President’s only leverage to fight targeted budget freezes would be to hold hostage, with a veto threat, those appropriations bills that Congress did pass. In the end, political gamesmanship would likely continue despite the passage of this legislation, only instead of deadlines forcing showdowns and compromises the entire government might be funded indefinitely by an unresponsive automatic continuing resolution.

An automatic continuing resolution would lead to absurd results: it would continue to set aside money for projects and activities where money was no longer needed, while other programs where needs had increased would go underfunded. For example, most capital accounts, such as federal facility construction, are earmarked in appropriation bills for particular projects. If the previous year’s appropriation bill had earmarked millions of dollars towards the completion of a federal courthouse, an automatic continuing resolution would still blindly allocate the same amount, though the building was fully completed, leaving unspent money that could have been allocated to other projects or programs. This clear misallocation of scarce resources would be duplicated throughout the continuing resolution.

At the same time, pressing needs that may have increased because of changing economic circumstances could go underfunded. For example, the market price for the food products made available to pregnant women and mothers of infants and small children under the WIC program may have risen sharply in a given year. Appropriators would ordinarily consider this rise in food prices in deciding whether to proportionally increase WIC’s appropriation for the year. Instead, an automatic continuing resolution would blindly set a rate below that year’s needs.

The appropriations process is a vital part of our legislative business, not to mention our constitutional duties. Hearings are held throughout the year to examine programs, establish priorities, make difficult choices regarding how best to spend scarce tax dollars. Are the benefits of all those hearings, all the careful considerations made at subcommittee mark-ups, to be thrown aside simply because it is too difficult for the President and Congress to reach a compromise?

For example, if we had an automatic continuing resolution in effect for fiscal year 1999 instead of the appropriations acts that were enacted through the legislative process, many significant accomplishments would never have been realized. The following examples compare FY 1998 enacted funding levels (the levels which would have been used for FY 1999 if the automatic CR called for in S. 558 had been in effect) to the funding levels enacted for FY 1999, according to information provided by the office of Management and Budget.<sup>1</sup>

- The Class Size Reduction initiative would not have been funded, taking \$1.2 billion away from schools and eliminating the hiring of 30,000 teachers, the first installment for the seven year goal of 100,000 new, qualified teachers to help educate, in smaller and more effective classes, the rapidly growing numbers of elementary and secondary children.

- The Pell grant maximum award would have been frozen at \$3,000, instead of rising to \$4,125. 38,000 fewer low income college students would have been helped to pay for schooling through Work-Study.

- The GEAR-UP program passed by Congress in FY 1998, would not have been funded, preventing 177,000 low-income middle-school students from receiving tutoring, mentoring, and counseling services to help them prepare for college.

- Special Education, assistance to school districts educating children with disabilities, would have been cut \$523 million, or 11 percent.

- Defense Operations and maintenance funding levels would have been reduced by about \$1 billion from the FY 99 enacted level, further exacerbating military readiness shortfalls. In particular, additional funds to purchase critical weapon system spare parts would not have materialized, which would likely have led to a steeper decline in readiness rates for Air Force fighter and bomber aircraft.

- Defense weapons procurement funding levels would have been reduced by about \$4 billion from the FY 99 enacted level. Most notably, Air Force aircraft procurement would have been cut by about \$2 billion, which would have resulted in significant delays in the purchase of the F-22 fighter aircraft and C-17 cargo aircraft. These are the bedrock systems for Air Force aircraft modernization into the 21st century.

- NIH would have been cut \$1.98 billion (13%) from the FY 1999 enacted funding level. The number of NIH-funded new research grants would have been cut by up to 1,900 (21%) in FY 1999.

<sup>1</sup>These would be the effects assuming program managers continued to operate programs as they had in FY 1998.

- Ryan White AIDS Treatment Grants would have been cut 23 percent from the FY 1999 funding level, cutting resources to provide protease inhibitors, other drugs and medical treatment, and support services to people suffering with AIDS.
- Up to 13,000 fewer children would be participating in Head Start.
- VA Medical Care would have been denied to 45,000 veterans.
- No additional funding would have been available for anti-terrorism to protect our citizens abroad in response to the embassy bombings in Africa.
- The proposed increase of 167 FBI agents, who are being hired to investigate computer crimes and health care fraud, would have been blocked.
- 50,000 families moving from welfare-to-work would not have been able to receive Section 8 housing assistance vouchers critical to their moving to areas close to or within commuting distance of jobs.
- Interior Department funding for the restoration of facilities at Historically Black Colleges and Universities would have been about 40 percent below the enacted level if frozen at the FY 98 level.
- The FAA would not have been able to hire the additional 150 maintenance technicians and approximately 50 safety staff requested in 1999, and would have had to eliminate nearly 1,200 air traffic controller workyears.
- Bureau of Indian Affairs School Construction—An \$8 million increase in FY 1999 (about 25 percent over FY 1998) for major repairs and improvements at some of the most dilapidated Bureau of Indian Affairs-funded schools would not have been provided.
- The INS would not be hiring 1,000 additional border control agents.

It can be very difficult to pass appropriations bills, especially during a period of divided government. This legislation would encourage inertia, since it would enable voting blocs to hold out for the expenditure levels from the previous year. Without the specter of an imminent deadline spurring us on, we are concerned that the government will plod along, as if on automatic pilot. We are much better off making the tough choices that are required of us.

JOSEPH LIEBERMAN.  
 DANIEL K. AKAKA.  
 ROBERT TORRICELLI.  
 JOHN EDWARDS, Jr.  
 CARL LEVIN.  
 DICK DURBIN.  
 MAX CLELAND.

## X. EXECUTIVE COMMUNICATIONS

EXECUTIVE OFFICE OF THE PRESIDENT,  
OFFICE OF MANAGEMENT AND BUDGET,  
Washington, DC, March 2, 1999.

Hon. FRED THOMPSON,  
*Chairman, Committee on Governmental Affairs,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: I understand that S. 93, the “Budget Enforcement Act of 1999,” introduced in the Senate by Senator Domenici on January 19, 1999, will be marked up by the Governmental Affairs Committee on Thursday, March 4. As explained below, the Administration has significant concerns regarding: (1) the proposal to establish an automatic continuing resolution; (2) the Budget Enforcement Act changes that would permanently weaken the pay-as-you-go rules; and (3) the proposals to impose new supermajority limitations on emergency spending.

As you know, the President’s budget for fiscal year 2000 proposes a third consecutive surplus—the first time that will have happened in half a century. The budgetary rules and requirements of the Budget Enforcement Act (BEA) were critical to this achievement. They should not be changed merely because we have achieved balance. If we are to maintain discipline, we should preserve these rules, making only limited changes and then only after careful review.

While we have significant concerns about these particular reform proposals, this Administration has been a strong advocate for budget process reforms that would provide more stability and predictability to a system that provides the framework for responsible fiscal behavior. For example, over the last six years this Administration has consistently expressed interest in the potential advantages of biennial budgeting and urged its adoption by the Congress. I look forward to working with the Congress to enact such reforms.

*Establishing an Automatic Continuing Resolution.* Title IV of S. 93 would establish an automatic continuing resolution (CR) for fiscal years 2000 and 2001 in the event that Congress fails to enact appropriations legislation. We think that doing so would reduce the discipline of the appropriations process.

The partial government shutdowns during the 104th Congress were unnecessary and very costly, and—as the President has said—should never happen again, but putting the Government’s finances on automatic pilot is not the answer. Congress should not undermine the ability to respond to a changing world by substituting an automatic funding mechanism for the hard work and judgment that are embodied in bicameral action and presidential approval.

An automatic CR is not a workable policy. It would effectively set the default position for discretionary spending at a freeze level, re-

sulting in: (1) the underfunding of programs which require increases to cover growing costs and populations; and (2) the overfunding of projects which are already near or at completion.

With an automatic CR in place, large portions of the Federal budget could be placed on automatic pilot for years at a time. This could result in underfunding vital programs such as research; Pell Grants; Head Start; assistance to Women, Infants and Children; and veterans medical care. In addition, the proposal would create an incentive simply to do nothing, for those who wish to prevent change, protect entrenched programs or quash new initiatives.

*Weakening the BEA Pay-As-You-Go Rules.* The PAYGO rules require that any new tax cuts and new mandatory spending must be fully offset by revenue raises and/or mandatory spending cuts. If full offsets are not provided, this creates a negative PAYGO balance which can trigger a sequester (automatic reductions) of Medicare and other mandatory spending programs.

The PAYGO rules have been a very effective pillar of fiscal discipline since their enactment in 1990 and extension in 1993 and 1997. They are an important reason why we have reached a surplus, and the Administration believes that this fiscal discipline should continue.

Unfortunately, Title III of S. 93 would immediately and permanently permit new tax cuts or mandatory spending increases to be enacted without offsets, up to the amount of projected on-budget surpluses. For example, the proposal would permit enactment of large tax cuts, without any offsets, so long as the tax cuts do not create, or increase, an on-budget deficit in the budget year or the ensuing four fiscal years.

These proposals would create a built-in bias toward spending entire on-budget surpluses on tax cuts. Even though the spending caps would still be in place for discretionary spending, the on-budget surpluses would be freely available for expenditure on tax cuts. We believe that allocation of projected surpluses should be carefully deliberated in the context of a comprehensive budget framework, and oppose changing the pay-as-you-go rules at this time.

The Administration has proposed a 15-year framework for strengthening Social Security and Medicare, reducing the debt, providing tax relief to working Americans through Universal Savings Accounts, and maintaining defense and domestic priorities; and the President believes that after such a framework is in place, the pay-as-you-go disciplines should continue. This was the policy in the deficit reduction legislation in 1993, and again in 1997; in each case, structural changes in the Federal budget were negotiated and all subsequent proposals for tax cuts and spending increases were made subject to continuing pay-as-you-go rules.

The Budget Enforcement Act should not be amended in a way that sacrifices long-term fiscal discipline.

*Limitations on Emergency Spending.* Title II of S. 93 would effectively require a supermajority of 60 votes in the Senate to enact legislation as an emergency. The bill would permit Senators to raise points of order striking any emergency provisions from legislation, subject to a 60-vote waiver. The points of order could also be made against provisions in conference reports, and non-emergency provisions in emergency spending bills.

The Administration shares the objective that emergency spending should be limited to bona fide emergencies. We believe the current requirement that the President and the Congress must jointly agree on emergency designations is the right approach.

The Administration opposes placing a supermajority requirement on emergency designations. While support for emergency spending tends to be bipartisan and collegial, the 60-vote requirement has the potential to delay or make it more difficult to obtain funding for emergencies that are regional in nature—such as agricultural assistance, home energy assistance when temperatures are extreme, or for disasters that impact a specific location.

I appreciate the opportunity to comment on this legislation and look forward to working with you.

Sincerely,

JACOB J. LEW, *Director*.

#### XI. CHANGES TO EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported are shown as follows:

Chapter 13 of title 31, United States Code, is amended by inserting after section 1310 the following new section:

**“1311. CONTINUING APPROPRIATIONS.**

*“(a)(1) If any regular appropriation bill for a fiscal year does not become law prior to the beginning of such fiscal year or a joint resolution making continuing appropriations is not in effect, there is appropriated, out of any moneys in the Treasury not otherwise appropriated, and out of applicable corporate or other revenues, receipts, and funds, such sums as may be necessary to continue any project or activity for which funds were provided in the preceding fiscal year—*

*“(A) in the corresponding regular appropriation Act for such preceding fiscal year; or*

*“(B) if the corresponding regular appropriation bill for such preceding fiscal year did not become law, then in a joint resolution making continuing appropriations for such preceding fiscal year.*

*“(2) Appropriations and funds made available, and authority granted, for a project or activity for any fiscal year pursuant to this section shall be at a rate of operations not in excess of the lower of—*

*“(A) the rate of operations provided for in the regular appropriation Act providing for such project or activity for the preceding fiscal year;*

*“(B) in the absence of such an Act, the rate of operations provided for such project or activity pursuant to a joint resolution making continuing appropriations for such preceding fiscal year;*

*“(C) the rate provided in the budget submission of the President under section 1105(a) of title 31, United States Code, for the fiscal year in question; or*

*“(D) the annualized rate of operations provided for in the most recently enacted joint resolution making continuing appro-*

priations for part of that fiscal year or any funding levels established under the provisions of this Act.

“(3) Appropriations and funds made available, and authority granted, for any fiscal year pursuant to this section for a project or activity shall be available for the period beginning with the first day of a lapse in appropriations and ending with the earlier of—

“(A) the date on which the applicable regular appropriation bill for such fiscal year becomes law (whether or not such law provides for such project or activity) or a continuing resolution making appropriations becomes law, as the case may be; or

“(B) the last day of such fiscal year.

“(b) An appropriation or funds made available, or authority granted, for a project or activity for any fiscal year pursuant to this section shall be subject to the terms and conditions imposed with respect to the appropriation made or funds made available for the preceding fiscal year, or authority granted for such project or activity under current law.

“(c) Appropriations and funds made available, and authority granted, for any project or activity for any fiscal year pursuant to this section shall cover all obligations or expenditures incurred for such project or activity during the portion of such fiscal year for which this section applies to such project or activity.

“(d) Expenditures made for a project or activity for any fiscal year pursuant to this section shall be charged to the applicable appropriation, fund, or authorization whenever a regular appropriation bill or a joint resolution making continuing appropriations until the end of a fiscal year providing for such project or activity for such period becomes law.

“(e) This section shall not apply to a project or activity during a fiscal year if any other provision of law (other than an authorization of appropriations)—

“(1) makes an appropriation, makes funds available, or grants authority for such project or activity to continue for such period; or

“(2) specifically provides that no appropriation shall be made, no funds shall be made available, or no authority shall be granted for such project or activity to continue for such period.

“(f) In this section, the term ‘regular appropriation bill’ means any annual appropriation bill making appropriations, otherwise making funds available, or granting authority, for any of the following categories of projects and activities:

“(1) Agriculture, rural development, and related agencies programs.

“(2) The Departments of Commerce, Justice, and State, the judiciary, and related agencies.

“(3) The Department of Defense.

“(4) The government of the District of Columbia and other activities chargeable in whole or in part against the revenues of the District.

“(5) The Departments of Labor, Health and Human Services, and Education, and related agencies.

“(6) The Department of Housing and Urban Development, and sundry independent agencies, boards, commissions, corporations and offices.

*“(7) Energy and water development.*

*“(8) Foreign assistance and related programs.*

*“(9) The Department of the Interior and related agencies.*

*“(10) Military construction.*

*“(11) The Department of Transportation and related agencies.*

*“(12) The Treasury Department, the U.S. Postal Service, the Executive Office of the President, and certain independent agencies.*

*“(13) The legislative branch.”*

The analysis of chapter 13 of title 31, United States Code, is amended by inserting after the item relating to section 1310 the following new item:

**“1311. CONTINUING APPROPRIATIONS.”**

