BUDGET BULLETIN

A WEEKLY BULLETIN PRODUCED WHEN THE SENATE IS IN SESSION.

COMMITTEE ON THE BUDGET Republican Staff

Judd Gregg, Ranking Member
202/224-0642 http://budget.senate.gov/republican

110th Congress, 1st Session: No. 1a

January 24, 2007

INFORMED BUDGETEER

The first two significant pieces of legislation considered by the House and Senate in the 110th Congress were H. Res. 6 (the House rules for the 110th Congress) and S. 1 (a bill to provide greater transparency in the legislative process), respectively. The issues covered by the legislation are complex and are difficult to compare and contrast between the two chambers.

This *Budget Bulletin*, along with the supplemental *Bulletin* that will be issued on the heels of this edition, summarizes the provisions of this legislation, as well as S. 10, the Restoring Fiscal Discipline Act of 2007, which includes some elements that parallel provisions in H. Res. 6. The two *Bulletin* editions then discuss in detail how each piece of legislation specifically deals with the issues of earmarks, pay-go, and reconciliation.

H. RES. 6

- H. Res. 6 is not a law and affects only the House of Representatives. The House passed Titles I and II of H. Res. 6 on January 4, 2007. Title I readopted the rules of the 109th Congress for the 110th Congress. Title II deals with ethics reform such as banning members from accepting gifts from lobbyists or from traveling on corporate jets.

- On January 5, 2007, the House passed the rest of H. Res. 6, including Title IV, which addresses the following issues:

- **Paygo.** H. Res. 6 makes it out of order in the House to consider any bill that has the net effect of increasing the deficit or reducing the surplus (only the House rule accompanying the bill can waive the point of order; rules accompanying legislation in the House can be adopted with a simple majority).

- The change in the deficit or surplus resulting from each bill will be measured relative to the most recent CBO baseline, which H. Res. 6 says must be calculated as set out by section 257 of the Congressional Budget Act. Each bill will be judged on a stand-alone basis. In other words, **each bill must be deficit neutral** over the two measurement periods: 2007-2012 (6 years) and 2007-2017 (11 years); savings from previously enacted bills will not be posted to any scorecard, and can't be used to offset legislation that the House will consider subsequently.

- **Reconciliation.** H. Res. 6 makes it out of order to consider a budget resolution that includes reconciliation instructions that would, on net, increase the deficit or reduce the surplus (like the pay-go point of order, the House rule accompanying the bill can waive the point of order). H. Res. 6 also creates an 11-year test for reconciliation directives, so the rule implies that a budget resolution that includes reconciliation instructions must be a 10-year resolution (plus the current year).

- **Earmark Reform.** H. Res. 6 makes it out of order to consider legislation unless the accompanying report includes a list of spending earmarks and limited tax and tariff benefits (those targeted to fewer than 10 beneficiaries), or else a statement affirming that there are no earmarks in the legislation. There is also a point of order against considering the House rule that accompanies each House bill if that rule waives this point of order (only a simple majority is needed to waive either of these points of order).

- The definition of an earmark under this legislation boils down to: a provision of a bill or language in the accompanying report that is included primarily at the request of a member that directs or recommends spending authority for an entity or is targeted to a specific State, locality or Congressional district, which would not necessarily occur through a formula-driven or competitive process.

- For each earmark, the member who is requesting it must provide the chairman and ranking member of the committee that reported the bill with the name, address and location of the intended recipient, the purpose, and a certification that the member has no financial interest. A record of this information is to be maintained by the committee and open to the public. The earmark rule also amends the Code of Official Conduct in the House to say a member may not condition the inclusion of an earmark on any vote cast by another member.

S. 1

- Over the past two weeks, the Senate considered and passed S. 1 – the lobbying and ethics bill. While H. Res. 6 already applies to the House because the House has passed it (H. Res. 6 does not require concurrence of the Senate or the President because it is not a law), the provisions of S. 1 are not yet operative, even though the Senate has now passed the bill.

- S.1 includes provisions that change the Standing Rules of the Senate (which could be made operative in the Senate if they were passed in an S. Res. vehicle). But it also includes other provisions that would change law, so none of S.1 will become operative until all the following conditions are met: the Senate passes it (already has happened), the House also passes it or conferences it with a similar House bill with an H.R. number and both the House and Senate pass the conference report, and the President signs it into law.

- S.1 would make it out of order to consider a bill unless a list of all the earmarks in the bill and the member(s) who proposed each earmark are made available to all members and the public at least 48 hours prior to consideration. The name of the intended recipient and the purpose are also to be made available to the public prior to consideration in a searchable format on the internet. S. 1, as now passed by the Senate, defines an earmark the same way as defined by H. Res. 6.

S.10

- S. 10 would replace the existing pay-go point of order in the Senate with a different 60-vote pay-go point of order. The proposed replacement pay-go point of order would apply against legislation that makes the on-budget deficit worse or creates an on-budget deficit (which also would require 60 votes to waive). Unlike H. Res. 6, S. 10 must be passed in the same form by both the House and Senate and signed by the President to be enacted and for any and all of its provision to take effect.

- The proposed Senate pay-go point of order does not appear to apply to bills that consume any of the budget surplus (if surpluses are projected in the baseline) by spending money or cutting taxes. S. 10 would require that the pay-go effects of legislation be measured relative to the CBO baseline calculated according to section 257 of the Congressional Budget Act.

- The Budget Committee would place those pay-go effects of legislation on the "pay-go scorecard," which would be adjusted for each enacted bill. Deciding whether pay-go applies to a particular bill would be based upon a comparison of the deficit impact of the bill and the "room", if any, on the pay-go scorecard at the time of consideration. The point of order would sunset on September 30, 2012.

- S.10 also would make it out of order for reconciliation to be used to increase the deficit OR decrease a surplus. S. 10 has been referred to the Committee on the Budget, but it is worth noting that seldom does legislation that changes the congressional budget process become enacted by going through the regular process of the Budget Committee reporting it and then the House and Senate passing it and the President signing it into law.

EARMARK DISCLOSURE: WHO TELLS WHOM WHAT, AND WHEN

- Earmarks have been a popular topic in the early weeks of the 110th Congress. Both the House rules package put forward by Speaker Pelosi (H. Res. 6) and the ethics bill passed last week in the Senate (S.1) include new disclosure requirements for earmarks. And last month, in reference to the omnibus continuing resolution that will ultimately conclude the fiscal year 2007 appropriations process, Appropriations Chairmen Obey and Byrd announced in a joint statement that: "There will be no Congressional earmarks in the joint funding resolution we will pass" (http://appropriations.house.gov/pr_121106.shtml).

- Though the two chairmen have guaranteed that their Appropriations Committees will report an earmark-free bill to conclude the 2007 appropriations process, it is still possible that someday in the future an earmark just might slip into a bill. So, when the next earmark appears in the House and Senate, who will have to disclose what to whom and when?

- Since the House has already adopted H. Res. 6, the earmark rule is in place now in the House of Representatives. Under that rule, it is out of order to consider a bill unless the report includes a list of earmarks, limited tax benefits, and limited tariff benefits, and the name of the requesting member for each item on those lists. If the bill does not go through committee, then the list must appear in the Congressional Record prior to consideration of the bill. A point of order lies against any bill on the House floor unless the required list of earmarks (or a statement that the bill contains no earmarks) has been made public in the report or in the Congressional Record.

- The point of order can be waived by a simple majority vote. H. Res. 6 also amends the House's Code of Official Conduct to say that a member cannot condition the inclusion of an earmark on the vote of another member on another bill.

- Perhaps the biggest challenge to disclosing earmarks is deciding: what exactly is an earmark? H. Res. 6 defines an earmark as: a provision or report language included primarily at the request of a Member, Delegate, Resident Commissioner, or Senator providing, authorizing or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality or Congressional district, other than through a statutory or administrative formula-driven or competitive award process. That's a mouthful -- but it does capture the essence of what most people consider earmarks.

- In the Senate, there is no rule on earmarks in place, and there is not likely to be one for quite some time. S.1, which the Senate passed last week, includes a change in the Standing Rules of the Senate that deals with earmarks. Since S.1 is a bill, none of its language becomes operative unless and until it is enacted. So the House will have to take up a companion bill (or S.1 itself), pass it, conference it, both chambers will need to pass the conference report, and the President will have to sign it before the earmark rule in S.1 will take effect. Alternatively, the Senate could take up an S. Res. that changes it's Standing Rules, pass it in the Senate and avoid any dealings with the House or President, but it does not appear the Senate plans to pursue that approach.

- Since the Senate earmark rule has yet to be put in place, one can't know what its final version will be. The language initially in S.1 differed substantially from that in H. Res. 6. However, Senator DeMint authored an amendment that was largely the same as that in H. Res. 6. After much debate and passage of a second-degree Durbin amendment, the Senate agreed to the DeMint language by a 98-0 vote.

- The Durbin second degree amendment changed the definition of targeted tax benefit to be a tax preference that goes to a limited number of beneficiaries (H. Res. 6 specifically says 10 or fewer). The other differences between the final DeMint amendment and H. Res. 6 are subtle variations in how, when, and in what format the earmark lists and earmark request information must be made public. Like in the House, the proposed Senate rule says a member may not condition inclusion of an earmark on another member's vote.

- In the Senate, a measure that violates the earmark disclosure rule would be ruled out of order (and there is no waiver procedure for Senate Rules). The bill would go down unless the body voted to overturn the ruling of the chair (or unless the Senate voted to suspend the Senate rule, which requires one day's notice and a ⅔ majority of those present and voting).

- Note that neither the House nor Senate earmark rules actually prevent or restrain earmarking. They simply require more transparency in the process.