

INFORMED BUDGETEER

SQUARE PEG INTO A ROUND HOLE (OR JUST JAM IT?)

- As conferees on the first-ever Homeland Security appropriations bill race to beat the new fiscal year deadline, they are confronted by a unique budget issue, which, because of the Administration's indecision, would trigger point-of-order problems for the bill unless carefully choreographed steps are taken.
- At issue is funding for the Project Bioshield proposal, a \$5.6-billion initiative proposed in the President's 2004 budget to develop and purchase countermeasures to combat public health threats. At the Administration's insistence, the Senate HELP Committee reported legislation (S. 15) to create Bioshield as a new mandatory spending program last March. As a result of the Administration's lobbying, the Senate-passed budget resolution created a mandatory reserve fund to accommodate S. 15. But the House-passed budget resolution included a reserve fund that would allow Bioshield to be authorized as either a mandatory or discretionary program. Both House and Senate budget conferees were reluctant to recede, so the budget resolution conference agreement adopted both reserve funds to apply in their respective chambers.
- Despite the Administration's preference for a mandatory Bioshield program, the House subsequently passed separate pieces of legislation to provide a discretionary Bioshield authorization and appropriation, and the House Budget Committee released the \$5.6 billion in their flexible reserve fund to the House Appropriations Committee. The appropriation itself is very unusual, essentially providing 10 years' worth of discretionary program funding all at once, with \$890 million for 2004 and a gigantic \$4.7 billion "advance" appropriation to cover the next nine years.
- When some Senate Democrats insisted on the House's approach of making Bioshield discretionary, the Administration quickly threw in the towel. OMB agreed to submit an official budget amendment that would shift their Bioshield request from mandatory to discretionary, and endorsed the unorthodox approach of the large advance appropriation.
- However, even with agreement evolving among authorizers, appropriators, and the Administration to make Bioshield a discretionary program, two problems remain for the Senate Budget Committee, which has to facilitate this agreement (with a more limited reserve fund in the Senate) as well as enforce the budget.
- How can the budget resolution be implemented to prevent procedural problems for the Homeland Security bill? Since the Senate's Bioshield reserve fund was not written to specifically accommodate this situation, it falls to the Budget Committee Chairman to employ all the available tools in the resolution. First, section 404 of the budget resolution allows the Chairman to increase the Senate HELP Committee's spending allocation by \$5.593 billion if it reports a mandatory Bioshield bill. S. 15 was reported in March, but has not yet been considered by the Senate and the reserve has not been released. Now, however, S. 15 will likely be amended to make the Bioshield spending discretionary.
- Next, Section 508 of the budget resolution allows the Chairman to adjust levels and allocations for enacted legislation that provides for a change in "concepts or definitions." Now that the President has submitted (on Sept. 12) a budget amendment to shift Bioshield from mandatory to discretionary, and if the House and Senate enact legislation that authorizes Bioshield as a discretionary program, the Chairman then can shift the Bioshield

spending authority from the Senate HELP Committee to the Senate Appropriations Committee and make other adjustments necessary to eliminate associated points of order against the Homeland Security appropriations bill (2004 and 2005 spending caps under Section 504 and the limitation on advance appropriations under Section 501). Of course, if and when the adjustments can be made will depend on the sequence of events necessary to trigger them.

- On the other hand, the end-of-session crunch simply might not accommodate all these players and steps (i.e. a Bioshield authorization bill may never be enacted). The Homeland Security appropriations conferees may prefer to take their chances by sending a bill to the Senate that exceeds its allocation, with the expectation that either no one would raise a point of order or that there are 60 votes to waive.
- How do you protect the integrity of the budget? An equally unique issue is the proposal's unconventional use of advance appropriations authority. It is rare to provide 10 years' worth of appropriations to a program in one fell swoop, and it opens the door to future "piggy-banking" or redirection of those funds.
- Congress decided in the 2001 budget resolution to begin limiting the use of advance appropriations since they had become a way to avoid annual spending limits. (The potential to abuse advance appropriations for scoring purposes was never more clearly illustrated than with the recent consideration of the Labor-HHS appropriations bill in the Senate, as amendment after amendment altered the timing of advance appropriations and claimed it as an "offset"; see following *Bulletin* article.)
- Since the potential for redirecting, rescinding, delaying, or accelerating the \$4.7 billion Bioshield advance appropriation presents too great a temptation, the HELP Committee Chairman's substitute for S. 15 would take these possible abuses off the table by creating a new scorekeeping rule to protect the unique purpose of this funding. The rule would ensure that any funding for Bioshield will be spent on that program, or not spent at all, by providing that any legislation changing the availability of the funds will not be scored for purposes of budget enforcement.

AN EMPTY "OFFSET"

- During consideration of the Labor-HHS appropriations bill the last two weeks, the Senate considered dozens of amendments to increase spending for various purposes. Some of them included offsets, some of them did not even bother to try an offset, but the majority of them just pretended to be offset. Sponsor after sponsor of the amendments with the pretend offset said the following (or something very similar): "my amendment is fully offset by using the same mechanism as in the underlying bill."
- Part of this statement is true. The amendments in question did expand on a mechanism contained in the underlying bill. But, to determine whether this mechanism is a valid offset requires a simple understanding of what an offset is, as well as a refresher in some recent appropriations history.
- First, why might one want an offset? Usually, budgets mean sticking to a spending total (302(b) allocation). Since the Labor-HHS appropriation is written to a certain total, if someone wants to add to that total in an amendment, that amendment faces a 60-vote point of order for exceeding the total. To avoid having to muster a supermajority of votes in favor, sponsors of such amendments sometime seek offsets. Makes sense: if you want to spend more on one thing, all you have to do is reduce spending on

something else to not exceed the total (as long as you don't trigger other points of order at the same time).

- Now for background on “the mechanism.” Last year, Congress failed to finish its work on a budget and most of the 13 appropriation bills. This was largely due to a \$9 billion disagreement on total budget authority (BA) between the Senate and President. When the majority in the Senate shifted, a compromise was reached in February. The President’s 2003 discretionary total would be adhered to, but the Congress was allowed to advance appropriate an additional \$2.2 billion in 2004, which made possible spending another \$2.2 billion in 2003. (This means \$2.2 billion still was provided for activities that normally would have been funded in the 2003 bill, but the BA was made available only on the first day of fiscal year 2004. BA is counted only in the year in which it becomes available.)
- Naturally, one good gimmick deserves another, and another. As the Appropriations Committee contemplated its 302(b) allocations for 2004, some who voted for the 2004 Budget Resolution “realized” too late that the resolution had “taken back” the advance appropriation allowed in the 2003 omnibus appropriations bill; so they reached a deal with the Administration. The very same \$2.2 billion that saved the day in 2003 (by being pushed into 2004) was to be pushed back into 2003, thereby freeing up room under the Budget Resolution’s 2004 cap. In 2003 we pretended this \$2.2 billion was 2004 money, so we could spend more in 2003, and in 2004 we are pretending it is 2003 money so we can spend more in 2004.
- The deal the appropriators reached with the Vice President, however, limited the shift to that \$2.2 billion, specifically stating that “[a]ny additional 2003 funding will be mutually agreed upon in advance.” The 2004 Labor-HHS bill implements the deal’s shift of \$2.2 billion back to 2003. Despite the existence of a 504(b) point of order against the entire bill for breaking the 2003 cap, it was implicit among those involved with the deal that the point of order would not be raised as long as the shift was limited to *only* \$2.2 billion. Given the spending provided by this mechanism and the existence of another \$18.9 billion in advance appropriations that had been provided in the 2003 Labor-HHS bill in 2004 that could potentially be moved back to 2003, amendment sponsors simply sought to augment the amount of the shift, and then proudly claimed they were “offsetting” their amendments.
- So now back to the original question: is this really an offset? Yes and no. If one looks only at 2004, then the answer is only a qualified “yes.” Within 2004, the amendment is fully offset and no caps are violated. But budgets must be enforced in all applicable years, not just one. It is not an offset if one examines all spending regardless of fiscal year. Such amendments seek to “fake out” enforcement in 2004 by spending more in 2003.
- The magnitude of the new spending proposed under the guise of this offset was enormous. The amendments that attempted to shift additional advance appropriations would have added an estimated \$327 billion to the deficit (including debt service) over the next ten years. The bill manager is to be commended for raising (and sustaining) 19 budget points of order, thereby successfully defending the budget.
- One final note: in order to shift the \$2.2 billion advance appropriations back to 2003 and have the budget authority counted in 2003, it has to still be fiscal 2003. The last day of fiscal year 2003 is fast approaching (September 30th). Amid rumors of the House blue-slipping the Labor-HHS bill, enactment of that bill by the deadline is threatened and the \$2.2 billion in the original deal is in danger of vanishing unless it is added to another bill signed by the President before October 1.

BUDGET POINTS OF ORDER RAISED IN THE SENATE UNDER THE 2004 BUDGET RESOLUTION			
Bill #	Bill Title	# of Points of Order Raised	# of Points of Order Sustained
S. 1054	Jobs & Growth Tax Relief Reconciliation Act of 2003	22	21
H.R. 2660	FY '04 Labor, HHS Appropriations Bill	20	20
H.R. 2555	FY '04 Homeland Security Appropriations Bill	9	9
H.R. 1298	AIDS Assistance Bill	1	1
H.J. Res. 51	Debt Limit Increase Resolution	1	1
S. 925	State Dept FY 2004 - 2005 Authorizations Bill	1	1
	TOTAL	54	53
	Type of Point of Order		
504(b)	Discretionary Spending Limits	19	19
302(f)	Committee Allocations	17	17
	<i>Homeland Security Appropriations Bill</i>	9	9
	<i>Jobs & Growth Tax Relief Reconciliation Act of 2003</i>	6	6
	<i>AIDS Assistance Bill</i>	1	1
	<i>State Dept. FY 2004 – 2005 Authorization Bill</i>	1	1
305(b)(2)	Germaneness	15	14
313	Byrd Rule	1	1
306	Budget Committee Jurisdiction	1	1
502(c)(5)	Emergency Designation	1	1
	TOTAL	54	53
	Type of Spending		
	Discretionary (L-HHS & Homeland Security)	29	29
	Mandatory/Revenues (remaining bills)	25	24
	TOTAL	54	53

Source: Senate Budget Committee Republican Staff

- Appropriation bills are moving, the start of fiscal 2004 looms, and conferences on Medicare and energy remain on the congressional leadership’s absolutely-must-do list. With this and other potential spending on Congress’ plate, combined with recently heightened deficit predictions and details imminent on an \$87 billion war supplemental (which was not assumed in the budget resolution), enforcing the budget as often as possible is imperative.
- To partially assess whether past Senate actions predict future resolve, it is worthwhile to review the success rate when Senators have raised points of order to enforce the budget. As with all points of order, budget points of order may only be made by a Senator from the floor. Consequently, some spending beyond what is contemplated in the budget resolution has knowingly gone unchecked because no Senator raised a point of order.
- A quick review of the table above shows six different budget points of order have been raised on 54 occasions on six different bills since passage of the 2004 budget resolution. In all, the Senate has defeated motions to waive these points of order on 53 of 54 occasions. (The one exception was an amendment where a point of order was applicable, not because the amendment exceeded the budget – the amendment had no net cost, but because the underlying bill was a privileged reconciliation bill and the amendment was not germane.)
- The majority of those 54 points of order (29) were raised against amendments proposing various ways of adding spending in two appropriation bills (through pure adds, timing shifts, or emergency designations). Another 22 points of order were raised against amendments to the Jobs and Growth Tax Relief Reconciliation Act of 2003. Of these, 16 were specifically related to reconciliation (Byrd rule and germaneness). The other six were for additional spending (which were either partially or wholly offset by revenue increases, but points of order may not be precluded by taxing and spending).
- Next week....a closer look at the budgetary implications of the 29 points of order that were raised on the Homeland Security and Labor-HHS appropriation bills.