tony babcock, rakkasan69, 22 July 2010, flickr.

Taking Back the Constitution - Part 10 - Appropriation Transparency

Donald N. Anderson
18 December 2013

Why address the appropriation process?

It often appears that all the forces of government have a bias in favor of higher taxes and higher expenditures. This bias is very apparent in the appropriations process. The process of compromise among the House, Senate, and President often results in taxation and spending higher than any one of the three would chose.

This has led to a government in which the best efforts of budget designers are dashed in the vote trading mêlée near the end of the appropriation process. Fiscal sanity is thrown out the window, and huge sums are traded to obtain the votes needed for passage. Only by setting a hard upper limit early in the process and limiting the size of individual bills can any serious weighing of alternatives be restored to the budget process.

Authorization and appropriation for federal spending

House and Senate rules define the process used by Congress to fund federal spending. The two sequential steps are:

1) An authorization bill that creates or continues an agency, program, or activity as well as authorizing the subsequent enactment of appropriations,
2) Appropriations to provide funds for the authorized agency, program, or activity.

Agencies and programs funded through the annual appropriation process referred to as *discretionary spending*, usually follow this two-step process. However, about 55% of federal spending is contained in the authorizing legislation, This is called *direct (or mandatory) spending.* Some direct spending, mostly entitlement programs, is funded by permanent appropriations in the authorizing law. Other direct spending (refered to as appropriated entitlements), is funded in appropriation acts, but the amount is controlled by the authorizing statute.[i]

Appropriations generally provide funds for one fiscal year (currently October 1 through September 30) but can run for longer periods. The Constitution limits army appropriations to two years.[ii]

The Origination Clause

The revenue clause in our Constitution reads:

> **All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.**[iii]

This represents a slightly different version of the rule in the UK Parliament that requires all money bills to be read first in the House of Commons.

Originating taxation is reserved to the House as the branch more representative of the population. Part of the original constitutional compromise permitted the Senate to represent the states without considering their relative populations. If the Senate had an equal voice in assessing taxes or initiating appropriations, the small states, who pay a small portion of the total taxes, would have power to reap disproportionate benefits.

House and Senate share only some powers

From the forgoing it is apparent that the House has greater control over taxation than the Senate, however the Senate can still block House bills until it gets what it wants. And the Senate, as the representative of the states, has sole control (with the President) over the approval of treaties, confirmation of administrative appointments, and federal judges. The House has no comparable exclusive powers.

The amendment below allows the House to set an upper limit for each appropriation in a binding budget bill. This helps prevent the “trading up” process to gain votes in both houses and the assent of the President. It moderates the powers of the Senate to modify tax bills or appropriations to higher levels.

Monster appropriations

There is a tendency to lump many appropriations into single bills. This reduces the ability of congressmen, staff, and citizens to focus attention on funding for specific programs. It creates bills that draw affirmative votes of Congressmen who may oppose a certain agency because they do not want to defund another agency.

The poorly examined and all inclusive appropriation reaches its worst form in a “continuing resolution.” This is a bill that authorizes the administration to keep spending in the new fiscal year, at the same level as in the last fiscal year, on the same programs. In general, no evaluation of and existing program occurs and Congress just shovels another pile of money at good programs and bad.

The amendment below limits the size of each appropriation to no more than a single department or agency. For large departments it also requires that the appropriations be divided by sub-departments so that no single appropriation bill funds more than ten percent of the government or its agencies.

For convenience in the discussions below, the term “department” will cover:

- official government departments whose budgets are less that 10 percent of the total,
- agencies that match the same criteria, and
- the sub-departments which are subsets of the largest departments divided to meet the ten percent limitation.

Continuing resolutions

Very often when disagreements about the budget prevent the passage and signing of new appropriations before the beginning of the fiscal year, Congress will pass a “continuing resolution” that funds government at the same level as the previous year. If the “continuing resolution” is not passed before the start of the fiscal year, the government goes through a partial government shutdown where “non-essential” employees are furloughed and a number of programs shut down.

In a shutdown, the two major parties and the President then attempt to score points in a display of extreme partisanship. In recent years, attempts to use the continuing resolution to defund unpopular programs has made them even more contentious. The President may shut down some public attractions, even though the shutdown costs more money than leaving them available. This can sometimes be used to gain leverage for preferred programs.

The amendment below replaces the continuing resolution with an automatic budget continuation at a slightly lower level if the appropriation for a department is not passed and signed prior to the beginning of the fiscal year. This automatic continuation budget shall continue for three months. If by that time a regular appropriation for the remaining nine months has been passed for that department, and signed, it shall come into force at the end of the three month period.

If an appropriation for that department has not been passed and signed before the end of the automatic continuation period, another automatic three month period shall begin without further reductions. This process can be repeated as necessary for the entire fiscal year.

Amendment Number ____

The House of Representatives shall pass a budget resolution specifying the maximum budget amount for each department. In this amendment, department shall mean:

- **a) a regular federal government department whose budget is less than ten percent of the total budget,**
- **b) an agency whose budget is less than 10 percent of the total budget,**
- **c) the sub-departments, into which a large department or agency is divided when it exceeds ten percent of the total.**

If this budget resolution is not passed three months before the beginning of the fiscal year to which it applies, the fiscal year will start with all departments having the automatic three-month continuing budget as defined below. The limits in this House budget resolution shall be binding on all preparation, amendment, passage and signing of each department's appropriation for the fiscal year.

Should enough Congressmen agree that an emergency exists requiring a supplemental appropriation for any department, it shall be considered only after that department's appropriation for the fiscal year has been passed and signed.

Appropriation bills shall be limited to a single department (as defined above) and may not be linked in any way that prevents their going into effect individually. If the House of Representatives fails to pass and send to the Senate each department's appropriation bill at least four weeks prior to the beginning of the fiscal year, the automatic continuing budget shall be invoked for that department.

If an appropriation bill for a department has not been passed by both houses and signed by the President, prior to the start of the fiscal year, an automatic three month continuing budget shall go into effect for that department. That continuing budget shall be the budget of the prior fiscal year less five percent. Any personnel not required during this period shall laid off, but eligible for rehire without compensation for the period under the continuing budget. Lacking the Presidents signature, an appropriation can also be approved using the regular veto override percentages in Congress.

If the House, Senate and President cannot agree on an appropriation for the remaining nine months by the end of the first three months, the continuing budget shall be extended for another three months. The process can be repeated for remainder of the fiscal year.

Senate amendment of appropriation bills shall be limited to removal of programs and addition of clarifying language.

This amendment shall go into effect in the first fiscal year which starts at least four months after ratification.

Budget reduction

The five percent reduction included in the first automatic continuing budget for each fiscal year is expressly intended to suggest to legislators and the President that they should complete the regular budget for that department in a timely fashion.

---

[i] Heniff Jr., Bill, *Overview of the Authorization-Appropriation Process*, Congressional Research Service, 26 November 2012.
[ii] Constitution of the United States, Article I, Section 8, clause 12 which reads, “To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Tears;”
[iii] Article I, Section 7, paragraph 1.