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司法院大法官釋憲及統一解釋案審查會

中華民國 八十九 年 十二 月二十一日

行政院綜合意見書

行政院

謹針對本院就決議停止興建核能四廠並停止執行相關預算聲請解釋憲法及統一解釋案，貴院要求本院陳述之各項重點，說明本院之看法及理由如后。

壹、聲請憲法解釋之疑義及爭議何在？

依中華民國憲法第五十三條、第五十八條、第五十九條及憲法增修條文第三條第二項第一款之規定，本院有決定政策，提出施政方針，並配合政策提出預算案之權限，而依憲法第六十三條規定，立法院則有議決預算案之職權。惟預算經立法院審議通過，本院係獲得執行之授權，換言之，預算於歲出部分，係規範動支費用之上限，僅具授權效力，與法律之拘束力有所不同，並非不容許行政機關因情事變更或政策變更而縮減或停止預算之執行。

本院基於行政權與立法權分立之憲政原理，鑑於核能四廠（以下簡稱核四）

興建計畫自推動以來，社會經濟情勢已發生重大變遷，過去評估所依據之基礎與數據業已改變，國際上對核能電廠興建與否或核廢料之處理態度亦有所變化，故在經濟部組成「核四再評估委員會」，就核四存廢之議題進行討論，並提出替代方案，且經多次召開會議邀集相關專家學者、社會公正人士、當地居民等，聽取各方意見後，審慎評估決議同意經濟部建議停止興建，並配合政策變更而停止核四預算之執行，以建立非核家園作為日後施政方向，並無逾越前揭憲法賦予本院之權限。

詎立法院於本（八十九）年十一月七日依該院親民黨黨團之提案，認「預算案非僅由立法機關『形式上的批准許可』，而是其內容做『實質上的審議』，而非對行政機關動支國庫的『概括授權』。是故預算案不能僅視之為『行政行為』，而更應視為『法律行為』，預算案既獲立法院決議通過，即視同為法律案，行政

機關均應一體遵行，怠無疑義。行政部門忽略其『依法行政』的基本職責，一再以各種方式規避其執行法律的責任，甚而拒絕執行法律！不僅是法治社會中極壞的示範，更是公然違法失職」，爰決議：「函請監察院就行政院院長張俊雄及相關失職人員蔑視法律、違法失職之行為，予以依法糾彈」（見附件一）；立法院顯然認本院無權決議停止興建核四及停止執行核四預算，因此關於本院是否有權決議停止興建核四，及配合政策變更而停止核四預算之執行，本院與立法院已有明顯相歧之意見，已構成適用前揭憲法與其增修條文之疑義及與立法院權限劃分之爭議。

貳、聲請統一解釋須適用法令與他機關適用同一法令見解有異，請具體說明發生歧異之情形。

依預算法第二條之規定，預算經立法程序而公布者，稱法定預算。惟預算經

立法院審議通過，其效果為授權本院得在法定預算所定數額內，依施政需要與對立法院負責之施政方針與目標而動支經費，並非課本院必須將法定預算完全執行之義務，此從預算法第四章「預算之執行」僅在提供預算執行之相關程序規定，預算法第六十七條規定：「各機關重大工程之投資計畫，超過五年未動用預算者，其預算應重行審查。」，或決算法第十三條、第十五條第三項及第二十三條等相關規定明示預算因撙節或停止執行所產生之賸餘，屬法之所許，可知其並非不容許行政機關因情事變更或政策變更而縮減或停止預算之執行。從而本院基於公共目的等考量，從政策上決定停建核四，並配合政策變更而停止核四預算之執行，並不涉及違反預算法之問題。

詎立法院卻依該院親民黨黨團之提案，認「預算案應視為『法律行為』，預算案既獲立法院決議通過，即視同為法律案，行政機關均應一體遵行」，據以函

請監察院彈劾本院院長，則本院本於職權適用預算法之見解與立法院已生明顯相歧。

參、行政院對於經立法院通過之重要政策或重要事項並已編列預算，可否逕不予執行？

關於興建核四案，係經立法院於八十三年七月通過八十四年度中央政府總預算案附屬單位預算案中編列於臺電公司附屬單位預算之核四預算一一二五億餘元，故核四案係經本院以編列「預算案」之方式提出於立法院，並經該院以「預算案」之方式審議通過，並非該院提案興建核四。嗣該院於八十五年決議依憲法第五十七條第二款之規定函請本院立刻廢止所有核能電廠之興建計畫，刻正進行之建廠工程應即停工善後，並停止動支任何相關預算，且繳回國庫在案，故本案並無經立法院通過「重要政策」或「重要事項」之情事。茲就本問

題涉及之憲法及預算法相關規定再詳述如后：

一、依憲法第五十七條第二款規定，立法院僅能就其所認屬於本院之重要政策請求變更，並無所謂立法院通過重要政策可言，自亦無所謂本院對於經立法院通過之重要政策可否逕不予執行之問題

按憲法本文提到「重要政策」一詞者，僅憲法第五十七條第二款：「行政院依左列規定，對立法院負責：…二、立法院對於行政院之重要政策不贊同時，得以決議移請行政院變更之。行政院對於立法院之決議，得經總統之核可，移請立法院覆議。覆議時，如經出席立法委員三分之二維持原決議，行政院院長應即接受該決議或辭職。」

依憲法第五十七條第二款之文義觀之，乃指對本院之施政事項，立法院不贊同時，得以「決議」移請本院變更，對於立法院之「決議」，本院則可經總統

之核可，移請立法院「覆議」。是以，單就本款之規範意旨以言，並無所謂立法院「通過」之重要政策可言，立法院至多僅能就其所認屬於本院之「重要政策」，請求本院變更而已，從而，自無所謂本院對於經立法院通過之重要政策可否逕不予執行之問題存在。況於八十六年修憲已將憲法第五十七條第二款移請變更重要政策與覆議制度停止適用，足見於現行規定之下，立法院更無「通過」重要政策之可能，至於立法院以通過「法律案」或「預算案」之方式來表彰某種重要政策，則屬涉及「法律案」與「預算案」之效力問題。

二、核四預算案非屬憲法第五十八條第二項所稱本院提出於立法院之其他「重要事項」，亦非屬憲法第六十三條所稱立法院議決之國家其他「重要事項」，自亦無本院可否逕不予執行之問題

憲法提到「重要事項」者有二處，一為第五十八條第二項：「行政院院長、

各部會首長，須將應行提出於立法院之法律案、預算案、戒嚴案、大赦案、宣戰案、媾和案、條約案及其他重要事項，或涉及各部會共同關係之事項，提出於行政院會議議決之。」，一為第六十三條：「立法院有議決法律案、預算案、戒嚴案、大赦案、宣戰案、媾和案、條約案及國家其他重要事項之權。」。

就憲法第五十八條第二項而言，該項所指「其他重要事項」者，係指法律案、預算案、戒嚴案、大赦案、宣戰案、媾和案、條約案以外應行提出於立法院而須先提出於本院會議議決之事項，其乃屬憲法賦予本院之職權，至為明顯，核四預算係經本院以編列預算案之方式提出於立法院，立法院亦以預算案之方式議決，故非屬憲法第五十八條第二項所稱本院提出於立法院之其他重要事項，自亦無本院對於立法院通過之重要事項是否可逕不予執行之問題存在。

次就憲法第六十三條規定以論，該條所稱立法院有議決「國家其他重要事項」

之權，係相對於立法院有議決「法律案」、「預算案」、「戒嚴案」、「大赦案」、「宣戰案」、「媾和案」及「條約案」之權。核四興建案既經立法院以通過「預算案」之方式議決在案，則應非屬憲法第六十三條所稱立法院議決之國家其他「重要事項」。更何況立法院固然可議決重要事項，但得議決之範圍亦應受到憲法權力分立、基本權利之限制。基於我國憲法五權對等分立之基本精神，各機關之權力各有其固有之核心領域，不容其他機關任意介入。就本案而論，執行乃是行政權之固有機能。立法院即使得針對「一般、抽象事項」為決定，但仍不得介入涉及個案決定之事項（例如特定電廠是否興建？應否核發使用執照？），從而，是否繼續興建特定核能電廠乃屬特定個案之決定，應不屬於憲法賦予立法院得議決之重要事項範圍。

其次，立法院就所屬於其職權範圍內重要事項所為之任何議決，其效力如何

亦應考慮其議決之形式。立法院如以法律案之形式表現其議決，此項議決自依法律內容發生其拘束力，以預算案之形式表現其議決，此項議決則發生預算應有之效力。反之，如立法院係以單純決議之形式表現其議決，參照貴院第二六四號及第四一九號解釋，此類單純決議原則上應無法律拘束力。以本案而言，立法院從未通過任何法律課予本院興建核四之行為義務，亦未通過任何單純決議要求本院續建核四，而僅是透過預算案之形式授權本院在特定金額之上限內得興建核四。因此本院本於自己職權決定停建核四廠，並未違反任何憲法或法律規定。縱退一步言，如憲法第六十三條所稱之重要事項包括「本件預算案所涉及之事項」，立法院所為之單純議決，對於本院亦無拘束力，從而自亦無本院可否逕不予執行之問題存在。

三、立法院通過之法定預算，本院非必須完全執行

核四興建案既係立法院以通過「預算案」之方式議決在案，關於立法院議決之法定預算，本院可否逕不予執行，則必須從法定預算之性質、拘束力及預算法之規定探究之：

（一）法定預算與法律之性質不同

本件有關預算案與法律案之不同，貴院釋字第三九一號解釋已論述綦詳，依其解釋理由書所載：「預算案亦有其特殊性而與法律案不同：法律案無論關係院或立法委員皆有提案權，預算案則祇許行政院提出，此其一；法律案之提出及審議並無時程之限制，預算案則因關係政府整體年度之收支，須在一定期間內完成立法程序，故提案及審議皆有其時限，此其二；除此之外，預算案法律案尚有一項本質上之區別，即法律係對不特定人（包括政府機關與一般人民）之權利義務關係所作之抽象規定，

並可無限制的反覆產生其規範效力，預算案係以具體數字記載政府機關維持其正常運作及執行各項施政計畫所須之經費，每一年度實施一次即失其效力，兩者規定之內容、拘束之對象及持續性完全不同，故預算案實質上為行政行為之一種，但基於民主憲政之原理，預算案又必須由立法機關審議通過而具有法律之形式，故有稱之為措施性法律（Massnahmegesetz）者，以有別於通常意義之法律。而現時立法院審議預算案常有在某機關之科目下，刪減總額若干元，細節由該機關自行調整之決議，亦足以證明預算案之審議與法律案有其根本之差異，在法律案則絕不允許法案通過，文字或條次由主管機關自行調整之情事。是立法機關審議預算案具有批准行政措施即年度施政計畫之性質，其審議方式自不得比照法律案作逐條逐句之增刪修改，而對各機關所編列預算之數額，

在款項目節間移動增減並追加或削減原預算之項目，實質上變動施政計畫之內容，造成政策成敗無所歸屬，政治責任難予釐清之結果，有違立法權與行政權分立之憲政原理。」，足見預算案與法律案不同，業經貴院釋字第三九一號解釋所肯認。而預算案經立法院審議通過後，即為法定預算，法定預算拘束之對象既係對行政機關就特定事項與款項有所確定，其內容非具一般性、抽象性，亦非對人民權利義務關係直接產生得喪變更之影響，並不具有外部效力，自與一般法律顯然有別。

（二）法定預算並未課行政機關完全執行之義務

在民主國家中，預算案之審查及議決權乃是代表民意之國會在憲法規定任務中最重要之一項。國會可經由預算案議決權之行使，從財政方面對政府作為之每一步驟加以限制及監督。在我國，立法院依憲法第六

十二條及第六十三條之規定為國家最高之立法機關，有議決由本院所提中央政府總預算案之權，而相對於立法院之預算同意權，則本院作為國家最高行政機關，有憲法第五十八條規定之預算提案權。預算案之提案權及議決權分別由本院及立法院為之，此乃依據國民主權原則及其所導出之權力分立原則所得出之必然結果。蓋預算乃國家收入支出之預定總計畫，且以國民之負擔為基礎，在今日以國民作為國家主體之民主國家，為防止政府擅專，為不必要之浪費支出，造成國家財政上及人民稅賦上之沈重負擔，賦予代表國民之國會有審查及議決政府所提預算案之權力。因此國會之預算同意權被稱為立法者所單獨擁有之監督權。惟依我國憲法第七十條之規定：「立法院對於行政院所提預算案，不得為增加支出之提議」，實已限制立法院預算案議決權之行使。

立法院經由審查而議決之法定預算，本質上是一種對行政機關之授權，使行政機關得為達到一定施政目的，而支出由立法院所同意之預算。且如前所述，預算法第六十七條之規定，以及決算法第十三條、第十五條第三項及第二十三條等相關規定，均顯示預算得因撙節或停止執行而產生賸餘，即行政機關於必要時，得基於政策或業務需要，本於其政策決定權自為決定，並因此負其政治責任。如由立法院分別選擇預算項目，個別決定行政部門是否有支出預算之義務，不免使行政與立法部門就預算執行之責任劃分混淆不清。貴院釋字第三九一號解釋亦以「政策成敗無所歸屬，政治責任難予釐清之結果，有違立法權與行政權分立之憲政原理」為理由，否定立法機關審議預算案時，有於款項目節間移動增減並追加或削減預算項目之權限。本於相同考量，基於責任分明之原理，

為達釐清立法權與行政權責任界限之目標，亦應否認立法院有針對個別預算項目課予行政機關執行義務之權限；從而法定預算所課者，乃行政機關不得在無法定預算授權下支出經費，亦禁止行政機關違背各項經費預定用途而支出經費，除有其他法律課予行政機關義務，使其依該法律規定，在執行法律賦予任務範圍內，來支出經費外，並不課予行政機關完全執行法定預算之義務。

（三）法定預算之停止執行，預算法並無禁止之明文規定

就預算法相關規定而言，預算法第五條第一項規定：「稱經費者，謂依法定用途與條件得支用之金額，……」，從本條規定將經費定義為「得支用之金額」以觀，預算法亦將歲出預算之各項經費定位為授權使用之金額，而非必須使用之義務性金額。次依同條項規定所謂經費，按其得

支用期間可分為歲定經費、繼續經費及法定經費三種，其中僅法定經費之設定、變更或廢止，始需以法律為之。換言之，只有法定經費之執行才是義務。但即使是法定經費之執行義務亦非來自預算本身，而是來自設定該項法定經費之法律。預算執行機關如果不動支法定經費而違法，係因違反設定該項法定經費之法律而違法，並非不動支經費之本身當然違法。本案所涉及之核四預算其依據並非法律，故非屬法定經費，因此現在廢止或停止動支自亦不需法律之依據，而未來是否編列此項經費，則最初編列之行政部門本身即可決定。

又預算法第二十四條規定：「政府徵收賦稅、規費及因實施管制所發生之收入，或其他有強制性之收入，應先經本法所定預算程序。但法律另有規定者，不在此限。」；第二十五條規定：「政府不得於預算所定外，

動用公款、處分公有財物或為投資之行為……。」；第二十六條規定：「政府大宗動產、不動產之買賣或交換，均須依據本法所定預算程序為之。」；第二十七條規定：「政府非依法律，不得於其預算外增加債務；……。」，前述條文均係規範政府機關不得為預算外徵取收入、動支公款、處分公有財物、進行投資或增加債務等，至於預算法對於因情勢變更而須停止法定預算之執行，則無禁止之明文規定。

至預算法第四章「預算之執行」係有關預算執行之規範，僅在提供預算執行之相關程序規定，亦未課予行政機關必須將法定預算全數執行完畢之義務。預算法第六十七條規定：「各機關重大工程之投資計畫，超過五年未動用預算者，其預算應重行審查。」，允許各機關重大工程之投資計畫，於五年內可斟酌衡量各項情事，決定是否予以執行，縱令執行機關於五年內從未動支該筆預算，亦僅使該筆法定預算之授權失效，從

而如欲維持該預算，應由立法院重新審查而已；第六十九條規定：「中央主計機關審核各機關報告，或依第六十六條規定實地調查結果發現該機關未按季或按期之進度完成預定工作，或原定歲出預算有節減之必要時，得協商其主管機關呈報行政院核定，將其已定分配數或以後各期分配數之一部或全部，列為準備，俟有實際需要，專案核准動支或列入賸餘辦理。」，對於未按進度完成之計畫，或預算有節減必要時，中央主計機關得就法定預算之一部分，報本院核定停止執行而列入賸餘；第七十二條規定：「會計年度結束後，……其經費未經使用者，應即停止使用。但已發生而尚未清償之債務或契約責任部分，經核准者，得轉入下年度列為以前年度應付款或保留數準備。」，法定預算於年度終了未執行部分，除已發生債務或契約責任，始得保留於下一年度繼續執行，否則即失去執

行之授權。綜上，依預算法相關條文規定之意旨，均未課行政機關須依法定預算完全執行之義務，就此觀之，法定預算之停止執行，亦為預算法所不禁。

肆、本件預算案所涉及之事項，於民國八十五年五月二十四日立法院依憲法移請行政院變更，嗣經行政院函請覆議，目前行政院是否認為本件已不屬於憲法所稱之重要政策或重要事項？

一、民國八十五年本院之覆議案，僅使立法院決議廢止核能電廠興建之原決議不予維持，並未「創造」出本院應繼續維持興建核四政策之義務就八十五年覆議案之內容以觀，立法院於八十五年五月二十四日第三屆第一會期第十五次會議，討論張委員俊宏等五十三人為本院持續興建核能電廠，嚴重威脅人民生命，依憲法第五十七條第二款規定移請變更之提案，決議依憲

法第五十七條第二款規定，立刻廢止所有核能電廠之興建計畫，刻正進行之建廠工程應即停工善後，並停止動支任何相關預算且繳回國庫，並經該院於同年六月四日(85)院臺議字第一六四二號函請本院查照辦理。本院經提同年六月六日本院第二四八三次會議決議通過，並經呈奉總統同年六月十一日核可後於八十五年六月十二日移請立法院覆議。上開覆議案經立法院第三屆第二會期第一次全院委員會審查，提同會期第十一次會議以無記名投票表決：「贊成維持本院原決議者〇人，未達憲法第五十七條第二款所定三分之二人數，原決議不予維持。」，則上開覆議案之議決效果，僅使立法院決議廢止核能電廠興建之原決議不予維持，本院處於如同立法院決議移請變更重要政策前之狀態，即得維持興建核四而已，至本院是否繼續維持興建核四之政策，則屬行政權得予決定之事項，故從該次覆議內容而言，實不能創造出本院應繼續維持興建核四政策之

義務。

二、停止興建核四，係屬本院當前施政事項，八十六年修憲後，憲法第五十七條第二款立法院對本院重要政策不贊同時得決議移請本院變更之制度，已停止適用：

核四計畫係經本院審慎評估後決議同意經濟部建議停止興建，並以建立非核家園作為日後施政方向，是停止興建核四，係屬本院當前重要政策，並無疑義。立法院對本院停止興建核四計畫之重要政策若不贊同，本可依憲法第五十七條第二款規定主動以決議移請本院變更之，對此決議，本院則可提出覆議以資對抗。惟八十六年修憲時，上開憲法第五十七條第二款移請變更重要政策與覆議之制度，已停止適用。故修憲後，立法院若對本院重要政策不贊同時，得循憲法增修條文第三條第二項第三款規定程序提出不信任案，是憲法增修條文已定

有相當之機制可循。

伍、行政院為本件之決策，有無通知立法院或向立法院提出報告之義務

立法院職權行使法第十七條規定：「行政院遇有重要事項發生，或施政方針於變更時，行政院長或有關部會首長應向立法院院會提出報告，並備質詢。前項情事發生時，如有立法委員提議，三十人以上的連署或附議，亦得邀請行政院院長或有關部會首長向立法院院會報告，並備質詢。」，上開規定雖課本院以重要事項發生，或施政方針變更時，向立法院院會報告之義務，但並未規定本院於施政方針變更前，須先向立法院院會報告，亦無規定須取得立法院之同意後始得變更，立法院對其報告有反對之意見，亦至多僅得依憲法增修條文第三條第二項第三款提起不信任案而已。

關於核四停建案，主管機關經濟部於本（八十九）年九月三十日向本院提

出停建核四建議後，即曾就該部停建核四之考量過程、相關替代方案之可行性，積極向立法院溝通說明，包括本年十月十一、十二日兩天，經濟部林部長列席，立法院經濟及能源委員會，針對各立法委員對核四停建案之質詢逐一說明。十月二十四日立法院就九十年度中央政府總預算案舉行朝野協商時要求本院應於十一月十五日前就核四案作成決定，本院遂於十月二十七日本院第二七〇六次會議通過決議停建核四，經濟部林部長並於十月三十日出席立法院預算決算委員會報告「八十八年下半年及八十九年度核四預算執行暨九十年度核四預算編列情形」，就核四停建之考量予以說明，及答復委員質詢。

此外，本院決議停建核四後，本院張院長旋於十月三十一日率全體部會首長至立法院，擬俟機就該案向院會說明並備詢。惟該日原排定之總質詢議程經立法院決議變更，而未有機會進行詢答說明。由於立法院表明不歡迎本院院長

列席立法院院會，因此迄今亦無法依據立法院職權行使法第十七條規定，向立法院院會提出報告。

陸、本件預算及決算之性質為何？與公務機關預算有何不同？又何謂財政上之不法或不忠於職務之行為，不執行法定預算是否屬之？

一、本件預算之性質

我國之中央政府預算，依預算法第十六條規定，分為總預算、單位預算、單位預算之分預算、附屬單位預算及附屬單位分預算等五類，其中附屬單位預算（連同其分預算）之內容，主要為編列政府有關商業型活動機構（如國營事業、國立醫院等）之財務收支事項，在預算法中基於其需為營業收支等與總預算及單位預算（即公務機關預算）不同之特色，遂另立一章規定。附屬單位預算又分營業基金部分與非營業基金部分兩種，本件所牽涉之核四預算即屬營業基金部分，即通稱之國營事業預算。

二、營業基金預算與公務預算之不同

法定預算成立之後，行政機關之動支經費雖已得到授權，但亦同時受到種種限制，為免膠柱鼓瑟，轉而無法靈活運用預算以對應國家社會之實際情況，甚且有害公益，乃設有種種彈性調整的機制，以緩和法定預算之金額、目的等限制。此等彈性調整機制，在公務預算一般而言為：預算之流用、預備金以及追加預算等；在營業基金部分即為預算法第八十七條及第八十八條所規定之彈性處理方式。按預算法第八十七條第一項規定：「各編製營業基金預算之機關……其配合業務增減需要隨同調整之收支，併入決算辦理。」；另同法第八十八條規定：「附屬單位預算之執行，如因市場狀況之重大變遷或業務之實際需要，報經行政院核准者，得先行辦理，並得不受第二十五條至第二十七條之限制。……」，其所以就附屬單位預算設有此等特別規定，乃因其受市場狀況之影響，其收出

與支出具有他動之特色，若以法定預算一律加以束縛，恐怕將會無法對應實際情勢之發展而被市場淘汰，故而允許其在執行上擁有較大之彈性，並且以本院為核准機關。由於營業基金之經營必須個別負擔盈虧之責任，因此經營者之預算執行有類一般企業，以適度提高其競爭力，以免最終造成虧累轉嫁給國庫乃至一般國民負擔。職是之故，其預算執行彈性自較完全由國庫負擔之公務預算為高，過去之預算停止執行先例在營業基金部分所在多有，亦係基於此種原因。

三、審計法所稱「財政上之不法或不忠於職務之行為」之意義

依憲法第一百零四條規定，監察院設審計長，由總統提名，經立法院同意任命之；憲法第一百零五條並規定，審計長應於行政院提出決算後三個月內，依法完成審核，並提出審核報告於立法院。可知決算審核為審計長之職責。但審計長乃審計部之首長，其下有甚多審計人員輔助其履行憲法上之義務。依審

計法第十七條規定：「審計人員發覺各機關人員有財務上不法或不忠於職務上之行為，應報告該管審計機關，…」係規定審計人員於執行職務時，如發現財務上不法或不忠情事之處理方式。其所稱不法，包括違反法律之規定，或缺少法律之依據；所稱不忠於職務上之行為，包括廢弛職務（應為而不為）或逾越權限（不應為而為）。惟此等不法與不忠之審計，雖分就預算執行之合法性與經濟性著眼，但其目的在防止政府為不法或不經濟之支出，以提高預算執行之效能，而非限制政府必須百分之百執行預算。此觀諸預算法第二十八條規定：「審計機關應供給審核以前年度預算執行之有關資料，及財務上增進效能與減少不經濟支出之建議」，可得明證。本件本院決議停止執行核四法定預算，係基於政策決定之必要性，在預算法及相關法規並無明文禁止之情況下，應無前揭審計法所稱之財政上之不法或不忠於職務之行為。

柒、本件本院停止興建電廠，並不再執行預算，是否違憲違法？

一、本院決議停止興建核四，並無逾越憲法賦予本院之權限

依憲法第五十三條與憲法增修條文第三條第二項第一款規定，本院為憲法所定之最高行政機關，自有依憲法授予行政權之範疇內，為決策與執行之權，其他權力部門在憲法所定之範圍內固可進行監督，但對行政權之行使亦應予以尊重。行政機關直接面對國家發展之需要與人民之需求，運用行政專業提出各種施政計畫固為行政權之核心內涵，因情勢變遷或國家需求之變化而作施政之變更，亦屬行政權之核心範疇。

核子反應器設施之設置，內含各種專業，舉凡成本效益分析、能源結構、安全分析、風險評估、後端營運、財務保證、緊急應變、及風險溝通等，均需配合國內之發展與國際情勢作權衡分析，因此國際上有核能反應器設施之國家，

除整體抽象之核能政策走向外，都透過法律之制定，由行政機關就個別核能反應器設施之設置，基於其專業作較周延之裁量與判斷，由於立法院曾通過「原子能法」，就核子原料、燃料及反應器之管制等事項，包括建廠執照及使用執照之核發，由本院原子能委員會審核，就此而言，立法院已透過原子能法之制定，而將核能電廠興建之個案決定權授予本院（原子能委員會）。

鑑於核四建廠計畫自推動以來，社會經濟情勢已發生重大變遷，過去評估所依據之基礎數據業已改變，國際上對核能電廠興建與否或核廢料之處理態度亦有所變化，在經濟部組成「核四再評估委員會」，就核四存廢之議題進行討論，並提出替代方案且經多次召開會議邀集相關專家學者、社會公正人士、當地居民等，聽取各方意見後，本院經審慎評估決議同意經濟部建議停止興建並停止執行相關預算，且以建立非核家園作為日後施政方向，乃是行政權積極面對情

勢變遷與國家發展需求所做之必要調整，並無逾越憲法賦予本院之權限。

二、本院停止核四預算之執行，係配合政策變更而為，屬行政權預算執行上之自我形成空間。

按經立法院審查通過之法定預算，其本質為一種對政府之授權，使政府得為達到一定施政上之目的，而支出由立法院同意之預算，俾在施政上直接受民意之監督，達到合理節制之目的，故立法院預算審議權在於控制本院經費使用上限，避免浮濫編列、動支經費，並不在使立法院取代本院最高行政機關之地位，而強制本院執行特定施政計畫；此觀我國憲法除第五十八條規定本院獨享預算之提案權外，於第七十條規定：「立法院對於本院所提預算案，不得為增加支出之提議。」，更限制立法院之修正權與審議權，可見預算之製作及執行乃屬行政權之領域，為我國憲法之基本精神。而貴院釋字第三九一號更明確釋示立法院

不得對本院所提之預算編列數額在款項目節間移動增減並追加或削減原預算之項目，即以其涉及施政計畫之變動與調整，立法院無權為之，否則會導致政策成敗無所歸屬，有違行政權與立法權分立，各本所司之制衡原理。至預算通過後，因其係授權行政機關依其編列項目支用法定預算，已為預算執行上之自我形成空間，故本院因決議停建核四並停止執行相關預算之執行，並無違憲可言。如立法院在預算編列或議決後，可任意干預或變更本院之預算執行，此不僅侵害行政權自我形成空間，亦無法確立預算編列與決議後本院應負政策成敗之政治責任，反使行政權與立法權之責任劃分不明確，違反法治國原則與權力分立下之責任政治。

三、本院停止執行核四預算，並不涉及違法問題：

（一）預算法之規範效力，並無課以行政機關須依法定預算完全執行之義務，

又核四預算係編列於臺電公司附屬單位預算之固定資產投資計畫，預算法對法定預算之停止執行既無禁止之明文規定，本院停止執行核四預算，並無違反預算法暨相關主計法規之問題。

（二）預算係財政手段，本身非施政目的，不動支預算是否違法或妥當，皆應以是否達成施政目的為判斷標準

按預算本為達成政策目標之手段，至於預算是否完全執行，主要由執行機關內部控制即可。在正常情況下，預算既係政府達成政策目標之工具，又經立法機關事前同意，執行機關必然盡力執行，以爭取選民認同，否則政策目標無法達成。然而，正常情況下預算之完全執行，並不意味法定預算因此具有強制力，毋寧係因預算之完全執行符合執行機關政策目標之緣故。惟執行機關認有必要，經審慎考量，亦非不可放棄預算之執行。行政機關既有政策制定權，則當然必須承認

其可透過不執行預算之方式放棄政策目標。以興建核四而言，如行政機關已找到更便宜或其他更佳之電力供應替代方案，當然應斟酌是否動支預算繼續興建核四。

捌、停建電廠之後，可能發生之賠償問題，如何因應？

核四停止興建，係本院考量以不建核四不會缺電，核四可以具體可行方案替代，核廢料是萬年無解難題，核災萬一發生，危機處理堪慮，核四合約中止損失尚可忍受，為永續發展臺灣經濟，順應國際廢核能發電之趨勢，逐漸建立非核家園等因素，經通盤審慎評估所作決定，其效益遠大於停建可能發生之賠償。至於核四停建後可能發生之賠償問題，則應依臺電公司與相關廠商所簽訂之契約及預算法、會計法等相關主計法規處理。另因核四預算係編列於臺電公司附屬單位預算內，而該公司為公開發行公司，因此，其賠償或損失金額之認

列，亦應同時遵照商業會計法、財政部證券暨期貨管理委員會發布之證券發行人財務報告編製準則第十一條、財團法人中華民國會計研究發展基金會公布之財務會計準則公報第一號第四十七段等相關規定辦理。

玖、以往有無類此法定預算未予執行之事例，如何處理？

前已述及預算法對於已編列預算之資本支出計畫之停辦並無明文規定。但本院為使年度進行中，如因財務狀況欠佳，資金來源無著，或因情勢變遷，無法達成預期效益，或因其他原因，致繼續執行已無效益之資本支出，為避免造成無效率或資源浪費，本院乃於「中央政府附屬單位預算執行要點」中規定各事業經審慎檢討後，報經本院或主管機關核定，得予緩辦或停辦。

過去國營事業資本支出已有法定預算遇確實窒礙難行、更符合公益之替代方案或情事變更等情形，而照前項要點規定，報本院核准停止執行之案例，例如

臺電公司林口—深澳電廠供煤系統工程計畫（七十五—八十年度）、臺機公司連鑄機計畫（七十七年度）、臺糖公司擴展肉牛飼養計畫（七十七—八十年度）、臺糖公司高雄育樂園開發計畫（七十九—八十年度）、臺糖公司鹿寮溪水庫風景遊樂區開發計畫（七十九—八十一年度）、中油公司高廠第四低硫燃油煉製工場計畫（七十九—八十三年度）、臺電公司高屏電廠竹門分廠更新工程計畫（七十九—八十四年度）、臺電公司澎湖發電廠第九—十部機發電工程計畫（八十—八十三年度）、中油公司北部油輪碼頭輸儲設備興建計畫（八十二—八十六年度）及菸酒公賣局宜蘭酒廠遷建計畫（八十七—九十二年度）等，各該案件停辦之原因、法令依據與處理情形如附件二。

另由本院授權各主管機關核定停止執行之案例，亦有如臺汽公司高雄地區場組遷建（七十六—八十四年度）、合作金庫購置松山支庫土地（八十七年度）、合作金庫購置岡山支庫土地（八十七年度）、臺灣銀行宜蘭分行臨時行舍新建工

程（八十七—八十八年度）、臺糖公司製糖工場遷越計畫（八十七—八十八年下半年及八十九年合作金庫瑞安支庫新建工程（八十八年度）、合作金庫屏東地區辦公室工程（八十八年度）、合作金庫新總庫大樓新建工程（八十八年度）、臺灣土地銀行南區檔案倉庫新建工程（八十八年下半年及八十九年度）及臺汽公司購車計畫—中興號五九六輛（其中九十六輛停辦）（八十八年下半年及八十九年度）等，其相關資料如附件三。

立法院議案關係文書

（中華民國四十一年九月起編號）
中華民國八十九年十一月一日印發

院總第一七九四號　委員提案第三二八三號

案由：本院親民黨黨團，鑑於行政院於十月二十七日，宣佈停止興建核四，悍然不顧立法院於民國八十五年即已做成之興建決議。行政院輕忽行政部門「依法行政」的基本職責，一再規避執行法律的責任，違法失職之情事，昭昭在目；踐踏法律尊嚴，莫此為甚！親民黨團強烈要求立法院，就行政院院長蔑視法律、違法失職之行逕，移請監察院予以彈劾懲處，以為儆戒！是否有當，敬請公決。

說明：

民國八十五年五月，立法院以七十六比四十二票三讀通過廢止核四廠興建案，根據憲法第三條第二款規定，「行政院對立法院決議，認為有窒礙難行之處，可提覆議」。行政院旋即決定對核四提出覆議案，同年十月十八日立法院以八十三票通過核四覆議案，核四計劃就此拍板定案。

大法官釋字三九一號解釋文，曾提及「預算不等同法律」，行政院竟遽以斷章取義，倡言行政院可逕行判斷預算案之執行與否，查預算案非僅由立法機關「形式上的批准許可」，而是其內容做「實質上的審議」，而非對行政機關動支國庫的「概括授權

」，是故預算案不能僅視之為「行政行為」，而更應視為「法律行為」，預算案既獲立法院決議通過，即視同為法律案，行政機關均應一體遵行，殆無疑義。

行政部門忽略其「依法行政」的基本職責，一再以各種方式規避其執行法律的責任，甚而拒絕執行法律！不僅是法治社會中極惡的示範，更是公然違法失職！立法院就行政院院長蔑視法律、違法失職之行逕，移請監察院予以彈劾懲處，以為儆戒！

親民黨立法院黨團　陳　振　盛

議事錄

立法院第四屆第四會期第十二次會議議事錄

時　　間　中華民國八十九年十一月七日（星期二）上午九時一分至十二時三十一分、下午三時三十一分至四時二十一分

地　　點　本院議場

出席委員　曾振農　饒穎奇　黃木添　呂新民　巴燕・達魯　劉政鴻　洪性榮　蕭金蘭　邱永仁

洪　讀　何智輝　林國龍　張蔡美　李顯榮　林政則　劉盛良　黃明和　張福興　徐少萍

卓伯源　李鳴皋　林宗男　吳清池　李正宗　劉光華　郭榮宗　周錫瑋　廖福本　張川田

陳宏昌　許素葉　蔡鈴蘭　陳景峻　潘維剛　周正之　唐碧娥　謝章捷　穆閩珠　楊秋興

曹爾忠　曾永權　鄭龍水　馮定國　賴清德　羅福助　鍾紹和　王幸男　葉宜津　謝啟大

趙永清　黃仁杼　彭紹瑾　湯金全　許添財　林國華　謝言信　鄭永金　侯惠仙　陳明文

陳鴻基　朱立倫　李慶安　許登宮　陳學聖　王　拓　劉俊雄　何嘉榮　徐志明　徐成焜

黃昭順　王天競　蕭苑瑜　林正二　鄭寶清　楊作洲　陳朝榮　林宏宗　楊富美　林火旺

二十四條之一條文草案一，請審議案。（本案連付二讀，並列為本次會議討論事項第一案，續於二讀後繼續進行三讀（經在場委員二〇一人，贊成者一三一人，反對者六十七人，多數通過，並採記名表決方式，表決結果名單附後(二)）

決議：立法院職權行使法增訂第七章之一章名照原提案內容通過；第四十四條之一照國民黨黨團、親民黨黨團、新黨黨團及無黨籍聯盟所提修正動議通過（經在場委員二〇〇人，贊成者一三〇人，反對者六十六人，多數通過，並採記名表決方式，表決結果名單附後(三)）；三讀時，均照二讀文字通過。（經在場委員二〇一人，贊成者一三一人，反對者六十六人，多數通過，並採記名表決方式，表決結果名單附後(四)）

二、立法院親民黨黨團，為行政院宣佈停止興建核四，悍然不顧立法院於民國八十三年即已做成之興建決議，請就行政院院長蔡視法律、違法失職之行徑，移請監察院予以彈劾懲處，以為做效！請公決案。（本案經變更議程列為討論事項第二案（經在場委員一九三人，贊成者一二三人，反對者六十七人，多數通過，並採記名表決方式，表決結果名單附後(五)）

決議：函請監察院就行政院院長張俊雄及相關失職人員蔡視法律、違法失職之行為，予

以依法糾彈。

三、㈠本院內政及民族委員會報告審查行政院函請審議「九二一震災重建暫行條例部分條文修正草案」案。

㈡本院委員孔慶新、吳林等三十八人提具「九二一震災重建暫行條例部分條文修正草案」，請審議案。

㈢本院委員馮定國等三十六人提具「九二一震災重建暫行條例部分條文修正草案」，請審議案。

㈣本院委員張明雄等四十一人提具「九二一震災重建暫行條例部分條文修正草案」，請審議案。

（以上四案併案討論）

決議：㈠第三條修正為：「為推動災後重建工作，由行政院設置行政院九二一震災災後重建推動委員會，以行政院院長為召集人，召集中央相關部會、災區地方政府及災民代表組成，負責重建事項之協調、審核、決策、推動及監督。其組織及運作由行政院定之，但災民代表不得少於三人。（第一項），直轄市、縣（市）、鄉（鎮、市）、村里及社區得設置各該地區九二一震災災後重建推動委員

附件二：

國營事業最近十年度(80 至 88 下及 89)計畫型資本支出經行政院決定停辦情形彙總表

單位：新臺幣千元

機關名稱	原計畫內容					停辦情形			處理情形
	計畫名稱	起迄年度	投資總額	已列預算		奉准停辦年度	停辦原因	法令依據	
				執行數	未執行數				
臺電公司	林口-深澳電廠供煤系統工程計畫	75-80	2,197,954	40,405	2,157,549	82	以該計畫原規劃運煤之龍井鐵路支線遭龍井鄉民(恐其對地方繁榮有負面影響)反對，而又無其他適當鐵路支線替代方案，經報奉行政院准予停辦。	中央政府附屬單位預算執行要點	已列入決算，經審計部審定在案。
臺機公司	連鑄機計畫	77	69,483		69,483	80	經該公司審慎衡量經營情況後，決定移轉民營後，視市場情況再行規劃辦理，報奉行政院核准停辦。	中央政府附屬單位預算執行要點	已列入決算，經審計部審定在案。
臺糖公司	擴展肉牛飼養計畫	77-80	171,000	33,931	128,069	80	因國內毛牛市價低落，經營情勢不易好轉，報奉行政院核准停辦。	中央政府附屬單位預算執行要點	已列入決算，經審計部審定在案。
臺糖公司	高雄育樂園開發計畫	79-80	287,700	—	287,700	82	本地區目前已有高雄都會公園、大型購物中心等重大開發計畫	中央政府附屬單位預算執行	已列入決算，經審計部審定在案。

機關名稱	原計畫內容					停辦情形			處理情形
	計畫名稱	起迄年度	投資總額	已列預算		奉准停辦年度	停辦原因	法令依據	
				執行數	未執行數				
							進行施工或規劃中，如再開發育樂園因與前項政府計畫功能重疊，大大減低開發經濟效益，爰報奉行政院核准停辦，俟政府政策上需配合開發時，再另案依規定程序辦理。	要點	
臺糖公司	鹿寮溪水庫風景遊樂區開發計畫	79-81	479,088	295	395,093	81	由於計畫範圍內部分使用軍方土地，歷經多年與軍方有關單位折衝協調，軍方因顧及附近靶場射擊之安全問題，始終未出具土地使用權同意書，致無法動工，短期內恐難以獲得解決，為免久懸不決，爰報奉行政院核准停辦，一旦獲得解決再重新研擬投資計畫。	中央政府附屬單位預算執行要點	已列入決算，經審計部審定在案。
中油公司	高廠第四低硫燃油煉製工場計畫	79-83	8,600,000	-	1,224,000	81	因印尼 DURI 低硫原油二期開採成功，產量將大幅增加，該公司進口摻配效果良好，另大林廠輸儲設	中央政府附屬單位預算執行要點	已列入決算，經審計部審定在案。

機關名稱	原計畫內容					停辦情			處理情形
	計畫名稱	起迄年度	投資總額	已列預算		奉准停辦年度	停辦原因	法令依據	
				執行數	未執行數				
							備增建計畫完成後已能克服高流動點油品進口問題，基於考量進口油品較自製更具經濟效益，報奉行政院准予停辦。		
臺電公司	高屏電廠竹門分廠更新工程計畫	79-84	288,080	9,479	121,379	83	臺電公司基於施工考量，擬拆除既有廠房，惟引起地方人士異議，嗣經內政部公告將該廠列為三級古蹟，而報奉行政院准予停辦。	中央政府附屬單位預算執行要點	已列入決算，經審計部審定在案。
臺電公司	澎湖發電廠第九-十部機發電工程計畫	80-83	1,900,926	216	400,162	84	因澎湖縣政府基於民情考量，無法順利協助辦理墳墓遷葬，致土地取得困難，經報奉行政院准予停辦。	中央政府附屬單位預算執行要點	已列入決算，經審計部審定在案。
中油公司	北部油輪碼頭輸儲設備興建計畫	82-86	18,664,000	-	300,000	83	因基隆港務局原擬收回中油於西三十三號碼頭之優先靠泊權，經中油爭取後，該局不堅持收回，致興建觀音港碼頭之迫切性得以紓緩。及原規劃防波堤費用受臺塑專用港移至麥寮影響，	中央政府附屬單位預算執行要點	已列入決算，經審計部審定在案。

機關名稱	原計畫內容					停辦情形			處理情形
	計畫名稱	起迄年度	投資總額	已列預算		奉准停辦年度	停辦原因	法令依據	
				執行數	未執行數				
							中油所需負擔經費需加倍等原因，報奉行政院准停辦。		
菸酒公賣局	宜蘭酒廠遷建計畫(遷至宜蘭利澤工業區)	87-92	4,481,230	—	941,206	88下及89	該酒廠遷建計畫原係為解決地方民間利益衝突及地方政府整體發展考量而提出之解決方案。時至今日，地方政府與民意代表已改變主意，希望該廠留在原地，經考量公賣局整體經營績效，以及改制後將面臨之競爭與市場不確定性，爰於88年8月報奉行政院核定停辦。	中央政府附屬單位預算執行要點	本(88下及89)年度始奉准停辦因尚未列入決算，故審計部尚未提出審查意見。

主計處附件一

附件三：

國營事業最近十年度(80至88下及89)計畫型資本支出經行政院授權主管機關決定停辦情形彙總表

單位：新臺幣千元

機關名稱	原計畫內容					停辦情形			處理情形
	計畫名稱	起迄年度	投資總額	已列預算		奉准停辦年度	停辦原因	法令依據	
				執行數	未執行數				
臺汽公司	高雄地區場組遷建	76-84	323,500	17,341	118,578	88下及89	該公司路線班次檢討後，依計畫經營規模，以目前高雄場組場地面積，尚可解決停車問題，本計畫已無續辦需要，經報奉交通部核准停辦。	中央政府附屬單位預算執行要點	本(88下及89)年度始奉准停辦因尚未列入決算，故審計部尚未提出審查意見。
合作金庫	購置松山支庫土地	87	10,000	—	10,000	88	該標的之業主與他人有財物訴訟，因未解決前無法讓售，經報奉財政部核准停辦。	中央政府附屬單位預算執行要點	已列入決算，經審計部審定在案。
合作金庫	購置岡山支庫土地	87	123,000	—	123,000	88	該標的之管理人擬將土地變更為非公用財產後讓售，嗣逢精省經報奉財政部核准停辦。	中央政府附屬單位預算執行要點	已列入決算，經審計部審定在案。
臺灣銀行	宜蘭分行臨時行舍新建工程	87-88	67,931	—	67,931	88	行舍已列入古蹟保存，需配合宜蘭縣都市計畫（尚未奉核定），重新提出基地整體開發計畫，故報奉財政部核准停辦。	中央政府附屬單位預算執行要點	已列入決算，經審計部審定在案。
臺糖公司	製糖工場遷越計畫	87-88下及89	306,600	11,807	4,793	88	因越南政府改變政策規定產品必須外銷，且原料量不足，導致投資報酬率過	中央政府附屬單位預算執行要點	已列入決算，經審計部審定在案。

機關名稱	原計畫內容					停辦情形			處理情形
	計畫名稱	起迄年度	投資總額	已列預算		奉准停辦年度	停辦原因	法令依據	
				執行數	未執行數				
							低，經報奉經濟部核准停辦。		
合作金庫	瑞安支庫新建工程	88	90,000	—	90,000	88下及89	因未能取得建造執照，經重新檢討後，報奉財政部核准停辦。	中央政府附屬單位預算執行要點	本(88下及89)年度始奉准停辦因尚未列入決算，故審計部尚未提出審查意見。
合作金庫	屏東地區辦公室工程	88	25,500	—	25,500	88下及89	因未獲當地建管主管機關核准開工，經報奉財政部核准停辦。	中央政府附屬單位預算執行要點	本(88下及89)年度始奉准停辦因尚未列入決算，故審計部尚未提出審查意見。
合作金庫	新總庫大樓新建工程	88	200,000	—	200,000	88	該標的之週邊畸零地多次議價不成，經報奉行政院同意緩辦兩年。嗣經立法院審查該庫88年下半年及89年度預算時全數刪除，並同時停止興建。	中央政府附屬單位預算執行要點	已列入決算，經審計部審定在案。
臺灣土地銀行	南區檔案倉庫新建工程	88下及89	99,940	—	99,940	88下及89	本工程因考量與臺灣銀行及中央信託局合併方案未確定及現有行舍利用情形未通盤檢討前，為避免重複投資，經報奉財政部核准停辦。	中央政府附屬單位預算執行要點	本(88下及89)年度始奉准停辦因尚未列入決算，故審計部尚未提出審查意見。
臺汽公司	購車計畫－中興號596輛（其中96輛停辦）	88下及89	432,000	—	432,000	88下及89	計畫內自有資金購置96輛車部分，因公司財務狀況欠佳，且交通部已編列補助購車預算在案，本項預算經報奉交通部核准	中央政府附屬單位預算執行要點	本(88下及89)年度始奉准停辦因尚未列入決算，故審計部尚未提出審查意見。

機關名稱	原計畫內容					停　　情形			處理情形
	計畫名稱	起迄年度	投資總額	已列預算		奉准停辦年度	停辦原因	法令依據	
				執行數	未執行數				
							停辦。		

主計處附件二

行政院聲請解釋憲法補充意見書

訴訟代理人　許宗力

鈞院要求各機關代表與訴訟代理人到院陳述重點有九點，行政院提出於鈞院的綜合意見書對各點均已有詳細的意見陳述，為避免重複，本補充意見書僅就鈞院第三、第四與第五點提問，就行政院綜合意見書所述再作若干補充：

一、行政院對於經立法院通過之重要政策或重要事項並已編列預算，可否逕不予執行？

（鈞院第三點提問）

鈞院本項提問隱含一個前提，即立法院不僅曾通過「興建核四的預算案」，也曾經通過「興建核四的重要政策」，再據此進一步討論行政院是否有權逕不執行。對此提問，我們回答是，立法院並無通過「興建核四」的重要政策，縱使有，也無拘束力；雖然立法院曾通過核四預算，但行政院仍不因之負執行的義務。理由分述如下：

（一）立法院事實上並無通過「興建核四」的重要政策，縱使有，也無拘束力

就鈞院有關立法院曾通過「興建核四」的重要政策，政院可否不予執行的提問，個人認為要回答這個問題，首先必須問，事實上立法院究竟有無通過「興建核四」的決議？如果有，再進一步問，該「興建核四」的決議對行政院有無法拘束力？縱使認為有拘束力，我們也必須追問，立法院是否有權作成這種課予行政機關「興建核四」的決議？

1、立法院究竟有無通過「興建核四」的重要政策？

對此，我們的回答是沒有。回顧立法院過去作成涉及核四之決議，大致可分為三類：

（1）首先是通過核四預算之決議。對此，我們必須強調，通過核四預算之決議與

通過興建核四之決議是兩回事，不能混為一談，毋寧，立法院只是曾經透過預算決議，批准行政院興建核四的政策而已，並未於核四預算之外，另外單就核四興建作成課予行政院作為義務之決議。何況就憲法第六十三條規定以論，該條既規定立法院有議決「法律案」、「預算案」、「戒嚴案」等等，以及「國家其他重要事項」之權，可見議決所謂「其他重要事項」之權乃是一種「補遺性規定」，今既然系爭預算案——核四預算所涉及事項，也就是興建核四，業已經立法院以「預算案」方式作成決議在案，邏輯上自不可能再有將核四興建之同一事項，又當作補遺性的「其他重要事項」另作決議之理。

(2)其次是立法院於八十五年五月二十四日依憲法第五十七條第二款，移請行政院變更興建核四之重要政策的決議。該決議之內容既然是要求行政院停止興建核四，自不可能是通過「興建核四」的重要政策。何況立法院既然是根據

憲法第五十七條第二款決議移請行政院停建核四，亦已清楚表明興建核四是當年行政院的重要政策，而不是立法院通過興建核四的重要政策。

（3）最後是立法院在同年十月就行政院移請的覆議案所作決議。該覆議案的決議內容是「原決議不予維持」，也就是不變更原批准行政院興建核四的預算決議，許可行政院繼續動支預算興建核四而已，與所謂立法院通過「興建核四」的重要政云云策，尚屬有間。

2、立法院縱使有決議，該決議對行政權是否有拘束力，不無疑義

縱使退一萬步虛擬立法院前揭「核四預算決議」與「覆議案決議」隱含課予行政機關興建核四義務之單純決議在內，但這種既非以法律方式，亦非以預算方式作成的單純決議，對行政權是否有法拘束力，也非無疑義。這個問題，國內少見討論，但想像上可能有正反兩說，且正反兩說都各有所本：

（1）主張沒有拘束力者，至少有如下兩個論點可以支持：一、單純決議，其嚴謹度遠不及須經三讀會公開言詞辯論程序的法律案與預算案決議，從程序越嚴謹，拘束力越強，越簡易則越弱的所謂「形式與內容的合比例性」觀點看，實在沒有理由要求行政院受其拘束。二、如果對行政院有拘束力，就權力相互制衡觀點言，至少也應讓行政院有覆議機會，然遭凍結之憲法第五十七條第三款與現行增修條文第三條第二項第二款均只允許行政院就立法院決議之「法律案」、「預算案」與「條約案」移請立法院覆議，所允許覆議的對象並不包括「單純決議」在內，可見憲法並沒有讓這種「單純決議」擁有拘束力的意思。蓋如果一方面讓單純決議有拘束力，另方面又不許行政權覆議，勢將形成行政、立法兩權不均衡現象，在權力分立面前很難站得住腳。

（2）當然，主張有拘束力者也可從憲法第六十三條找到奧援，因憲法第六十三條

明訂立法院有議決法律案、預算案、條約案等等，以及「國家其他重要事項」之權，倘立法院就「重要事項」所作決議沒有拘束力，只供行政院參考，則憲法明訂此項職權又有何意義？至於「立法（權）高，行政（權）低」的不均衡問題，若將憲法就行政院得移請立法院覆議之範圍的規定，解為例示規定，而非列舉規定，就可解決，蓋既為例示規定，政院就仍有覆議可能。

上揭兩種主張，據「形式與內容的合比例性」觀點以論，無拘束力說似乎略勝一籌。並且值得我們注意的是，德國即便是內閣制國家，議會以單純決議作成的政策方針對政府也沒有拘束力，毋寧，施政計劃及施政方針的擬定權歸屬政府，議會倘不同意政府政策，儘可能以通過法律之方式，乃至提出不信任案制衡之，而絕無以單純決議拘束政府之理。內閣制國家都不許議會以單純決議拘束政府了，更何況非內閣制國家的我國？且日後如果立法院屢屢以事屬「國家其他重要事項」為由，作成單純決議

以拘束行政院，行政院則以非屬「國家其他重要事項」為由拒絕之，政爭勢必持續延燒下去，遇此情形，大法官難免一再被要求就特定單純決議所涉事務是否屬「國家其他重要事項」作解釋，也勢必被迫陷入政爭，而逐漸斲喪自身公信力。然話說回來，有關國會於議決法律案、預算案外，也有權議決「國家其他重要事項」之規定，在比較憲法上縱不尋常，卻是我國憲法第六十三條白紙黑字明定的事實。個人相信，如何妥適解釋憲法第六十三條此項規定，或將構成我國未來憲政實務操作與大法官釋憲實務的一大挑戰。作為反映多元民意的國會——立法院，主張其就「國家其他重要事項」完全沒有作成有拘束力之決定的權力，似也說不過去，所以，依本人所見，重要的或許不是一般性的去爭執國會的單純決議有無拘束力，反是需要先區分單純決議的內容，再就內容判斷是否有拘束力。

3、「興建核四」的單純決議侵及行政權核心領域，不可能有拘束力，否則即屬違憲

不過，縱令退步言之，承認立法院就「國家其他重要事項」所作單純決議對行政院有拘束力，我們也須進一步檢視立法院的「興建核四」決議是否與憲法第六十三條所稱「國家其他重要事項」相當。因立法院並未獨攬對一切國家重要事項之決策大權，毋寧，就職司行政權之「政府」的功能與本質而言，無待憲法明文，行政院原本就概括性地掌有國家重要政策的擬定與實施權，何況憲法第五十七條第一款及增修條文第四條第二項第一款明文規定：「行政院有向立法院提出施政方針及施政報告之責」，以及釣院釋字第391號解釋提到行政院必須負起施政成敗責任，也都是行政院掌有國家重要政策之決定權的明證[1]。因此，「興建核四」一事，即便屬「國家重要事項」，也不排除有權屬行政院之可能。所以，關鍵問題還是在於如何劃分行政、立法兩院各自重要政策的範圍。

然究竟立法與行政兩院該如何劃分其各自重要政策的範圍？判斷標準，個人認為或

[1] 在此，須釐清一件事實，即不能因為憲法第六十三條規定立法院有議決「國家其他重要事項」之權力，而提及行政院之「重要政策」的憲法第五十七條第二款在九七年憲改遭到凍結，就直率主張立法院有獨攬一切國家重要事項之決策的權力。因九七年修憲，之所以凍結憲法第五十七條第二款，目的並不在剝奪行政

可從功能最適（funktionsgerecht）的機關結構理論尋覓之。據該理論，何種重要事項歸那機關決定，應視何機關在內部結構、組成方式、配備與決策方式、程序等各方面條件都最能配合各該重要事務的種類、性質所需者判斷之。這種功能最適的判準當然還很抽象，有待進一步發展與具體化，但至少從核能所具有之高度政治敏感性與爭議性，以及關係人民生命、財產與後代子孫福祉至鉅的強烈「基本權涉及性」（Grundrechtsbetroffenheit）以觀，要不要發展核能，以及在如何條件下如何使用核能等事，由具有直接民主正當性基礎，能夠代表社會上各種不同重要政治立場與利益，並循公開、言詞辯論與多數決原則議事的國會——立法院擔當決策，誰曰不宜，甚至可說是天經地義。立法院早先就制定有原子能法，透過該法律就核能政策作成一般、抽象性決定，相信也是基於這個道理。

院對重要政策的決策權，其所剝奪的反而是立法院移請行政院變更重要政策之權力。

問題是，立法院既已制定原子能法，且該法非但沒有課予行政部門興建核四之義務，甚至還透過「建廠」及「反應器運轉之使用執照」的兩階段執照管制程序，將特定核能電廠的興建，授權由行政部門決定[2]，則立法院是否有權另透過單純決議干預行政權執行法律，就很可疑。根據權力分立原則，國會掌立法，行政司執法，是明白不過的道理，故立法院倘一方面制定原子能法，授權行政部門決定是否許可特定核能電廠之興建，他方面又透過單純決議，命令行政部門非興建特定核能電廠不可，就顯屬違憲，其干預行政部門執法所凸顯的荒謬程度，就如同立法院作成「蘇建和無罪」之決議，干預司法部門執法一樣。總之，具體個案之法律的執行，屬典型行政權範疇，是行政權核心領域，非立法權所能以單純決議干涉；立法院倘有此決議，也不可能具法拘束力，否則該決議將勢必因為侵犯行政權，違反權力分立而違憲、無效。所以本件核四興建與否，既然屬

[2] 原子能法第二十三條規定：申請設置核子反應器者，應申報行政院原子能委員會核准，發給建廠執照(第一款)。又核子反應器之運轉，也應於事前報請行政院原子能委員會審查核准，發給使用執照(第三款)。而核子反應器在建造期間，如變更設計時，或在運轉後因設計修改涉及設備變更時，均應於事前申報原子能委

原子能法的執行範疇，則無論其政治敏感性與爭議性再怎麼高，基本權涉及性再怎麼強，果真立法院作成興建核四的單純決議，充其量只能承認其對行政院有建議效力而已，並無拘束力，否則將因干預行政部門之執法而構成違憲、無效。

4、小結：

（1）立法院並無通過興建核四的重要政策。

（2）縱有通過，該決議也無拘束力，否則該決議將因涉及個案法律之執行，侵犯行政權核心範圍而違憲、無效。

（二）立法院通過核四預算，行政院並不因之負執行的義務

1、除非有法律依據，否則預算的動支(或執行)並非義務

預算可區別為「歲入」和「歲出」兩大部分。歲入部分的預算，在性質上非常接

員會核准(第五款)。

近所謂的政策目標，其法律拘束力相當低。例如歲入預算編列交通罰鍰收入新台幣二十億元，政府即使沒有「執行」成功，沒有收到這麼多錢，也不能因此就主張政府違法。至於歲出部分的預算則有拘束力，但歲出預算的拘束力主要是對「支出總額」的控制，也就是在設定「支出總額的上限」。當實際支出超過預定支出總額的話，除非另外追加預算，否則就會(也才會)構成「違法」。至於在支出總額之內的歲出預算則屬於「授權」的性質，也就是容許預算執行部門在預定總額的範圍內決定是否及如何動支款項。即使有剩餘或沒有動支的部分，也沒有違法的問題。最多就是兩個結果：立法院下一年度作為刪減歲出預算的依據，或監察院審計部調查是否有執行不力等構成失職的事由，作為行使糾彈權的參考。甚至有些歲出預算的「目的」就不見得是希望預算執行部門要將錢花完，例如國家賠償預算。如果說歲出預算沒有花完就是違法，那豈不是要行政機關故意去製造國家賠償事件，以便將國家賠償預算動支完畢？

現行預算法第五條規定：所謂「經費」，「謂依法定用途與條件得支用之金額。」從本條規定將經費定義成「得支用之金額」可以看出，預算法本身也是將歲出預算的各項經費明確定位成「授權」使用的金額，而非必需使用的「義務性」金額。再依同條規定來看，所謂經費，按其得支用期間可分為「歲定經費」、「繼續經費」和「法定經費」三種。其中只有「法定經費」之設定、變更或廢止，才需以法律為之。換言之，只有「法定經費」的執行才是義務。但即使是法定經費的執行義務也不是來自預算本身，而是來自設定該項法定經費的「法律」。預算執行機關如果不動支法定經費而違法，這是因為違反設定該項法定經費的法律而違法，並不是「不動支」經費的本身就當然違法。本案所涉及的核四預算，是屬於該條所定的「繼續經費」，而不是「法定經費」。當初產生核四預算的依據並非法律（原子能法並未明定行政部門必須興建核四廠），因此現在的廢止或停止動支自然也不需法律的依據，未來是否繼續編列這項經費，都是最初編列這項

經費的行政部門本身就可以決定。

2、歲出預算的性質屬於授權性規範，而不是義務性規範

在我國法的解釋上，預算(案)的性質及效力和法律(案)並不完全相同，這從憲法第五十八、六十三條將法律案與預算案並列，並且對於預算案與法律案分別設有不同的程序規範(例如憲法第五十九、七十、七十二等條)，也可看出兩者性質的差異。司法院釋字第三九一號解釋也是採取類似見解。其實，不論我們對預算的性質是採取所謂「特別行政行為說」(例如釋字第三九一號解釋)、「特別法律說」或「法律說」，在本件的解釋結果都一樣。也就是說：歲出預算的部分是一種授權性規範，而不是義務性規範。就算是將預算比喻成法律，但法律也有所謂強行規定和任意規定的區別。歲出預算在性質上屬於任意規定，而不是強行規定。

歲出預算既然是種授權，因此預算執行機關在執行預算時通常都會有一定的裁量

權，這是行政權及預算的本質使然。即使立法院通過核四預算一千多億元，但何時及如何進行工程的招標或議價？就這些實際的執行手段而言，行政權必然會有相當的裁量範圍。這項動支預算的裁量權是本於行政部門的決定權及責任而生，而且是行政部門為執行其決策的必要手段。

3、預算是財政手段，本身不是施政目的。不動支預算是否違法或妥當，都要以是否達成施政目的為判斷標準

就如同「組織法」的規定本身不能產生職權或行為義務一樣，作為「財政手段」的預算規定本身也不當然產生行為義務，這和作用法本身就會產生行為義務有所不同。因此，行為義務或職權的有無及範圍，都應該依據「作用法」來決定。預算本身只是財政手段，而不是施政目的，更不是「作用法」。是否動支及如何動支預算(行為義務)，要

以所追求的施政目標而定(作用法)。何況就算是作用法規定的行為義務，也還是有裁量性與羈束性規定的區別。換句話說，就是否及如何動支預算等問題如果發生違法或妥當性的爭議時，也應該以其預定施政目標之達成度來判斷，而不是單就預算本身的動支程度為準。簡單的說，並不是將預算花錢，就是比較妥當的合法手段。

以核四預算來說，真正的施政目標應該是確保有足夠的電力供應，蓋核四電廠，就像蓋水力或火力發電廠一樣，都只是達成這項施政目標的手段。核四廠本身不是施政目的，無所謂合法或妥當與否。因此應該以「停建核四是否會造成缺電」等標準來判斷不動支預算的違法性或妥當性，而不是以「有沒有將錢花完」來判斷是否違法或妥當。如果行政部門找到替代手段或發現更便宜的方法可以達成相同目的，當然可以(甚至應該)斟酌是否(繼續)動用全部預算。

二、本件預算案所涉及之事項，於民國八十五年五月二十四日立法院依憲法移請行政院

變更，嗣經行政院函請覆議，目前行政院是否認為本件已不屬於憲法所稱之重要政策或重要事項？（鈞院第四點提問）

我們的看法，核四興建與否當然是國家重要事項，且行政院也一向將此作為行政院重要政策，過去的行政院將興建核四作為行政院重要政策，現在的行政院則是把停止興建核四當作行政院重要政策，就行政院本身而言，頂多只能說行政院變更其重要政策而已，其並無否認興建核四與否屬國家重要政策的意思。就鈞院的提問，個人猜想鈞院可能是想要釐清一個問題：既然行政院已就立法院要求停建核四的決議函請立法院覆議，且立法院也已就該覆議案作成「原決議不予維持」之決議，則行政院事後是否仍有權決定停建核四？對此，我們的答案是肯定的，理由如下：

在我國現行憲法之下，覆議制度的目的就是要讓行政部門有機會透過覆議權來促使立法院再一次考慮，以維持原狀。當立法院多數通過法律或預算案（會改變現狀），行政

院如果不贊成這項改變，可以透過覆議案促使立法院再一次考慮。如果覆議成功，就回到沒有通過法律或預算之前的原先狀態，也就是維持原狀。本來，覆議制度的終極目的就是想防止立法部門以簡單多數就可強迫行政部門實施後者所不喜歡的法案。但由於我國在九七年修憲後，覆議門檻降為二分之一，以致現行覆議的效果幾乎只有促使立法院再一次考慮的程序意義。本案所涉及的覆議是一九九六年間的事，雖然仍適用憲法本文第五十七條(第三款)的規定。但就覆議的根本目的及效果而言，九七年修憲之前及之後仍然相同。

立法院在一九九六年五月二十四日通過「廢核案」的決議，要求行政院停建核四。後來行政院對此決議提出覆議，並且由立法院決議「原決議不予維持」，因而成功推翻立法院的原決議。在法律效果上，行政院覆議成功的結果就是回到「立法院原決議前的原狀」，也就是回到行政院「在沒有法律要求也沒有法律禁止，而是行政院自己決定要興建

核四，並有立法院預算授權支持」的原先狀態。換句話說，立法院廢核的原決議既然被推翻，整個覆議過程及結果並沒有增加也沒有減少原來行政院決定興建核四廠的合法性。今既然一方面原子能法並沒有課予行政院興建核四的義務，他方面立法院通過的核四預算，如前述，亦無課予行政院興建核四義務，則行政院過去既有權審時度勢，自行作成興建核四的決定，當然今天也有權自行變更其興建核四的決定。

最後我們要澄清的一點是，行政院縱有權變更其興建核四之決定，亦不至於導致行政權過度膨脹，因立法院即使因九七年修憲之故，不能再根據憲法第五十七條第二款，決議移請行政院變更停建核四之重要政策，但根據新增的增修條文第三條第二項第三款之規定，立法院仍得對行政院長提出不信任案，以達制衡之目的。且九七年之憲改，修憲者亦明顯有以「不信任案」取代過去「移請行政院變更政策」之制衡方式之意。制定法律當然也是一般制衡行政權的手段之一，但本件倘立法院果真修改原子能法，赤裸裸地

課予行政部門興建核四之義務，也因屬「個案法」（Einzelfallgesetz）而有牴觸平等原則的嚴重嫌疑，不過這已屬另一問題，與本案無直接關係了。

三、行政院為本件之決策，有無通知立法院或向立法院報告之義務？（鈞院第五點提問）

行政院變更政策，如果無須立法院同意，是否至少亦有通知立法院或向立法院提出報告之義務？就權力分立觀點，我們認為行政院確實負有此通知或報告義務，因立法院如果要制衡行政院的政策變更，而提不信任案，自以知悉行政院有變更政策為前提，若不知悉，就無從制衡起，而知悉則主要繫於行政院之通知或報告。因此，憲法既然賦予立法院種種制衡行政院的手段，自同時隱含課予行政院有通知或報告立法院有關政策變更情事之義務。今立法院職權行使法第十七條規定，「行政院遇有重要事項發生，或施政方針變更時，行政院院長或有關部會首長應向立法院院會提出報告，並備質詢。前項情事發生時，如有

立法委員提議，三十人以上的連署或附議，亦得邀請行政院院長或有關部會首長向立法院院會報告，並備質詢。」相信其立法本意亦在於此。

然而，針對此條規定，我們仍須強調一點，即該法課予行政院的，只是單純的「報告義務」，尚非「事前報告義務」。除了條文本身未規定係屬「事前報告義務」外，更重要理由是，屬重要事項與否，往往不易認定，行政院認不重要者，立法院可能認為重要，故倘認本條規定屬「事前報告義務」，行政院勢必常因重要與否的認定與立法院歧異，而屢屢陷於違法境地而不自知，這種隨時可能陷於違法的風險與陰影，對國家日常政務的推動勢必產生深遠的不利影響。再次一個理由，許多國家政務具有變遷迅速而須國家作立即適切反應之特質，如外交、國防、景氣與金融事務等是，這類政策的變更如須一一事前報告立法院始能著手實施，勢因時機的無從即時掌握而導致更大的國家災難，更遑論立

法院還有會期限制，不是一年三百六十五日天天集會執行職務，有時甚至行政院想要事前報告亦無從報告起。綜上，我們確信本條並無課予行政院「事前報告之義務」，毋寧，事後報告即為已足[3]。今本件行政院於今年十月二十七日決議停建核四，行政院張院長旋即於十月三十一日率全體部會首長至立法院，擬俟機就該案向立法院院會說明並備詢，惟立法院決議變更原排定之總質詢議程，並表明不歡迎行政院張院長列席立法院院會，使行政院無法依立法院職權行使法第十七條規定，向立法院院會提出報告，此誠不能怪罪於行政院，反而立法院拒絕行政院院長到會說明，使行政院喪失藉說明以爭取更多立法委員支持的機會，其本身才構成權力濫用，違反各憲法機關應相互「忠誠合作」（loyale Zusammenarbeit）的不成文憲法義務。

[3] 行政院如果要事前報告，當然非法所不許。我們要強調的只是，該法並未強制行政院要事前報告，僅此而已。

核四釋憲案補充理由書

行政院停止興建核四的決策合憲合法

葉俊榮

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一、本案所涉及待解釋的問題

（一）核心問題

除了聲請解釋所涉的程序與要件問題外（第一與第二題），本案有三大核心問題：

1、行政院於立法院通過核四預算後，[illegible]情勢變遷[illegible]決定停[illegible]建核四，是否違憲或違法？

2、行政院決定停止興建核四的決策，是[illegible]違反憲[illegible]法律所規定的程序義務？

3、停建核四所引起的賠償問題，是否應納入本案的考量？

（二）必須釐清的事實

上述核心問題蘊含部分前提事實問題，必須釐清：

1、有無憲法或法律規定行政機關負有設置核能電廠的義務？

2、立法院是否曾決議要求行政院必須興建核四？

3、有無憲法或法律規定行政院於決定不繼續興建核四時應踐行一定的程序？

（三）問題的進一步具體化

從上述問題的結構，配合所列九項待說明議題（詳行政院綜合意見書），本補充說明書就以下四大問題作補充說明：

1、行政院是否有拒不執行立法院所通過的重要政策或重要事項？（第三，四議題）

2、行政院決定不執行立法院所通過的核四預算，是否違憲或違法？（第三，七議題）

3、行政院決定停止興建核四的決策程序，是否違憲或違法？（第五議題）

4、停建核四所涉及的解約賠償，是否應納入本案的考量？（第八議題）

二、行政院並沒有拒不執行立法院已經通過的重要政策或重要事項

（一）立法院至今為止，從來沒有做出興建核四的決議，只是曾議決通過台電核四預算

1、立法院除了被動地通過核四預算外，從來沒有積極做出興建核四的決議，也因而沒有通過核四此一重要政策可言

核四的興建，即令在俞國華先生任行政院長時代，也曾經喊停。立法院面對行政機關在核四政策上的擺盪，只是在預算的審議上，在高度爭議下通過預算，並沒有做出行政院應積極興建核四的決議。

2、立法院曾認為核四興建為行政院的重要政策，而依憲法第五十七條第二款做出決議，行政院根據該決議提起覆議成功，使一切回到原點

依憲法第五十七條第二款規定立法院對行政院的重要政策不贊同時，得以「決議」移請本院變更，對於立法院之「決議」，行政院則可經總統之核可，移請立法院「覆議」。從憲法條文結構而言，並無所謂立法院「通過」重要政策可言，立法院至多僅能就其主觀上所認屬於行政院的「重要政策」，請求行政院變更而已。從而，自無所謂立法院通過之重要政策的問題。何況，民國八十六年修憲時，已將憲法第五十七條第二款的覆議制度停止適用，足見於現行規定之下，立法院更無「通過」重要政策之可能。

相反的，立法院確實於民國八十五年做出「廢核」的決議，。行政院對立法院「廢核」決議提起覆議，立法委員維持原議者未達三分之二，只是將狀況回到沒有「廢核」的原狀，並不表示立法院曾決議建核四，充其量只能說立法院「曾經決議」停止一切核電廠的興建而已。

3、立法院配合性地審議行政院所編列的核四預算，不能被解釋決議興建核四

基於立法院預算審查僅具有對預算項目背後的施政目標為「授權」的性質，立法院通過核四預算，不能被解釋為立法院通過核四案，因為核四是否興建的決定權不在立法院。也不能被解釋為立法院做出建核四的決議。

（二）立法院不得依憲法第六十三條以核四為「重要事項」做出應興建核四的個案決議

1、核四是否興建未必是憲法第六十三條的「重要事項」

依憲法第六十三條，立法院有議決重要事項之權，但重要事項的範圍不能從字義上做推論，必須在憲法權力分立與責任政府的架構下做解釋。而解釋的重點在於，必須不影響行政權的核心，也不違反憲法對立法權的定位。

2、核四個案的決定，屬於行政權的核心內涵，立法院不可對此具體決定做出議決，而不當侵犯行政機關的個案決定權

（1）核四為一個別的建廠計畫，與整體核能政策有別，不應被定性為憲法第六十三條的重要事項。

核四在性質上，為一個別的決策，法律上有原子能法，核子損害賠償法等規範其設立要件與責任，立法院也已透過原子能委員會的設立，以及相關法律的制訂，將此一部份的個案決定權交給行政機關為之。行政機關對核四案的具體決定，包括建廠執照此一行政處分的審查，以及編列核四的為年度附屬單位預算項目。核四雖然影響層面很廣，但在性質上乃是一個個案決定，與一般抽象的能源政策、核廢料處理政策（境內處理或境外處理等等）或農地釋出政策（農地釋出的範圍與時程等）有別。

（2）核四建廠適用「開發行為的環境影響評估」，不適用「政策環境影響評估」

此一區別也可以從核四設廠計畫所要求的程序得到印證。一般抽象的政府政策，依環境影響評估法，在環境影響的程序要求上必須進行政策環境影響評估，至於一般個別的開發行為，則是用環境影響評估法的開發行為環境影響評估。核四計畫的推動過程，所適用的環境影響評估為個案開發行為的環境影響評估，而非政策開發影響評估，可得明證。

3、立法機關對個案決議，超越立法權的內涵，也侵犯行政權的核心，造成責任政治的混淆

行政院為我國最高行政機關，憲法上行政權的核心內容故應受到憲法規範，但其他部門亦應尊重。美國最高法院在Youngstown一案中所確立的固有行政權，即是強調現法中行政權與立法權並行，應互相尊重的論點。

行政權既為執行權，則針對是否在特定地點，以特定發電容量及反應器結構設計設置個別核能電廠，自應由行政機關盱衡實際並發揮專業作最好的判斷，立法院除得作必要監督外，不可越俎代庖代為決定，否則容易造成責任的混淆，決策的成敗應由誰負責？

因此，憲法第六十三條所稱的重要事項，應做狹義解釋，並受憲法上權力分立原則的拘束。對於個案事項，除非修改原來授權的法律，並接受合憲性的檢驗，否則不應藉「重要事項」的決議而介入個案。

（三）即令立法院依憲法六十三條做出建核四的決議，也只是個單純決議，雖對行政機關有政治上的拘束力，但沒有法律上的拘束力。

憲法第六十三條所規定的「重要事項」，必須做狹義解釋，如何嚴守立法權的界線，以及不介入行政權個案決定的核心權，成為解釋該條文的重要基礎。然而，從學理上，

即令立法院仍做出「續建核四」的決議，也並不必然表示行政機關決定「停建核四」就是違法。此與該決議的性質有關。

立法院的議決若透過對法律案的審議而成為法律，自有以法律拘束行政機關的效果。但是，若是以預算的形式，則產生預算的效果。立法院若只是對具體個案做出決議，而非表現在預算或法律，則只是一項立法機關的單純決議。對於單純決議，行政機關基於政治和諧或權力部門間的相互尊重，固有政治上予以配合的壓力，但單純決議並不當然產生法律上的拘束力，行政機關不配合，或會產生一定程度的政治後果，但沒有違法的問題。

三、行政院決定不執行立法院所通過的核四預算，並不違憲或違法

（一）憲法所規定預算權，性質上為權力部門間的分享權

1、憲法將預算的編製與執行權給行政院，對預算的議決權給立法院

相對於美國憲法將預算的編制與審議均賦予國會，必須靠國會立法才將預算的編列撥給總統行使，我國憲法則明文規定預算的提案權屬行政院，預算的審議屬立法院，性質上為分享權(shared power)。行政部門依憲法所享有的預算權並非預算權的全部，立法院所享有的預算權，亦非預算權的全部。憲法既然對預算權的整體內涵，規定為由不同權力部門分享，權力部門均需相互尊重各自享有的預算權。而對分享權力的相互尊重，乃是憲政運作的精髓。

預算編製權既然屬於行政院，則形成該預算項目的施政目標，乃是行政院行使預算提案權的重要基礎，絕非立法院於審查預算之際所可能任意改變或取代。

2、憲法規定立法院不得為增加支出的決議

雖然先進國家有容許國會於審議預算時自行加入預算項目的實例（如美國），但我國憲法則為避免利益團體政治下的濫用，明文於第七十條規定立法院不得為增加支出的決議。此一規定對立法院行使預算審議的權限進行了實質的限制，再次削減立法院議決預算的權力內涵。憲法上這一對立法院的限制規定，強化了行政權基於施政考量及資源配置需求的全盤考量，也強化了行政院預算編製權的實質內涵。其結果，等於是憲法更加尊重行政院編製預算背後的施政目標，

（二）經立法院議決的預算案為法定預算，其效力與一般法律有別

先進國家由國會所通過的預算，有完全以法律形式做成，其性質也近似與法律者（如美國），但在我國則預算案與法律案有明顯的區別，經立法院通過的法定預算與法律也有鮮明的差異。因此，經立法通過的法定預算，其效力自不能與法律等同而語。

預算案與法律案之不同，貴院釋字第三九一號解釋理由書已有詳論：「預算案亦有其特殊性而與法律案不同：法律案無論關係院或立法委員皆有提案權，預算案則祇許行政院提出，此其一；法律案之提出及審議並無時程之限制，預算案則因關係政府整體年度之收支，須在一定期間內完成立法程序，故提案及審議皆有其時限，此其二；除此之外，預算案法律案尚有一項本質上之區別，即法律係對不特定人（包括政府機關與一般人民）之權利義務關係所作之抽象規定，並可無限制的反覆產生其規範效力，預算案係以具體數字記載政府機關維持其正常運作及執行各項施政計畫所須之經費，每一年度實施一次即失其效力，兩者規定之內容、拘束之對象及持續性完全不同，故預算案實質上為行政行為之一種，但基於民主憲政之原理，預算案又必須由立法機關審議通過而具有法律之形式…，以有別於通常意義之法律。而現時立法院審議預算案常有在某機關之科目下，刪減總額若干元，細節由該機關自行調整之決議，亦足以證明預算案之審議與法律案有其根本之差異，在法

律案則絕不允許法案通過，文字或條次由主管機關自行調整之情事。是立法機關審議預算案具有批准行政措施即年度施政計畫之性質，其審議方式自不得比照法律案作逐條逐句之增刪修改，而對各機關所編列預算之數額，在款項目節間移動增減並追加或削減原預算之項目，實質上變動施政計畫之內容，造成政策成敗無所歸屬，政治責任難予釐清之結果，有違立法權與行政權分立之憲政原理。」，足見預算案與法律案不同。經立法院審議通過的法定預算，其拘束對象係對行政機關就特定事項與款項有所確定，非具一般性、抽象性，亦非對人民權利義務關係直接產生得喪變更的結果，並不具有直接外部效力，與一般法律顯然有別。

（三）核四預算的提案與決議，並非基於法定義務，未執行預算不發生是否違反其他法律的情形

立法院通過的預算項目，或基於其他法律所規定的義務而編列，或基於行政機關的裁量權，為尋求國會財務支持而編列。就前者而言，預算經立法院審議通過後，該筆預算是否執行，不單純為是否違反預算的問題，而是是否違反其他法律的問題。美國尼克森總統時代，時常運用總統的預算保留權(impoundment)不執行國會所通過的預算項目，而引起國會甚至法院的指責。然而，該等預算項目大都基於法律要求行政機關執行的項目，尤其集中在農業補助，環境保護或住屋措施等，其不執行預算直接涉及該等強制要求法律的違反。

核四預算的編列固然表現行政院的施政目標，但興建核四並非法律所要求必須去做的法定項目，此與上述不執行預算項目及構成違反法律的強制規定有別。因此，核四預算項目的不執行，乃是反應行政院建或不建核四施政目標的變化，並沒有不盡法定行為義務的情形，也無違法的情事。

（四）停建核四，也沒有違反預算法

預算法對歲出預算各項支出項目定位為授權使用之金額，而非課與機關必須使用之義務。預算法第五條第一項規定：「稱經費者，謂依法定用途與條件得支用之金額，…」，從「得支用之金額」的用語，便可看出此一授權性格而非義務性格。

此外，又預算法第二十四條、第二十六條、第二十七條，均係規範政府機關不得為預算外徵取收入、動支公款、處分公有財物、進行投資或增加債務等，至於預算法對於因情勢變更而須停止法定預算之執行，則無禁止之明文規定。

預算法第四章「預算之執行」係有關預算執行之規範，僅在提供預算執行之相關程序規定，亦未課予行政機關必須將法定預算全數執行完畢之義務。預算法第六十七條規定：「各機關重大工程之投資計畫，超過五年未動用預算者，其預算應重行審查。」，等於是

允許各機關重大工程之投資計畫，於五年內可斟酌衡量各項情事，決定是否予以執行。即令執行機關於五年內從未動支該筆預算，亦僅使該筆法定預算的授權失效，從而如欲維持該預算，應由立法院重新審查而已。

因此，從預算法相關條文規定以觀，均未課行政機關須依法定預算完全執行之義務，停建核四所引起不再執行核四預算，並沒有違反預算法。

（五）立法院應具體指證行政院因情勢變遷不執行核四預算，違反憲法或法律何等規定？

核四決策變化所引起的合法或合憲爭議，應從我國憲法所規定的預算制度及權力分立架構著眼，但主張行政院違憲違法的立法院，應具體指出行政院違反何等憲法規定，或違反何等法律規定，而不應抽象指責行政院違憲違法。

四、行政院決定停止興建核四的決策程序，並未違法或違憲

（一）權力部門間的互動，講究憲法規範與良性文化的建立

憲法將權力分為立法、行政司法等部門，並設定權力部門間的互動機制，包括硬性的覆議、不信任投票及彈劾等等，以及軟性的總統召集五院院長協商權限爭議等。然而，無論如何，權力部門面對具有爭議的問題應如何互動，一直是憲法上難解的問題。美國有關總統戰爭權(war power)的行使程序，一直爭議不斷，既令最高法院介入，也無法真正解決問題。問題真正的解決，除了查考具體的憲法或法律要求外，仍須靠權力部門間建立良性的互動文化，司法解釋仍有其侷限。

（二）沒有法律規定要求行政院對核四決策的變更應有對國會的報告義務

行政部門所做的決定，在哪些範圍內應知會國會獲應獲國會同意，應依憲法或法律的規定而定。憲法上對核四是否興建，除了預算或相關法律的互動外，並沒有明文規定。除了憲法以外，基於事務的性質，部分法律明文行政機關採取某些措施應知會立法院，或事先得立法院同意，或事後獲立法院追認，例如貿易法及兩岸人民關係條例等均有類似規定。在此種情況之下，行政機關的決策及其變化，在哪一階段應由立法院做何等事前或事後的程序，應依該等法律的規定為之，行政機關不得拒不遵行該等程序規定。

但是，就核四的決策而言，現行原子能法並未規定行政院在個別核能電廠的興建或不興建決策，有向國會事先或事後的程序義務。因此，唯一需考量的是，行政院決定停建核四的程序，有無違反立法院職權行使法的規定。

（三）立法院職權行使法第十七條的程序規定

立法院職權行使法第十七條規定：「行政院遇有重要事項發生，或施政方針於於變更時，行政院長或有關部會首長應向立法院會提出報告，並備質詢。前項情事發生時，如有立法委員提議，三十人以上的連署或附議，亦得邀請行政院院長或有關部會首長向立法院院會報告，並備質詢。」行政院停止核四興建之決定，在程序上是否有違反此一規定？判斷此一問題應從適用時機，程序內含及違反效果作整體考量。

1、適用時機為重要事項發生或施政方針變更

本條的適用時機為重要事項發生或施政方針變更，用語相當不明確。但是，核四停止興建的決定，應可抽象地納入該重要事項發生或施政方針變更。

2、程序要求為向立法院提出報告，並未規定必須事先提出報告

然而，程序要求可分為必須得到許可或單純告知即可，無論哪一種也可進一步再分為事前或事後。立法院職權行使法第十七條之規定，並沒有課以行政機關一個得到許可的要求，更沒有事先為之的要求。換言之，從條文的解釋，行政院於重要事項發生或施政方針變更時，並不必得到立法院許可，只有報告義務，而且該報告義務也非必須事先為之。該條的程序要求為向立法提出報告並備質詢，並未課行政院於重要事項發生，或施政方針變更前先行向立法院報告之義務，或須取得立法院之同意後始得變更。

3、違反的後果

立法院職權行使法第十七條的程序規定，主要的後果在於「如有立法委員提議，三十人以上的連署或附議，亦得邀請行政院院長或有關部會首長向立法院院會報告，並備質詢」。當然，如果立法委員對報告或答詢內容不滿意，可以依憲法增修條文第三條第二項第三款提起不信任案。

（四）行政權與立法權的程序互動，必須講究部門互動文化的建立

行政權與立法權乃是憲法上兩個重要部門，基於憲法許多分享權力的設計，必須在平衡的制度設計下，進行平順的互動。然而，互動的實況受制於政治文化，以及議題的性質，難以有明確的定論。例如，總統發動戰爭勢必難以事先經國會討論或授權，但總統如何仍「尊重」國會，則包括事先通知國會領袖等作法，而其實際作法往往也取決於議題性質，當前政治情勢，以及政治文化。法院在此方面的介入，往往只能彰顯原則，無法過於深入做具體要求。

五、停建核四的賠償問題與違憲審查

（一）核四停止興建後賠償問題，不應成為本案的審查範圍

1、核能電廠興建的決策，不是單純成本效益的問題

核四雖然是一個個別的電力開發計畫，但決策的內涵相當複雜，且引起社會廣泛爭議，台灣社會也已經為核四的議題付出相當成本。這與核四決策的下列特色有關：

（1）動態發展

核四在台灣已經爭議多年，其間行政部門與立法部門都曾經在立場上有所變化，而國際上對核能的發展，也有許多階段性的急遽變化。未來立法院的組成如何，難以逆料，對核四的看法如何，也難以定論。

（2）利益衝突

核四涉及嚴重的利益衝突，受益者或潛在受害者，甚至於風險承受者的分佈相當不平均。更複雜的是，許多成本效益的問題也無法十足呈現。即令有些具體的數字表彰建或不建的成本，也都很難完全呈現全貌。例如，對核能電廠對環境的影響

（如珊瑚白化，核廢料的處理），都難以化約成具體的金錢數字，而且往往正因為如此，都沒有能夠完整被呈現出來。

（3）隔代正義

核四更涉及嚴重的隔代正義的問題。當代的決策往往具有影響後代的結果，核能問題更具有此一特色。若納入隔代議題作考量，則核四興建與否的決定更需要有憲法上人性尊嚴的考量，而非單純是否合乎當前成本效益以及是否技術上安全的問題。

（4）國際關連

台灣並沒有核電工業，核四的興建，不論反應器，核燃料，乃至核廢料的處理，都有相當強的國際依賴性。國際管制規範的發展以及全球核能工業結構變化，都可能得台灣有決定性的影響。這種國際關連，在在增加決策的複雜度。

上述這些特色共同指向核四決策不能以表現在帳面上的損益做為決策的基礎。

2、停建核四所涉及的賠償問題，只是整體成本效益的一環

停建核四涉及原來合約不履行的賠償問題，該問題當然應從合約的內容及相關國際與國內應適用法律一程序做出決定。然而，因此所涉及賠償金額的多寡，只是整體成本效益的一環，而成本效益的考量更必須考量到許多無法量化的價值問題，包括人性尊嚴與環境生態價值。因此，法院於審查停建核的合憲性時，不應單獨從賠償額論斷。

3、法院審查與政治情勢

停建核四所涉的的合約賠償問題，在未來立法院審議監察院的決算報告時，是否會通過，乃是一項未來預測性的議題。國會將於明年改選，任誰也難以逆料國會結構的變化，因此，國會「未來」是否會同意，不應納入本案考量的議題。

六、結論

從以上的陳述，可以論結停建核四並不違法也不違憲，因為：

（一）沒有憲法或法律明文課與行政院設置核電廠的義務，立法院也從來沒有做出應興建核四廠的決議，即令做出也僅有政治上的壓力，沒有法律上的拘束力

（二）立法院所通過的核四預算，行政院因停建核四而不執行，基於我國憲法對預算權的界定及法定預算與一般法律不同等結構性原因，並不構成違法也無違憲的情事。

（三）行政院停建核的決定程序，憲法並未明文，原子能法也沒有要求，不構成違法。至於立法院職權行使法第十七條的要求，並未要求必須立法院「許可」，也未明文「事先」報告，行政院並未違反該條規定。為判斷行政立法互動問題，除憲法或法律規定外，仍應從議題性質及政治文化著眼。

（四）基於核能電廠設置問題的高度複雜性，成本效益無法完全表彰決策的所有考量因素，停建核四所引發解約賠償，僅是整體成本效益考量的一環，不應納入違憲審查的項目。又未來立法院對賠償所引起決算審查的同意與否，涉及未來政治情勢的判斷，也不應納入違憲性的考量。

停止興建核能四廠並停止執行相關預算，聲請解釋憲法及統一解釋法律案陳述狀

聲請人　行政院　　台北市忠孝東路一段一號

代表人　張俊雄

訴訟代理人　洪貴參律師　　台北市羅斯福路二段四十九號六樓

為行政院就決議停止興建核能四廠並停止執行相關預算，聲請解釋憲法及統一解釋法律案件，謹呈陳述狀事：

壹、程序方面

一、依據司法院大法官審理案件法第五條第一項第一款，就本案聲請解釋憲法：

行政院作為中央機關，於行使「停止興建核四，並停止執行預算」之政策決定權時及於決定不編列預算興建核四廠時，於適用憲法第五十三條、第六十三條及憲法增修條文第三條第二項發生疑義。

同時，行政院於行使前述停建核四之預算決策權時，與立法院於民國八十九年十一月七日決議中認定「預算案既獲立法院通過，即視同法律案，行政機關均應一體遵行」，並認為行政院停建核四，停止執行相關預算之決定，為「規避其執行之法律責任，甚至拒絕執行法律」間，發生適用憲法增修條文第三條第二項「行政院依左列規定向立法院負責」之爭議。

依司法院大法官審理案件法第五條第一項第一款之規定，提請司法院大法官解釋憲法。

二、依據司法院大法官審理案件法第七條第一項第一款，就本案聲請統一解釋：

行政院作為中央機關，就停建核四，並停止執行相關預算之職權行使，在適用預算法所持之見解：「預算經立法院議決，乃係授權行政院得在法定預算所定數額內，依施政之需要與對立法院負責之施政方針與目標，動支相關經費，而非課予行政院應悉數支出各該法定預算所有經費額度之義務」與立法院適用同法時，認定：「預算案既獲立法院通過，即視同法律案，行政機關均應一體適用」之決議見解，相互歧異。

依司法院大法官審理案件法第七條第一項第一款之規定，提請司法院大法官統一解釋預算法之規定。

三、立法院從未決議應興建核能四廠（問題之釐清）：

本案「各機關代表到院應陳述之重點」所列第三點「行政院對於經立法院通過之重要政策或重要事項並已編列預算：」，似緣自八十九年十一月七日立法院親民黨團所提「為行政院宣布停止興建核四，悍然不顧立法院於民國八十五年即已做成之興建決議：」案。實則，立法院於八十三年七月十二日通過八十四年度核四預算一一二五億多元，八十五年五月廿四日立法院決議：「立刻廢止所有核能電廠之興建計劃，刻正進行之建廠工程應即停工善後，並停止動支任何相關預算且繳回國庫」，行政院於八十五年六月十二日依憲法第五十七條第二

款函請立法院覆議，立法院八十五年十月十八日覆議結果：「因贊成維持原決議之人數未達憲法第五十七條第二款所定三分之二人數，原決議不予維持」，核能電廠興建及核四預算之執行，因而未停擺，立法院提案所謂「核四計劃就此拍板定案」、「行政院不顧立法院於八十五年已做成之興建決議」，非屬事實，況立法院本無權決議核能四廠之興建，將如下述，首予陳明。

貳、實體方面

一、行政院針對核四興建與否，具有政策決定權，不因八十五年間之覆議案而有不同

（一）核能電廠興建與否之決定權及執行權係歸行政部門

1.核能電廠之興建，本質涉及專業科技之判斷，並具有風險預測、控制之性質。依照權力分立原則，衡量各該機關之組織與功能，核能電廠興建與否之政策決定權，應屬劃歸行政權職掌之領域。

2.立法院於國家重要事項雖有議決權，然八十六年之修憲已使立法院喪失依據憲法本文第五十七條第二項之規定，主動介入行政院決策之權力。其享有者僅係事後制衡及監督之權力。

（1）決策與執行為行政權之核心，行政院必須負起施政成敗之責任（釋字第三九一號）。憲法對於行政以外之四種權力，皆明白規定其職權範圍，尤其在性質

上同屬行政權之考試院及總統，皆以明文列舉之方式，可見行政院有概括性職權。

（2）其他各院預算之編製及提案，均由行政院為之（司法院部分須尊重司法院之年度概算）。而預算之編列為施政目標、計畫及順序等實質政策決定在財政手段上之表現，可見憲法規定行政院主動決定一般性之政策。

（3）憲法第五十七條第一款及增修條文第三條第二項第一款均明文規定行政院有向立法院提出施政方針及施政報告之責。

（4）憲法第五十七條第二款原本規定，立法院有主動要求變更決策之權，此項規定因增修條文而不再適用，立法院僅有事後制衡及監督之權力，唯有透過法律案或預算刪減案之方式為之，不能以決議之方式介入。

3.針對核能電廠之興建事項，立法院已透過「原子能法」之立法，將個案決定權交由行政院決定。質言之，立法院已透過立法將本案決定權交由行政部門，亦即原子能法等相關法律所規定之執照管制程序及制度。

4.無論立法院如何修改法律，許可或不許可特定核電廠之各項執照，仍應係行政部門之權力，立法院不能越俎代庖代替行政部門就個案決定特定電廠之執照是否發放或撤銷等。同時，原子能法之制定僅係授權行政院就核四電廠擁有個案決定權，並非

課與行政院興建核四廠之義務：立法院以制定原子能法之方式，將興建核能電廠之個案決定權—包括興建、緩建及停建之決定權—授權由行政院為之。

5.就本案而言，行政院得基於權力分立之原則，決定核能四廠興建與否，而後再尋求立法院於財政預算上之支持、授權，立法院並未課行政院興建核四廠之義務。

（二）八十五年間之覆議案，立法院之「原決議不予維持」並未創造行政院興建核四之義務

1.覆議案使立法院停止興建核四廠之決議不予維持，回復行政院得自行決定核四廠興建與否之狀態：針對前述八十五年間之「停止興建核四廠」之決議，行政院於當時曾提出覆議案，嗣經立法院表決通過，原決議不予維持，係回復行政院得自行決定核四興建與否之狀態，並未創設行政院興建核四廠之義務。此與立法院為「興建核四廠」之決議，經行政院覆議後立法院仍予維持之情形並不相同，況立法院本無權決議興建核四廠，已如上述。

2.八十五年覆議後，所謂「核四計劃就此拍板定案」，倡言行政院因此負有興建核四之法定義務之說，亦違背任期責任原則，及民主政治之本質。依釋字第二六一號、四九九號解釋意旨，憲法規定立法院立法委員之任期三年，國民賦予立法委員行使憲法上權限之期限亦同，立法院行使職權對象之效力也是如此。新任期之立法、行政兩院均可依職權提出修正案或提案廢除，依任期責任原則八十五年度之覆議結果，

僅生對該屆立法委員負責之效力，而無拘束下屆立法委員或政府之效力，否則，責任政治無從實現；現代立憲民主國家人民透過選舉形成、決定、改變政府政策，歐美先進國家完成政黨輪替後，新政黨就舊有重大政策加以檢討，甚至廢止者，所在多有。民主政治、政黨輪替本身意味著政策改變的可能性，尤其候選人所屬政黨之黨綱及競選政見，皆清楚表明廢核四而贏得選舉，意味新民意取代舊民意、新政策得以改變舊政策，否定透過選舉、政黨輪替之方式檢討、更動核能政策，毋寧與民主政治背道而馳。

二、立法院通過預算未使行政院負興建核四廠之義務

1.除非有法律依據，否則預算之動支（或執行）並非義務：歲出預算之拘束力表現在「支出總額」之控制，也就是在設定「支出總額之上限」。超出預定支出之總額時，除非追加預算，否則才有違法與否之問題。至於支出總額以內之歲出預算，則屬「授權」之性質，即使有剩餘或未予動支，亦無違法問題，其結果則成為立法院下一年度作為刪減預算之依據。

2.歲出預算之性質屬於授權性規範，而非義務性規範：預算法第五條第一項規定：「稱經費者，謂依法定用途與條件得支用之金額」，其係授權使用之性質，而非義務性之規範。

3.預算是財政手段，本身不是施政目的。不動支預算是否違法或妥當，皆應以是否達成施

政目的為判斷標準。

4. 現行預算法及向來實踐亦容許執行機關自行決定不動支預算

預算法第六十七條「各機關重大工程之投資計劃，超過五年未動用預算者，其預算應重新審查」，第六十九條規定將已定分配數或以後各期分配數列為準備之情形，得俟有實際需要，專案核准動支或列入賸餘辦理，第七十二條歲出應付款得轉入下年度為以前年度應付款或保留數之準備；第七十一條規定「預算之執行，遇國家發生特殊事故而有裁減經費之必要時，得經行政院會議之決議，呈請總統以令裁減之」，無須經立法院之核准或同意，不動支核四預算，當然屬行政院之職權。

三、預算法制之比較法

1. 各國多認預算之性質係屬國會授權之性質。

2. 就預算之效力，各國法制多肯認行政部門享有相當程度之自主權。

3. 以日本為例，就實定法之規定而言，由於日本憲法及相關法律均未明文規定行政部門必須執行預算之「義務」，因此無法直接依文義解釋之方式，得出行政部門不執行預算即屬違法之結論。由於日本實定法長期以來將關注焦點置於對行政部門動支經費課以種種程序上及實體上之限制，以免預算被違法、不當動支，因此，行政部門有權停止預算之執行，既符預算節約原則，遂成為解釋上必然之結果。

4．日本學界無論財政法學者（如杉村章三郎、兵藤廣治、小林武、槇重博等人）、憲法學者（如宮澤俊義、蘆布信喜、手島孝、浦部法穗等人）乃至行政法學者（如田中二郎、福家俊朗等人），亦不論主張「預算行政說」抑或主張「預算法律說」之論者，代表性學者及代表性之教科書中，均異口同聲主張：「歲出預算之效力在於授權行政部門於預算所定之目的、金額與時期內動支經費，而無課以執行義務之內涵」。

5．由於日本國憲法係將預算之編製權分配給行政部門，將審議、議決權分配給立法部門之規定與我國相同，財政法上就預算之執行僅設有限制動支經費之規定，復與我國預算法之規定相接近，因此於法定預算之效力問題，至少在實定法之規範方式及解釋上，應有極大之參考價值。

四、行政院為本案之決策，有無通知立法院或向立法院提出報告之義務？

（一）立法院職權行使法第十七條規定：「行政院遇有重要事項發生，或施政方針變更時，行政院院長或有關部會首長應向立法院院會提出報告，並備質詢（第一項）」「前項情事發生時，如有立法委員提議，經三十人以上連署或附議，經院會議決，亦得邀請行政院院長或相關有關部會首長向立法院院會報告，並備質詢（第二項）」。

本條規定未課行政院於重要事項發生，或施政方針變更時應先向立法院報告之義務，或須取得立法院之同意後始得變更：

1．行政院不可能未卜先知，預見將要發生重要事項，而事先向立法院報告並備質詢；

2．行政院掌理國家行政政務事項件件重要，施政方針亦非堅牢不移、一成不變。事項是否重要，方針有否變更，其標準為何？究由立法院或行政院判斷或決定？該條並未明白規定，適用上亦不可能明白界定，自無強解為「事先」之餘地；

3．立法院對行政院之報告不贊同時，充其量亦僅得依憲法增修條文第三條第二項第三款規定對行政院長提出不信任案，行政院長可依同款規定同時呈請總統解散立法院，該條之適用、效果及衍生的憲法問題在此。

（二）關於本案，經濟部於八十九年九月三十日向行政院提出停建核四之建議前後，即曾就停建核四之考量過程，相關替代方案之可行性，積極向立法院溝通說明在案。

行政院第2706次會議通過停建核四後，行政院張院長於十月三十一日率全體部會首長至立法院，擬俟機就本案向立法院說明並備質詢，惟該日原排定之總質詢議程經立法院決議變更，而未有機會進行詢答說明，由於立法院表明不歡迎行政院院長列席立法院院會，因此，行政院無法就本案向立法院提出報告，無可歸責。

五、核四廠停建後可能發生之賠償不能完全以金錢為衡量計算之標準

核四廠停建後，依台灣電力公司與承包廠商間之契約關係，循民法上債務不履行之法則處理，此部分金額可依協議、仲裁或裁判確定之，惟對政府及國民全體而言，此項賠償金

額不能完全以金錢為衡量計算之標準。鑒於國家重大公共工程建設動輒追加預算之情形，屢見不鮮。評估損失除應考慮已編列或追加之預算，已、應支付之款項外，自應將繼續興建所需再投入之資本支出算入，契約履行與不履行間權衡利弊得失，分析成本效益，諸如電力生產過剩供給過度浪費之損失，核一、核二、核三提前除役之損失，當地及全國反核民眾抗爭社會成本之損失，核廢料處理、運作風險等對土地及人民生命、身體、財產難以估計及回復之損失等等估算在內，不能完全以金錢為衡量之標準。

六、本案並無違法、失職或財政上不法或不忠於職務行為之可言

審計法第十七條規定：「審計人員發覺各機關人員有財務上不法或不忠於職務上之行為，應報告該管審計機關：」，所謂「不法」，指違反法律規定，或欠缺法律依據，所謂「不忠於職務上行為」，指廢弛職務或逾越權限之行為而言，與公務員懲戒法上所規定之「違法」、「廢弛職務或其他失職行為」，應屬相當。不忠或不法與否，雖重在就預算執行之合法性及經濟性，但其目的在防止政府為不法或不經濟之支出，以提高執行效能，而非強制政府必須百分之百執行預算，預算法第二十八條所規定「審計機關應供給審核以前年度預算執行之有關資料，及財務上增進效能與減少不經濟支出之建議」可稽。行政院在審慎評估、通盤考量我國核廢料處理情形、核能安全、先進國家非核化趨勢，有更符合公益之替代方案及為國家永續發展等因素後，決定停建核四，本即為行政權之領域，本諸憲法所架構之權

力分立原理，立法、行政兩權各本所司，各享有憲法所保障之核心領域，停建核四不動支預算，並無「違法」、「失職」之問題，自與財政上之「不法」或「不忠於職務行為」無干。

謹呈

司法院大法官　公鑒

中華民國八十九年十二月廿一日

具狀人　行政院

代表人　張俊雄

訴訟代理人　洪貴參律師

解釋憲法
統一解釋法律
意見書

聲請人 法定代理人 代表人 或代理人	關係院 代表人
（姓名及身分證統一編號，如係法人團體或政黨請記明其名稱代表人姓名。）	立法院 高育仁委員 周錫瑋委員 營志宏委員
性別	
出生年月日	
職業	
出生地	
住居所、營業所、主事務所及電話號碼	
送達代收人姓名、住址及電話號碼	

為行政院就決議停止興建核能四廠並停止執行相關預算，認與本院行使職權發生適用憲法爭議，聲請解釋憲法及統一解釋案，依　貴院邀請，提出意見事：

一、疑義或爭議之性質與經過及涉及之憲法條文

㈠緣行政院於八十九年十月二十七日第二七0六次院會中，決議通過經濟部核四計畫再評估簡報之建議「停止興建核四電廠」，並不再執行相關預算（證一號）；嗣於八十九年十一月七日以台八十九經字第三一九0七號函將前開決議通知經濟部，並副知主計處、經濟建設委員會、環境保護署及原子能委員會等相關單位，表明「由院正式宣佈停止興建核四電廠」，命之「照決議辦理」（證二號）。

㈡前開決議後，本院認行政院此舉乃違反其依法行政之基本職責、拒絕執行法律，屬公然之違法瀆職，即本於本院八十九年十一月七日決議「函請監察院就行政院長張俊雄及相關失職人員蔑視法律，違法失職之行為，予以依法糾彈」（參閱行政院釋憲聲請書附件一號）。矧行政院竟以預算案與法律案性質不同為由，認為預算案屬於行政權之事項，並以法無明文禁止不執行預算，可由其自行依據政策考量於本院決議後，刪減甚或不執行，而提出本件聲請解釋憲法與統一解釋案。

㈢查本件核能四廠之預算，係由本院於民國八十三年七月十八日以在場委員一百四十六人中，八十四人贊成，通過台灣電力公司之附屬單位預算（證三號），嗣本院委員張俊宏等五十三位委員依據憲法第五十七條第二款規定，提案「不贊同行政院核能政策，要求廢止所有核能電廠興建案」，並經本院於八十五年五月二十四日，以出席人數一百一十九人，七十六人贊成，四十二人反對，決議通過；然經行政院於六月十二日提出覆議案後，本院復於十月十八日以出席人數一百一十四人，八十三人贊成，二人反對，而決議贊成行政院覆議案，推翻先前之決議。是本件核能四廠之預算，業經本院兩度之決議確認應予執行，而該兩度之決議，亦曾經行政院長之副署公布（證三之一號），甚且行政院於覆議案時更以正式公函向本院提出覆議案（證三之二號）；俱見，核能四廠之預算前後經過本院及行政院各兩次之正式決議與認可，行政院現竟圖以一次行政院院會決議，便推翻兩院共四次之正式決議，其違法不當，不證自明。

㈣按經本院覆議通過之提案，學者且有認為其效力形同法令者（證四號），不容行政院恣意違反；自預算案本身之性質以及憲法關於覆議程序等規定觀之，本院通過之法定預算，即應依預算法等相關規定

辦理，自有拘束行政機關之效力，行政院絕無自行決議違反法定預算之權限；而縱欲加以變更，亦應經由法定之相關程序，始得為之。是本件行政院自行以院會決議停止執行核四預算之行為，顯屬違憲。

㈤法定預算乃經由與法律案相同之三讀立法程序，由本院正式通過，其雖與一般法律不同，但仍為「措施性法律」，具有法的拘束力（　貴院大法官釋字三九一號解釋參照）。今行政院竟逕行決議停止執行經本院通過之法定預算，不僅違背預算法、審計法、決算法等相關法令規定其應執行預算之義務；更嚴重牴觸憲法增修條文第三條第二項第一款及第二款行政院應就「重大施政方針」及「預算案」向本院負責之規定；且違反權力分立之精神，逾越憲法第五十三條行政院為國家最高行政機關必須以依法行政為前提之本旨；甚者，行政院恣意以決議停止執行已由總統公布、行政院長副署之法定預算，更屬牴觸憲法第三十七條行政院長副署及第一百七十二條命令不得牴觸憲法或法律等規定之行為；而行政院將法定預算解釋為行政裁量之權限範圍，更將使本院監督行政院執行職務之權力成為具文，而審議預算案成為橡皮圖章，且讓行政院「覆議」之制度失其存在之意義，顯然違反釋字三九一號解釋

所揭示預算案為「措施性法律」之意旨。是本件行政院之決議及對經濟部所下照上述決議辦理之命令，均屬違憲。

二、本院對本案所持之立場與見解

㈠經本院通過之法定預算屬「措施性法律」，具有法規範效力

1.預算法第二條明定，預算經立法程序而公布者，稱法定預算。是法定預算之立法程序與一般法律案完全相同，顯見法定預算至少在形式上是一種法律。而依據 貴院釋字第三九一號解釋，更明揭預算案之性質雖與一般法律案有所不同，但**「基於民主憲政之原理」，預算案又必須由立法機關審議通過而具有法律之形式，故有稱之為「措施性法律」者，以有別於通常意義之法律**（證五號）。而所謂「措施性法律」者，乃內容非完全抽象及一般性之法律，在尊重立法機關之原則下，以及衡諸我國立法實務，**此種立法具有法規範效力，無可否認**（證六號）。

2.本於權力分立之基本精神，在我國民主憲政法秩序下，預算之法律性質應採「預算法律說」（又名特殊法律說）的觀點，此徵諸憲法第六十三條規定本院有議決預算案之權以及預算法第二條法定預

算之規定，意旨甚明。其審議程序、規範對象乃至於效力持續性而言，預算雖與普通法律有所不同，但是此正係其特殊性之所在，尚不能據而否認其規範性（證七號釋字三九一號大法官蘇俊雄、劉鐵錚不同意見書）。而憲法第七十條本院不得為增加支出提議之規定，恰足以彰顯預算為「特殊之法規範」之性質。是行政院聲請書稱憲法第六十三條規定本院之審議，僅具有立法機關批准行政機關年度施政計畫之性質云云，顯與財政民主主義之原則有違。

3. 復查我國憲法增修條文第三條第二項第二款規定「行政院對於立法院決議之法律案、預算案、條約案，如認為有窒礙難行時，得經總統之核可，於該決議案送達行政院十日內，移請立法院覆議。……。覆議時，如經全體立法委員二分之一以上決議維持原案，行政院院長應即接受該決議。」，可知對於本院通過之法律案及預算案對於行政院有同等之拘束力，否則如本院通過之預算案行政院有決定執行與否之裁量權限，又何需設此一覆議制度？限制時效為十日？且如經立法院決議維持原案，行政院院長應即接受該決議？在在足證，法定預算之效力實與法律無異，不容行政機關藉詞規避其執行之責。

4.以美國為例，徵稅並據以決定支出，都是憲法單獨賦予國會之權力，國會通過之預算即為法律，行政部門除以覆議程序從事抵抗外，必須加以執行，絕不容許總統本於行政權，而為選擇性執行預算；美國國會甚至於一九七四年制頒「國會預算保留與控制法」（Congressional Budget Impoundment and Control Act），明文禁止總統未經國會事前同意而任意停止或削減國會已通過預算之執行；即便國會立法授權總統不予動支預算亦遭美國最高法院解釋為違憲（證八號）。而我國憲法雖規定本院不得為增加支出之提議，使本院不能主動提出預算案，使預算案與一般法律案不盡相同，然此僅為將預算之提案權劃歸行政部門，本院仍有議決之權，使預算具有法規範之效力，非謂行政權得不受拘束，可自行基於施政需要、政策變更而任意選擇執行與否。

5.綜之，本於權力分立之基本精神，本院依據憲法第六十三條規定審議通過之法定預算，實屬「措施性法律」，具有法規範之效力，絕非僅為立法機關對行政機關之授權。

㈡本於依法行政原則，行政院不得拒絕執行法定預算

1.依法行政原則，又可分為「法律優越」及「法律保留」兩項子原則，前者係指行政機關之行為不得

與法律相牴觸，而此處之法律係指經立法機關通過之形式意義法律；承前所述，法定預算既屬立法機關通過之「措施性法律」，行政機關自無牴觸拒不執行之權。而法律保留原則，則指憲法已將某些事項保留予立法機關，行政機關必須有明確之法源依據，始得為之，而不僅要求不與法規相牴觸即可。於干涉行政之事項，因足以侵害人民基本權利之行為，自當受法律保留之拘束；而即使在給付行政之事項，近年來亦採取「重要性理論」，認為如涉及原則性問題，亦必須有法律明文之依據，因為在法治國家，應防止行政機關之措施出於恣意，並應盡可能使行政機關之決策具有預測性（證九號）。

2.因此，法定預算既屬「措施性法律」，具備法規範效力，則本件核能四廠此等業經立法機關審議通過之預算，若尚且容忍行政機關可以「法無明文禁止」為名，任意取捨執行與否，則顯然與依法行政原則背離，更使本院之預算審查、制衡機制，失其意義。

3.再者，我國憲法賦予行政對抗立法之武器，僅有前揭憲法增修條文第三條第二項第二款之覆議一途，行政院若覆議失敗，依據前開條款規定，閣揆只有接受；換言之，我國憲法顯已明文規範，本

院通過之法律案及預算案，行政院有執行之責，非經覆議成功，不得拒絕執行。

4. 行政院認為法定預算乃單純立法機關對於行政機關之授權，屬於行政權裁量範疇之見解，顯仍陷入傳統公法學界認為財政作用乃是附屬於行政作用之下之不具「權力色彩」之金錢支出作用，因其不具侵害行政之性格，從而非屬立法權保留事項之老舊認知；實則，基於現代財政作用因為量的極度擴張業已無可避免引起質的變化；昔日認為財政行為從屬於行政權之傳統概念，已遭淘汰（證十號），國庫行為亦非完全不受立法之監督，更何況，**本件核能四廠案為我國重大電源開發計畫，為能源政策、產業政策之一部分，且經由公權力之參與，而得以排除各項阻力，如土地徵收、疏解民怨抗爭活動等，現該項重大工程計畫已執行四百八十餘億，約達百分之三十一之進度，並非單純屬於台電公司之私經濟行為**，其是否興建，影響層面甚廣，對於確保未來電力供應，以繼續發展經濟，提高人民生活水準，甚關重要，自應依據法定預算確實執行，不得由行政院片面決定停建之。

㈢本件行政院拒絕執行核能四廠法定預算，嚴重違反憲法規定

1. 憲法增修條文第三條第二項第二款明定，對於本院之預算案，行政院如認窒礙難行，需於十日內提

出覆議，否則即需執行，以對本院負責。本件行政院於核四案並無任何窒礙難行之處，或客觀上執行確有困難之情形，僅以「政策取向」，便欲否定法定預算之效力，自屬違反憲法本款之規定。

2. 憲法第五十九條規定，行政院需提出預算案於本院；第六十三條復規定本院有議決預算案之權；是預算案最終決定之權在於本院，而本院決議後之預算案，依據釋字三九一號解釋，為「措施性法律」之性質，自當拘束提出預算案之行政機關，若非如此，本院審查預算之憲法機制，將無任何制衡、監督之效果，況且，前開憲法條文係將預算案與法律案、戒嚴案、大赦案、宣戰案、媾和案等事項並列，如解為行政院得以自身之意志，拒不執行本院議決之法定預算，則不啻行政院對於所有本院通過之法律、重要事項，皆得拒不執行！則權力分立、相互制衡之機制將不復存在，勢將造成行政院一院獨大，行政專擅，而本院則淪為行政院之附庸機關，此顯與憲法五院分治平等相維（貴院大法官釋字第三號解釋參照）之意旨不符。

3. 憲法第五十三條「行政院為國家之最高行政機關」之規定，亦即行政院有綜理政務行使行政權之權力與責任；而行政權即為「依法行政」、「執行法律」之權，自應受立法機關決議通過之法律案、

預算案之拘束。按核四再評估委員會委員係由經濟部部長所選聘，且其成員之意向，自始確定，所作評估結果，早在意料之中，欠缺公正性及公信力。核四再評估委員會推翻「全國能源會議」與建核四之結論，欠缺說服力及可信度，以少數人意見推翻多數人意見，顯然違反民主憲政基本原則，而行政院院會竟直接以其建議為基礎，並以本身不具民意之決議，否定民意機關本院之兩度決議（八十三年通過預算及八十五年同意覆議）。同時，**行政院僅以法無明文禁止即任意不執行核四法定預算，自屬違背憲法關於行政院對立法院負政治責任，以及基於民意政治與責任政治原理之意旨（貴院大法官釋字第三八七號解釋參照）**。

4.綜前，本院難以接受某種憲法理論，而將行政部門拒絕遵守國會通過之支出決定，解釋為正當行為。財政支出可能被認為係行政權之固有功能，然而，執行法律原就是行政權之固有功能，卻不能從行政權有執行法律之功能推出行政權遂有抗拒執行法律之權。自亦不能因行政權有權責執行預算，即認定行政權有權責不執行本院通過之法定預算。

㈣本件行政院拒絕執行核能四廠法定預算，嚴重違反相關法律之規定

1.經立法程序而公布之預算案，為法定預算；而預算包括附屬單位預算，預算法第二條、第十六條分別定有明文。台電公司為附屬單位，係預算法所明定，其預算之編製、審議及執行，應依預算法第六章（第八十五條至第九十條）規定辦理，其預算執行較具彈性，故第九十條亦規定，該章未規定者，準用該法其他各章有關總預算或單位預算之規定，其立法程序，仍係由行政院會議通過，隨同總預算案提出於本院審議，均須經三讀通過，同屬憲法所稱本院有議決權之預算案。顯見，核四預算雖屬附屬單位預算，仍不影響其屬法定預算，而具有措施性法律效力之本質。

2.預算法第二十八條、第三十條至第三十二條、第四十六條雖明定預算應由行政部門提出，然姑且不論由行政部門提出，不代表行政機關對於本院通過之法定預算有不予執行之裁量權；參酌同法第三十四條「重要公共工程建設及重大施政計畫，應先行製作選擇方案及替代方案之成本效益分析報告，並提供財源籌措及資金運用之說明，始得編列概算及預算案，並送立法院備查」之規定，可知就核四此等重大公共工程及施政計畫，即便行政院欲擬定預算案（即所謂「建案」），尚且需先經過多方評估，且在送本院審議前，先行送本院備查。因此，在本院已經備查、審議甚至於覆議通

過，形成正式之法定預算後，豈有行政院得不經本院之審議通過，甚至連先行知會、備查都不用，即可任意以一句「政策變更」，全盤推翻自己先前提出、經本院通過之法定預算（即「廢案」）？顯見，預算法第三十四條即為禁止行政院任意不執行核四預算之規定。

3. 預算法第五十二條第二項規定：本院就預算案所為之附帶決議，應由各該機關單位參照法令辦理。舉輕以明重，即便附帶決議，亦「應」由各該機關依法執行，何況法定預算本身？足見，行政院絕無不執行法定預算之權。況且預算法第五十二條第一項更明定法定預算附加條件或期限者，從其所定，但該條件或期限為法律所不許者，不在此限。

4. 預算法第六十一條「各機關執行歲出分配預算，應按月或分期實施計畫之完成進度與經費支用之實際狀況逐級考核之，並由中央主計機關將重要事項考核報告送立法院備查；其下月或下期之經費不得提前支用，遇有賸餘時，除依第六十九條辦理外，得轉入下月或下期繼續支用，但以同年度為限。」之規定，各機關自當依照預算法之規定執行預算，如有任何未依進度完成與支用之情形，皆當為考核之內容，且重要之考核報告尚需送本院備查，可知，**行政機關當有依法定預算執行之義**

務，否則考核制度即無存在之必要。而類似核四之預算，其考核甚至有送本院備查之必要者，豈能任由行政院停止執行預算？

5. 行政院雖以預算法第六十七條各重大工程投資計畫，超過五年未動用預算者，其預算應重行審查之規定，「推論出」行政機關有權不執行法定預算。惟查，一則本條之立法目的係針對擱置超過五年之預算，由本院重新審查，以利預算符合現狀，便於執行，全然無行政機關得不執行法定預算之意涵；再則本件核能四廠之預算業已動支四百八十餘億元，與本條完全未動支預算之要件不符。行政院以本條為其停止執行法定預算之理由，顯屬曲解法律。

6. 預算法第七十一條規定，預算之執行，遇國家發生特殊事故而有裁減經費之必要時，得經行政院會議之決議，呈請總統以令裁減之。故對於預算之執行，若非有特殊事故之發生，不得予以裁減；況且，此裁減尚且需由具有民意基礎之總統為之，始有正當化之基礎，否則對於民意機關本院所通過之法定預算，行政機關若得逕行裁減甚至裁減至零，則不啻開民主之倒車，不符合民主法治之精神。而本件核四之爭議，既非國家發生任何特殊事故，亦非有裁減經費之必要，行政院更未呈請總

統以令裁減之，便貿然宣布不予執行預算，自屬違法。

7.另「法定歲入有特別短收之情勢，不能依第七十一條規定辦理時，應由中央財政主管機關籌劃抵補，並由行政院提出追加、追減預算調整之。」為預算法第八十一條所明定。故行政院必須在法定歲入有特別短收之情形下，始能提出追減之預算作為調整；而本件核四預算並無前開情事，行政院更無權提出追減預算，是其行為顯不合法。

8.預算法第八十五條第一項第一款規定：「各國營事業主管機關遵照施政方針，並依照行政院核定之事業計畫總綱及預算編製辦法，擬訂其主管範圍內之事業計畫，並分別指示所屬事業擬訂業務計畫；根據業務計畫，擬編預算。」，查核四電廠興建計畫係由行政院核定之重大電源開發政策，攸關國家經濟發展、國民生計及未來國內長期電源供應之穩定性，屬憲法第一百零七條、一百零八條應由中央立法執行之事項。且台電公司曾依據土地徵收條例，行使公權力，強制徵收土地，故非純屬契約之私經濟行為。且同條項第二款雖規定附屬單位預算其所列資產之建設、改良、擴充，應考量投資計畫之成本與效益，然本款係規定「營業基金預算之擬編」之主要內容，核與預算通過後之

政策變更毫無關連。

9. 至行政院稱依據所謂「中央政府附屬單位預算執行要點」（證十一號）第九點（二）規定，行政院得對於附屬單位之計畫型資本支出，於年度進行中，核定予以緩辦或停辦云云；然查該要點僅為行政院自行頒佈之行政規則，既非法律授權之法規命令，又無憲法或法律之其他授權基礎，行政院欲以此自行頒佈之要點規定，推翻本院通過之法定預算預算，實與依法行政、立法優越等法治國基本原則不符，而屬違法違憲。況且，姑不論核能四廠案與前開第九點㈡之財務狀況欠佳、資金來源無著、情事變更無法達成預期效益等要件不合，該要點第二十五點亦明定，資本支出進度未達百分之九十，「除不可抗拒之特殊因素外」，該機構首長及相關主管應予議處。顯見，行政部門確有依據法定預算執行之義務，否則將面臨違法議處之責任。

10. 預算法第八十七條第一項雖規定附屬單位應配合業務增減需要，隨同調整收支，併入決算辦理。應係承認得由行政部門自行調整收支，併入決算；然則，依據行政院主計處五十五年八月六日台（五五）處孝一字第二二〇四〇號令（證十二號）預算法第七十一條（即修正前之預算法第八十七條第

一項）僅適用於「修正」預算之情形，至於「變更」則非依預算程序辦理不可。是以，如同本件核四預算停止執行之預算「變更」，行政院自應依據預算程序辦理，不得自行決定。

11.至行政院稱預算法第八十八條之規定，更屬附屬單位之預算執行，在預算未及編列時之處理辦法，與本件核四預算業已編列之情形完全不同。

12.而預算法於八十七年修正後，除於前揭「中央政府附屬單位預算執行要點」第二十五點有對執行預算不力者議處之規定外，行政院八十九年八月三日修正公布之「行政院暨所屬各機關計畫預算執行考核獎懲作業要點」（證十三號）第四點更規定「全年度計畫預算執行進度，…未達全年度百分之九十者，相關主管人員依下列標準予以議處…」，其要件較亦屬嚴格，俱見即便行政院本身對於預算執行之義務，採取高標準之嚴格要求；甚者，該要點第五點復規定「所稱不可抗拒之特殊因素，…，其規定如下，…：1.因民意機關之決議，…，致所列預算無法據以執行，進度落後、緩辦或停辦者。」，亦無任何得由行政部門單方決定停止執行法定預算之規定，而今行政院竟於本件核能四廠預算之執行，便翻異其詞，認為有權不予執行，顯屬選擇性解釋，要無可採。

13. 簡言之，預算法既無「法定預算得予停止執行」之規定，又已明定預算程序，對於預算變更，若非有符合前揭預算法得逕予調整之事由，便只有再經預算程序一途。故行政院逕行決議核四預算不予執行，並無任何預算法之依據。

14. 審計法第二條第一項第一款即明定審計之職權為「監督預算之執行」、第四款規定「稽查財物及財政上之不法或不忠於職務之行為」，顯見**預算之執行乃行政機關之義務，如有任何執行不力或拒絕執行者，自屬財政上之不法或不忠於職務之行為，應依同法第十七條規定「審計人員發覺各機關人員有財務上不法或不忠於職務上之行為，應報告該管審計機關，通知各該機關長官處分，並得由審計機關報請監察院依法處理；其涉及刑事者應移送法院辦理，並報告於監察院。」處理。**若行政院有自行決定執行法定預算與否之權，又何需由審計機關監督其預算之執行？顯見，行政院無權自行做成停建核四之決議。

15. 「財政上之不法或不忠於職務之行為」，審計法上雖未明白規定或予以定義，惟依審計部編印之「中華民國八十八年審計報告書」之「財務上不法不忠於職務行為之稽察」專編中（第一三七頁），

其註二（第一六0頁）所稱：『審計法上所稱「不法或不忠於職務上之行為」，均係指「財物及財務上之行為」而言。所稱「不法」，包括違反法律之規定，或缺少法律之依據；所稱「不忠」，包括廢弛職務（應為而不為），或逾越權限（不應為而為）。其與公務員懲戒法所稱「違法」、「廢弛職務或其他失職行為」之解釋應為一致。審計機關為考核各機關財務效能，核定各機關人員財務責任，則稽察各機關人員在財物及財政上不法或不忠於職務之行為，乃係必要之職權。』因此，不執行法定預算係廢弛職務（應為而不為），應屬財政上不忠於職務之行為。

16. 審計法第六十七條、第六十八條復規定審計機關審核決算時，應注意預算數之超過或賸餘以及歲出與預算是否相符；而第六十九條更規定，如有未盡職責者，更應通知上級長官並報告監察院。此皆足見行政機關確有依據預算執行之責任與義務。

17. 審計法施行細則第三十五條第五款規定「對於預算執行發生重大變動者，應通知檢討改善，如發現不當情事或重大特殊問題，應派員深入調查迅速依法辦理」，第七十一條及第七十二條更分別規定各單位提送之報告中，必須包括預算執行之經過及情形。是預算之執行，絕不容行政機關恣意停

止。

18. 至決算法第十三條、第十五條第三項及第二十三條等規定，實為要求審計單位於決算時必須注意之方向，並因此作為判斷是否依據第二十九條懲處或告誡之依據，非行政院所稱本得允許不執行預算；況且，決算法第十三條業經行政院提案經由本院通過於今年廢止；是行政院以該條表示其有自行決定執行預算與否之權，即屬無據；且決算之審核報告亦需提出於本院，由本院審議，同法第二十六、二十七條定有明文，更足徵行政機關必須執行預算之意旨。

19. 綜上，足見行政院停止執行核四預算之行為，非但於相關法規中找不到明文依據，甚且，就各法規之規定中在在顯示行政部門有義務於年度計畫中執行法定預算，絕無權力拒不執行預算。是行政院稱無法律明文禁止不執行預算云云，實屬無稽。

(五)核四預算屬於重要政策及事項，行政院縱欲修正其施政方針，亦應向本院報告，並經本院同意

1. 核四預算為重要政策

行政院八十五年六月十二日台八十五經字第一八四七二號函請本院覆議之說明二謂：「核四計畫為

政府長期審慎評估，所決定之重大經濟政策，為確保我國經濟持續發展，維護國家信譽及民眾之福祉，核四計畫確有移請覆議之必要，俾維持政府重大政策施政之一貫性。」（見證三之二號）再者，核四廠之興建既屬二院共同認定之重要政策（決議變更與提出覆議），對其所為「停止興建」之決策，自屬重要政策之變更，此由行政院將停建核四案提出於行政院第二七0六次會議討論並作成決議，非如同行政院解釋憲法聲請書及統一解釋聲請書所述未執行法定預算之事例，僅由通常之行政作業程序即予同意停止執行，而均未提報行政院院會之處理方式可觀之；另由行政院「統一解釋聲請書」參、五、（第九頁）中所稱「本案經濟部成立核四再評估委員會，從能源政策、產業政策及社會總成本等觀點重新評估，……」，可推知行政院對停建核四廠之決策並非僅基於預算經費之考量，顯見核四計畫並非台電公司之個別營運、建設計畫，乃政府之重大施政政策，行政院對停建核四廠亦有屬於重大政策變更之認知，要無疑義。

2. 行政院有向本院提出施政方針及施政報告之責。我國憲法增修條文第三條第二項第一款定有明文。足徵行政院就國家之重大政策，或其施政之重要事項，自當必須向本院提出報告，並接受本院之質

詢；而「立法院為國家最高立法機關，有議決法律、預算等議案及國家重要事項之權。立法院為行使憲法所賦予上開職權，得依憲法第六十七條規定，設各種委員會，邀請政府人員及社會上有關係人員到會備詢。」貴院大法官釋字四六一號解釋著有明文（證十四號）。顯見，本院之「質詢權」乃是伴隨為行使憲法所賦與本院之職權而來；換言之，本院就立法職權有關之事項，有質詢之權，以利促使行政部門檢討一般政策或本院自行作成決議。衡諸憲法第六十三條「本院就國家其他重要事項有議決之權」之規定，並參酌前開增修條文本院得就施政方針質詢之意旨，增修條文第三條第二項第一款行政院向本院負責之內涵，自應為國家重要事項，應向本院報告。

3. 再者前開增修條文雖就憲法第五十七條第二款本院就行政院重要政策不贊同時，得移請行政院變更及行政院覆議之規定停止適用，然此非但無解於行政院應就其重要政策向本院報告之責，反適足以說明各項重要政策行政院不再有逕為執行之權，而應先行向本院報告。是就核四此等重大事項之政策變更，行政院自有向本院報告並備質詢之憲法責任。況且，本案業經本院於憲法修正前依據前開憲法規定，移請行政院變更，經行政院移請本院覆議後，確認應繼續興建核能四廠之施政方針；實

不容行政院片面以政策變更為由，不先行報告本院，取得本院之同意，便自行宣布不予執行。而其自行決議變更重大政策之舉，自屬違反憲法前開規定需對本院負責之意旨。

4.另立法院職權行使法第十六條復明揭行政院應依據前開增修條文向本院為施政報告之意旨；而同法第十七條第一項「行政院遇有重要事項發生，或施政方針變更時，行政院院長或有關部會首長應向立法院提出報告，並備質詢。」之規定，更賦予行政院有向本院提出報告之法律義務。上述規定，原於「立法院議事規則」中明定，但因涉及兩院權責，本院於八十八年一月間制定立法院職權行使法時，將之明列於該法律中，不再以本院之內規定之，使其具有法律拘束力，而應為兩院所共同遵守；未料行政院院會作成此項決議後，全然無視於該法律之規定，且不顧本院正值會期期間，拒不向本院提出報告，不僅破壞憲法之精神，亦使法律規定形同具文。

5.實則，行政院對於立法院決議之預算案如有認為窒礙難行之處，需於十日內提出覆議，否則即需執行，以對本院負責。換言之，行政院對於本院通過之預算，唯一之救濟途徑，即為「覆議」制度，本件核四案並無任何窒礙難行，客觀上亦無執行困難之情形下，行政院僅以「政策取向」，便否定

法定預算之效力，自屬違反憲法本款程序之規定。甚者，本件核四案業經覆議在案，行政院更應受其拘束，始符憲法覆議制度之意旨。

6.而自憲法第五十九條、第六十三條之規定觀之，我國憲法係將預算之提案權交由行政院，而將議決權劃歸本院；可知，預算案必須經由兩院之程序，始能通過；預算之決定如此，則預算之變更，豈能由行政院單獨決定即發生效力？因此，就核四預算之不予執行，行政院自應向本院報告，且非經本院法定程序，不得變更預算。

7.再查，核四預算迄今僅編列一千一百餘億元，尚有六百餘億元並未編列；已編列之部分，勢必須要報請本院決議，並另案追加相關賠償、損失等預算；未編列部分，則應當向本院報告不再編列之意思；此外，依據行政程序法第一二六條規定給予因廢止原受益處分，應給予之損失補償等種種問題，皆須另行報請本院通過相關預算，而停建核四之後續問題，涉及層面廣泛，包括電價上漲及賠償問題將由全民負擔、替代方案涉及立法政策之變更而需修法，以及歲出之增加及歲入之減少等，凡此均直接、間接與人民之權利義務有關，亦與本院職權之行使有關，勢必僅能依照行政院所提之

議案通過，否則無法解決現實面所發生之困難，如此一來，立法權完全受到限縮，嚴重違背憲法之規定與精神。顯見行政院於做成本件核四停建決議前，自應先向本院報告，非經本院法定程序，不得變更，否則，後續處理等事宜，勢必無法完成。

8.總言之，興建核四政策係經行政、立法兩院會同以預算方式賦予法定定位之重大政策，行政院所作停建之決策，無論依憲法增修條文第三條第二項第一款或本院職權行使法第十七條第一項之規定，行政院院長均有先向本院報告擬停建核四決策之義務，且依憲法精神，是否停建應由兩院共同解決，決非單方面所能輕率決定。且行政院院長向本院報告之義務，其目的在於使本院據以明瞭原經兩院同意之重大政策可能有所改變，本院委員亦得藉以向行政院及相關部會首長行使質詢權，以溝通意見、周延決策外，更可使本院因此報告而作為爾後審議相關預算案、法律案或國家重要事項案之價值判斷或立法決策之參考。興建核四之重要政策業經本院於八十五年間議決確定，本院向無再提出相同議案之議事慣例，惟本院委員在聽取行政院依本院職權行使法第十七條第一項所作之報告後，尚非不得依同法第八條第一項規定，由本院委員以提出法律案之方式，經辯論、說服、協商

後，予以合法妥適解決。故行政院依同法第十七條第一項所為之報告，僅為履行義務，行政院也不因履行此項義務而有逕行停建核四之權，但該院未履行此項報告義務，並逕行宣告停止興建核四廠，影響嗣後本院職權之行使，實為破壞憲法權力制衡及權力互相尊重基本精神之惡例。

㈥停建核四電廠後可能之後續問題

1. 相關賠償及損失部分

(1)台電與各廠商終止契約所衍生之賠償及損失

就台電片面終止與承包商所簽訂合約所負之損失補償、違約金與罰款義務而言，台電公司既為國營企業，政府擁有高達百分之九十四以上之股份，本即屬廣義之政府體系之一環，若推稱政府停建核四決策對台電公司係「不可抗拒之事件」而主張不負任何賠償責任，勢必無法為承包廠商所接受。且依政府採購法第六十四條之規定：「採購契約得訂明因政策變更，廠商依契約繼續履行，反而不符公共利益者，機關得報經上級機關核准，終止或解除部份或全部契約，並補償廠商因此所生之損失」，故有關台電與承包商之間諸多的契約解約相關賠償問題將無可避免。依據行

政院的資料，因終止契約可能發生的賠償金額約為新台幣七百五十一億至九百〇三億元。

(2)停建核四電廠計畫土地後續處理相關損失問題：

①撤銷徵收，發還土地

核四電廠如停止興建，原徵收之土地應撤銷徵收。依土地徵收條例第四十九條第一項第五款之規定，已徵收之土地，需用土地人應切實按核准計畫及所訂期限使用。如已依徵收計畫開始使用，尚未依徵收計畫完成使用之土地，因情事變更，致原徵收土地之全部或一部已無使用之必要者，需用土地人應辦理撤銷徵收。依台電公司原報請徵收計畫書中所載之徵收目的為應興建核能發電廠之所需，如核四電廠停建，恐將構成上述撤銷徵收之要件。依該條例第五十條規定「撤銷徵收由需用土地人(台電)向中央主管機關申請之」，惟台電公司若未依前條規定主動申請撤銷徵收，原土地所有權人仍可依同條例第五十條之規定，得向該管縣(市)主管機關(台北縣政府)請求之。另依土地徵收條例第五十一條規定，原土地有權人應於一定期間內繳清應繳回之徵收價額，始發還其原有土地。如未於期間內繳清應繳回之徵收價額者，不予發還土地，仍維持原登記，致有部

分土地發還、部分土地未發還之情況，造成土地公私共有之問題，將造成原核四土地無法有效使用之困境。

②拆除及整地費用

屆時台電公司不僅將面臨須發還土地之問題，已興建完成約三分之一之廠房設備，亦可能需拆除及回填所挖掘之土地，若需將土地恢復原貌還給原地主，勢將增加數以百億計之巨額費用，且辦理撤銷徵收程序繁瑣，亦會增加行政部門之負擔，徒增行政資源之浪費。

③變更計畫用途應重提徵收計畫

核四廠停建後若改為其他天然氣發電廠，須先依法定程序將土地發還原地主，再重新研提徵收計畫並辦理徵收作業。未來重新辦理徵收時，仍應依土地徵收條例第三十條規定，按照被徵收當期之公告土地現值，補償其地價。

(3)台電歷年回饋地方及各項補償民眾費用之損失：

台電公司為化解地方及民眾抗爭及阻力，以便順利執行核四計畫，歷年已支付數億元經費，用於

回饋及補償。核四計畫如停止興建，這些已支付之費用，均可能成為實質之損失，例如：台電公司提存於法院之漁業權補償金二億餘元，係因貢寮鄉漁會之專用漁業權因核四之興建，致遭變更、撤銷及停止該部分漁業權而受有損害，經中央主管機關農委會依漁業法第二十九條規定決定補償金額，惟該漁會因拒領該項補償金，台電公司爰依提存法之規定，將該項補償金無條件清償提存於國庫，並通知受領權人貢寮鄉漁會，得隨時提領。依據提存法第十五條規定，提存人(台電公司)如擬領回原提存之提存物，須係提存出於錯誤、原提存原因消滅或受領權人同意返還提存物等原因始可，核四停建一旦確定，漁業權將予以回復，台電公司即得據此請求返還部分提存物。若提存金已為受領者，則台電公司對於該漁會提領之漁業權補償金，雖可依民法不當得利之法律關係，請求返還。惟能否順利全部取回，或仍可能產生部分損失，不無疑問。至於其他回饋地方所支出之費用，則雖停建核四，恐難以要求地方返還，而將成為實質之損失。

2. 有關損失提列或轉嫁可能之因應方式及問題：

(1)台電於營業預算中，以逐年提列損失方式處理。如採此一方式，政府將會因此減少台電公司本可

繳交國庫之巨額法定盈餘，對政府財政收入及全民權益將有顯著損害，此損失國庫要以何彌補？是舉債或增稅？再者，台電公司官股雖占百分之九四．一四，但民股仍占百分之五．八六，該民股持股股東是否同意以抵銷盈餘，逐年提列方式認列該筆損失，或堅持要求政府賠償損失，亦需考量。

(2)台電將損失分攤到每一用戶之電費上面而轉嫁給消費者。如採此一方式，台灣二千三百萬人口，不分老少，每年平均需負三千六百元以上。用戶會有何反應？且是否妥適？如依「國營事業管理法」第二十條「國營之公用事業費率，應由總管理機構或事業機構擬具計算公式，層轉立法院審定，變更時亦同。」之規定，若將停建損失推於電費中，亦須接受本院之監督。

(3)政府編列預算，支應停建核四所衍生之賠償、善後工作等損失。如採此一方式，固然有助於台電營運之正常，減少台電民營化過程中之阻力，但將大為增加政府財政之負擔。

(4)上述各項因應賠償及損失之提列或轉嫁方式，均涉及預算編列、審議或國會監督。按台電歷年已編列，並經本院審議通過之核四興建預算一、二四〇億元，係屬國營事業預算中之「資本計畫支

出預算」，若因行政院決定半途停建而最終未能完成核四電廠，則現已支出之興建費用必須轉為「損失」，連同未來之「賠償費用」、「善後費用」等損失，與現已按預算程序編列完成之「資本計畫支出預算」不能互相流用，故不能用建核四之資本支出來支付賠償、善後損失等費用，必須編列「損失」及「賠償」預算，這些依法都要透過預算程序經本院審議通過。依預算法第二十五條第一項：「政府不得於預算所定外，動用公款、處分公有財物或為投資之行為。」可見行政院如因停建核四，須動用公款處理賠償、善後等損失，須得到本院的同意。在行政院違背本院通過之核四預算案及覆議案，逕行宣布停建後，反要求本院通過其在預算中提列停建賠償損失以為善後，恐在邏輯上及實際上皆是不易化解之憲政難題。設若採合議制之本院因多數委員不同意在預算中編列停建賠償金，則政府自不免要面臨外商的控告，又若事態演變為中華民國政府或中華民國的國營事業(台電)公然違約又拒絕理賠法律責任問題，除將面對外國廠商追溯索賠訴訟，而海外資產亦有遭受實質損之之實，甚至查扣政府或台電在海外之資產求償等行動，如此一來，不但將令舉國上下顏面無光，嚴重傷害國家信譽，而海外資產亦有遭受實質損失之虞。

(5)再依預算法第九條：「因擔保、保證或契約可能成未來會計年度內之支出者，應於預算書中列表說明；其對國庫有重大影響者，並應向立法院報告。」停建核四可能發生的賠償損失，如前所述，對國庫將有重大影響。行政院在宣布停建核四過程中，未依法向本院報告，堅稱係行政裁量權，其違憲違法之事實甚為明確。

(6)此外，核四興建預算執行至今，完成進度已達三分之一，不論在廠址興建的各項結構物或向國內、外訂購的各種機器設備材料，其已施工或製造完成部分，於台電與各廠商完成終止合約及賠償付款後，行政院如欲責令台電公司變賣、拆毀、處分這些耗費巨額預算換得之資產，依預算法第二十六條規定：「政府大宗動產、不動產之買賣或交換，均須依據本法所定預算程序為之」，此仍屬國會應監督審議之權責，以避免行政機關不當處分，浪費國家資產。可見行政院在停建核四之決策過程中，不能違反民主憲政機制，罔顧貿然停建所引發之複雜後果，而置國會監督及決議於不顧。

(七)至行政院提出之停止執行預算之先例，皆為具有「不可抗拒」或「無法達成預期效益」等因素，而由

執行單位呈報行政院停止之情形（詳見證十五號）；而與本件純粹因為政策變更，且由行政院主動決議停止之情形不同，甚且執行機關台電公司，並無停止執行之意願，僅因行政院之決議，而不予執行預算。而前開例子中，絕大多數皆為尚未執行前甚或開始規劃時即行停止，故影響層面較小，至於有執行疏失者，如台電公司之「烏山頭水力發電工程計畫」、中油公司之「二、三輕節約能源設備計畫」，亦皆遭調查、糾正或懲處（詳見證十五號），但行政院請求解釋函卻隻字未提，是行政院提出之先例，皆與本件性質不符，無足憑採。

三、綜據前述，本件行政院以院會決議逕行停止執行核能四廠法定預算之決議，且未考量因而帶來之憲政衝擊與因應對策，實屬違憲違法。再者，台電公司為執行行政院之決議，目前已通知合約廠商「暫停執行合約」至八十九年十二月三十一日（證十六號），如核四是否繼續興建之爭議持續延宕，於十二月三十一日後，因合約廠商有權終止合約，恐造成既成事實，益增公庫損失，並使回復執行更增困難；復衡諸本件核四爭議發生後，政局諸多困頓，且久懸未決，憲政動盪不安，近日美國總統大選引起憲法爭議，美國最高法院雖然意見紛歧，仍於最短時間內做出決定，憲政秩序遂得回復常軌。為

此，狀請　貴院迅就本案作成解釋，以維民主憲政。

此致

司法院

中華民國八十九年十二月　日

立法院

代表人：高育仁委員

周錫瑋委員

營志宏委員

簽名蓋章

一 二 三 四 五 六

所附關係文件之名稱及件數：

證一號：行政院民國八十九年十月二十五日第二七0六次會議紀錄。

證二號：行政院八十九年十一月七日台八十九經字第三一九0七號函。

證三號：本院第二屆第三會期第三十六次會議議事錄。

證三之一號：行政院長就核四預算之副署。

證三之二號：行政院八十五年六月十二日台八五經字第一八四七二號函。

證四號：經濟日報八十九年十一月一日學者胡佛「政院公然違法 將成亂源」投書。

證五號：司法院大法官釋字三九一號解釋。

證六號：吳庚，行政法之理論與實用，增訂五版，自版，第四十、四十一頁。

證七號；參閱證五號大法官蘇俊雄、劉鐵錚不同意見書。

證八號：Clinton v. City of N.Y.,524 U.S.417(1998)。

證九號：同證六號，第八十四、八十五頁。

證十號：蔡茂寅，本院之預算增額修正權—評司法院大法官釋字第三九一號解釋，月旦法學雜誌，第九期，第六三至六八頁。

證十一號：「中央政府附屬單位預算執行要點」。

證十二號：行政院主計處五十五年八月六日台（五五）處孝一字第二二〇四〇號令。

證十三號：「行政院暨所屬各機關計畫預算執行考核獎懲作業要點」。

證十四號：司法院大法官釋字四六一號解釋。

證十五號：國營事業最近十年度計畫型資本支出停辦情形彙總表。

證十六號：台電公司八十九年十二月十四日電核火字第八九一一一一九二號函。

民國八十九年十月二十五日第二七０六次會議

報告事項

一、本院研究發展考核委員會編具「行政院列管案件進度季報」（八十九年七至九月），請鑒核案。
決定：准予備查。

二、本院研究發展考核委員會陳報「工業區暨科學園區設廠申辦流程與作業專案調查報告」，請鑒核案。
決定：准予備查。

三、本院新聞局函送我與格瑞那達新聞交流協定，請鑒核案。
決定：由院復准備查，並函請總統府秘書長查照轉陳。

討論事項

一、內政部擬具「農地重劃條例」部分條文修正草案，經張政務委員有惠等審查整理竣事，請核轉立法院審議案。
決議：通過，送請立法院審議。

二、內政部擬具「性侵害犯罪防治法」修正草案，經張政務委員有惠等審查整理竣事，請核轉立法院審議案。
決議：通過，送請立法院審議。

三、本院原住民委員會擬具「原住民族發展法」草案，經蔡政務委員清彥等審查整理竣事，請核轉立法院審議案。
決議：通過，送請立法院審議。

四、本院研究發展考核委員會簽以，本院農業委員會組織條例部分條文修正草案，經胡政務委員錦標等商獲結論，請核轉立法院審議案。
決議：通過，送請立法院審議。

五、本院新聞局擬具「公共電視法」第二條、第二十四條條文修正草案，經張政務委員有惠等審查整理竣事，請核轉立法院審議案。
決議：通過，送請立法院審議。

六、本院主計處編具「中央政府立法院新院址興建計畫工程」及原臺灣省政府「臺灣省加速取得都市計畫公共設施保留地償債計畫第二期及金融保險等機構民營化員工權益補償金」等二特別決算，請核轉監察院，請核議案。
決議：通過，函送監察院。

七、本院研究發展考核委員會簽以，總統府秘書長函送「國史館組織條例」部分條文再修正草案及「國史館臺灣文獻局組織條例」草案，請函轉立法院審議，請核議案。
決議：通過，送請立法院審議。

八、經濟部核四計畫再評估簡報，請核議案。
決議：基於一、不建核四不會缺電，二、具體可行的核四替代方案，三、核廢料是萬年無解的難題，四、核災萬一發生危機處理堪憂，五、核四合約中止損失尚可忍受，六、永續發展台灣經濟逐漸建立非核家園等六項理由，由院正式宣布停止興建核四電廠。

院長提示：

核四續建與否的問題，已經成爲全國極爲關注的焦點。經濟部、經建會、環保署、原能會、國防部及法務部等機關發表了各自的看法，不論正反意見如何，俊雄都要表示由衷的謝意。各機關提出的書面資料也一併列入紀錄，俾便日後查考。

基於以下六項理由，俊雄今天要在憲政體制所賦予的權限裡，做出停止興建核四的決定：

（一）不建核四不會缺電。台灣的電力供應，在不建核四又無替代方案的狀況下，到民國九十六年以前都不會缺電。

（二）具體可行的核四替代方案。政府會積極推動經濟部所提的替代方案，開放民營電廠經營，推動電業自由化，並排除非理性抗爭。

（三）核廢料是萬年無解的難題。我們既然無法作最終妥善的處理，就不能遺害後代子孫。

（四）核災萬一發生危機處理堪憂。核電意外發生機率雖然很低，但即使只有「百萬分之一」，緊急應變及疏散措施就極爲困難，令人憂心。

（五）核四合約中止損失尚可忍受。政府一定會信守承諾，履行合約中應負的責任。

（六）永續發展台灣經濟逐漸建立非核家園。我們誠摯呼籲全國民眾、朝野政黨，秉持國家永續發展及建立非核家園的願景，支持政府這項決定。

最後，俊雄要引述愛因斯坦的話：「我一生犯了一個最大的錯誤，就是簽署那一封支持製造原子彈的信給羅斯福總統」。停建核四這個決定，現在雖然不能讓所有人滿意，但俊雄深切相信，以後當有一天，我們在面對自己的子孫時，可以驕傲的說：「我們曾爲台灣，勇敢的作出正確的抉擇」。

機關地址：台北市忠孝東路一段一號
傳　真：（〇二）二三四一三四五四

受文者：經濟部

速別：最速件
密等及解密條件：普通
發文日期：八十九年十一月七日
發文字號：台八十九經字第三一九〇七號
附件：

主旨：所報核四計畫再評估結論建議一案，請照本院第二七〇六次會議決議辦理。

說明：

一、復八十九年九月三十日經（八九）秘字第八九三三六九八七號函。

二、案經八十九年十月二十七日本院第二七〇六次會議決議：基於一、不建核四不會缺電，二、具體可行的核四替代方案，三、核廢料是萬年無解的難題，四、核災萬一發生危機處理堪憂，五、核四合約中止損失尚可忍受，六、永續發展台灣經濟逐漸建立非核家園等六項理由，由院正式宣布停止興建核四電廠。

正本：經濟部
副本：行政院主計處、行政院經濟建設委員會、行政院環境保護署、行政院原子能委員會

立法院第二屆第三會期第三十六次會議議事錄

時間　中華民國八十三年七月十二日上午九時二分至十二時五十八分、下午二時三十八分至七時五十八分
七月十四日上午九時一分至十二時十分、下午二時三十分至十時七分
七月十五日上午九時五分至十二時十三分、下午一時十三分至二時二十一分、二時四十二分至十
六日上午六時十八分
七月十八日上午九時三分至十二時、下午二時三十二分至十九日上午一時二十分

地點　本院議場

出席委員

張堅華	李進勇	王建煊	顏錦福	張俊宏	林聰明	李宗正	李鳴皐	劉國昭	謝長廷
陳璽安	謝聰敏	廖永來	蔡同榮	陳癸淼	關中	曹爾忠	劉政鴻	郭金生	李必賢
蔡式淵	江偉平	洪性榮	饒穎奇	廖大林	趙振鵬	廖福本	張旭成	張建國	楊吉雄
朱鳳芝	李友吉	林明義	蔡中涵	郭廷才	陳婉真	陳健民	林錫山	丁守中	葉憲修
王金平	周伯倫	洪冬桂	黃爾璇	沈富雄	劉松藩	許添財	尤宏	葛雨琴	林志嘉
林濁水	許國泰	嚴啓昌	林源山	周書府	蔡友土	姚嘉文	邱連輝	蘇嘉全	陳光復
徐成焜	林光華	曾永權	魏鋕	郭石城	黃昭順	陳水扁	陳清寶	邱垂貞	翁金珠
羅傳進	詹裕仁	曾振農	吳德美	黃煌雄	游淮銀	黃正一	郁慕明	盧修一	莊金生

七一四、本院委員許國泰、趙綉娃，為深入追查台電相關資料發現，核四廠第一、二號機發電工程，其國外借款竟高達三六．一%，為新台幣六百一十三億元，較之於台電其他各重大工程均高出甚多，所謂「國外借款之所在，即是佣金、回扣之所在」，本席等再深入了解台電資料顯示，核四廠一、二號機工程耗資一千六百九十七億元，其發電量九二二三百萬度，遠低於目前亦正興建之台中大力發電工程第一～四部機僅造價九百零二億之發電量；據此，則令人再嚴重質疑為何堅持興建核四？為何國外借款如此嚴重偏高？新台幣六百一十三億元之外國借款有多少為佣金、回扣？特向行政院緊急質詢。

討論事項

一、本院預算委員會報告專案審查「中華民國八十四年度中央政府總預算案附屬單位預算及綜計表營業部分」暨「台灣省菸酒公賣局八十四年度營業預算案」案。（本案於二讀後繼續進行三讀。）

決議：一、「中華民國八十四年度中央政府總預算案附屬單位預算及綜計表營業部分」暨「台灣省菸酒公賣局八十四年度營業預算案」照審查報告修正通過。

（二讀時，㈠台灣糖業股份有限公司、㈡台灣製鹽總廠、㈢台灣肥料股份有限公司、㈣中國鋼鐵股份有限公司、㈤中國造船股份有限公司、㈥交通

銀行（含交通銀行歐洲公司）、(七)中央再保險股份有限公司、(八)麻醉藥品經理處及(九)中央健康保險局等單位均照全院各委員會聯席會議意見通過（在場委員一百四十六人，贊成者八十八人，反對者五十七人；並採記名表決方式，表決結果名單附後(一)）；通案部分照全院各委員會聯席會議意見通過；財政部主管（第一組）：(一)中央銀行、中國輸出入銀行、中央信託局、中國農民銀行及中央存款保險股份有限公司均照全院各委員會聯席會議意見通過。(二)台灣省菸酒公賣局業務計畫部分照全院各委員會聯席會議意見通過，二、三、四、五項部分照分組審查會意見通過。（在場委員一百四十一人，贊成者八十六人，反對者五十四人；並採記名表決方式，表決結果名單附後(二)）；交通部主管（第三組）：(一)陽明海運股份有限公司及招商局輪船股份有限公司照分組審查會意見通過。(二)郵政總局第三、四項部分照全院各委員會聯席會議意見通過，第一、二、五、六項部分照分組審查會意見通過。(三)電信總局除營業收支部分外，餘照全院各委員會聯席會議意見通過（在場委員一百四十二人，贊成者九十三人，反對者四十九人；並採記名表決方式，表決結果名單附後(三)）；台灣電信總局營業收支部分減列捐助台灣電信工會經費七百四十九萬三千元全數予以保留，委員一百二十五人，贊成者一百零二人，反對者十八人

政府所得」下增列「其中之二〇%即六十一億七千七百七十二萬七千元留存供電信局轉投資之用，以加速電信設備之現代化」，前項減列繳庫六十一億七千七百七十二萬七千元，則本案審查結果將淨減國營事業繳庫盈餘二十八億五千七百三十四萬七千元，另因刪除中國農民銀行民營化，致減少總預算歲入六十四億五千六百十六萬一千元，共計減少總預算歲入九十三億一千三百五十萬八千元，除審查總報告第八頁所列「移用以前年度歲計賸餘」三十一億三千五百七十八萬一千元外，尚不足六十一億七千七百七十二萬七千元，應以增列「建設公債」，予以彌平。經濟部主管（第二組）：(一)台灣機械股份有限公司照行政院原列數通過；(二)中華工程股份有限公司已於八十三年六月二十二日移轉民營，其預算免予審議，但其投資收益應繳庫並列帳。(三)中國石油股份有限公司（含中國石油化學工業開發公司）：(1)中國石油化學工業開發公司已於八十三年六月二十日移轉民營，其預算免予審議，委員彭百顯提議增列「但其投資收益應繳庫並列帳」毋庸增列（在場委員一百三十八人，贊成增列者四十八人，反對增列者八十七人，少數未通過；並採記名表決方式，表決結果名單附後(五)）；(2)中國石油股份有限公司預算照行政院原列數通過。(四)台灣電力股份有限公司

，照全院各委員會聯席會意見通過（在場委員一百四十六人，舉手贊成者七十九人。）。三讀時均照二讀內容通過（在場委員一百四十六人，舉手贊成者八十四人。）」。

二、審查報告及委員在院會所提附帶決議交預算委員會處理後提報院會。

本案各項記名表決結果名單：

㈠台灣糖業股份有限公司等九單位部分：

贊成者：八十八人

曹爾忠　王天競　廖福本　洪秀柱　魏鏞　蔡中涵　葉憲修
陳志彬　張建國　蕭金蘭　程建人　江偉平　劉政鴻　林壽山
林志嘉　曾永權　李宗正　林國龍　詹裕仁　翁重鈞　李鳴皋
趙振鵬　羅傳進　劉炳華　陳清寶　洪濬哲　李友吉　沈智慧
洪玉欽　莊金生　林聰明　劉瑞生　廖光生　高巍和
朱鳳芝　洪冬桂　黃昭順　華加志　賴英芳　李源水
郭金生　丁守中　葛雨琴　林錫山　徐成焜
郭石城　張文儀　李顯榮　王金平　林明溪
吳德美　王顯明　王國清　蔡勝邦　徐中雄
游淮銀　劉國昭　郭政權　張堅華
鄭逢時　高育仁　曾振農　呂新民　陳健儒

証三(一)

總統府公報

中華民國八十三年六月十五日（星期三）

總統令

總統令 中華民國八十三年六月十五日
八十三華總(一)義字第三三八五號

茲將中華民國八十四年度中央政府總預算，以歲入歲出簡明比較分析表暨收支性質及餘絀簡明分析表公布之。

總　　統　李登輝
行政院院長　連　戰

注：中華民國八十四年度中央政府總預算，以歲入歲出簡明比較分析表暨收支性質及餘絀簡明分析表，見本號公報第二頁、第三頁。

總統令 中華民國八十三年六月七日

國防部常務次長海軍中將周述大另有任用，應予免職。

任命海軍中將黎克恕為國防部常務次長。

總　　統　李登輝
行政院院長　連　戰
國防部部長　孫　震

總統令 中華民國八十三年六月七日

立法院外交及僑政委員會簡任第十三職等專門委員李思秀已准退休，應予令免。

任命施炳煌為行政院主計處簡任第十二職等主任秘書，石素梅為簡任第十一職等副局長，陳中玉為簡任第十一職等專門委員，鄧國藩、成湘純為簡任第十一職等視察。

保存年限 / 機密等級

行政院（函）

受文者：立法院

行文單位：正本 / 副本

批示

擬辦

發文日期：中華民國捌拾伍年陸月拾伍日

發文字號：台八十五經 18472

附件：如文

主旨：貴院函為依憲法第五十七條第二款之規定，立刻廢止所有核能電廠之興建計畫，刻正進行之建廠工程應即停工善後，並停止動支任何相關預算且繳回國庫一案，經研議實難接受，依憲法第五十七條第二款之

說明：

一、復　貴院八十五年六月四日(85)台院議字第一六四二號函。

二、據經濟部函院略為，核四計畫為政府長期審慎評估，所決定之重大經濟政策，為確保我國經濟持續發展，維護國家信譽及民眾之福祉，核四計畫確有其必要性，應予繼續推動，有移請覆議之必要，俾維持政府重大政策施政之一貫性。謹將理由敘明如下：

(一)就憲法之規定而言：

1.按憲法第五十七條第二款前段規定「立法院對於行政院之重要政策不贊同時，得以決議移請行政院變更之。」，係指於該等重要政策

預算案、條約案等，而依憲法第六十三條規定，立法院有議決法律案、預算案、戒嚴案、條約案等之權，故立法院應於行政院政策制為法案提出立法院審議時，始得決議移請變更，以劃分立法權與行政權之分際。立法院對於此類法案固可逕行修改，亦得未雨綢繆，於行政院重要政策制為法案前，依憲法第五十七條第二款規定，以決議移請行政院變更之（參考憲法學者林紀東著「中華民國憲法逐條釋義」㈡第二百三十二頁），惟該等重要政策如已制為法律案、預算案等，並經立法院議決通過時，應表示立法院已贊同該等政策，立法院應不得另以決議方式移請行政院變更政策而停止原通過之

法律案或預算案之執行，否則各項重要政務之推動執行，均將處於

可隨時決議變更之不確定狀態，殊非憲法賦予立法院對行政院提出重要政策決議變更權之本旨，揆諸司法院大法官議決釋字第三九一號解釋理由書謂：「立法委員對行政院所提預算案所顯示之重要政策如不贊同時，自得就其不贊同部分依憲法所定程序決議移請行政院變更，……或於審議預算案時，逕為合理之刪減。」，因此該項重要政策移請變更權，應於預算案完成立法程序之前行使，其理甚明。另立法院議事規則第三十七條規定「法律案及預算案，應經三讀會議決之。前項以外之議案，應經二讀會議決之。」，而法律案及預算案均經總統公布，立法院如得以其他提案方式經二讀會程序

待商榷。

2. 預算案與法律案性質不同，立法委員對於法律案有主動提案權，惟預算案依憲法第三十九條：「行政院於會計年度開始三個月前，應將下年度預算案提出於立法院。」及第六十三條：「立法院有議決法律案、預算案……之權。」之規定，其提案權則在於行政院，立法院僅有審議之權。上開憲法規定旨在劃分預算案之提案權與議決權，使行政院在編製政府預算時能兼顧全國財政、經濟狀況與年度施政計畫之需要，並為謀求政府用度合理，避免浪費起見，委由代表人民之立法院議決之，以發揮其監督政府財政之功能，故憲法

出之提議。」對立法院之預算審議權予以限制（參考司法院大法官會議議決釋字第二六四號解釋理由書）。又預算案經立法程序而公布者即為法定預算，該法定預算對政府機關具有法規範之效力，政府機關自應依法定預算執行，如其計畫執行結果未達一定比率，依中央政府預算執行暫行條例第十三條規定，機關首長及相關主管尚應予以議處；故立法院應不得逕行決議停止法定預算之執行。且預算乃政府施政之表現，參照司法院大法官議決釋字第三九一號解釋意旨，預算案係以具體數字記載政府機關維持其正常運作及執行各項施政計畫所需之經費，立法機關審議預算案具有批准行政措施即

行政院變更政策停止預算執行，則變動行政院之施政計畫，易導致政策成敗無所歸屬，責任政治難以建立，有違行政權與立法權分立，各本所司之制衡原理。

㈡就決議所謂「相關預算繳回國庫」而言：

按臺電公司屬公司組織型態，其預算依預算法第十七條規定，屬附屬單位預算，核四計畫案係編列在臺電公司附屬單位預算內之固定資產投資計畫，興建經費由該公司自行籌措，已編列之一、二三七億，其中二〇八億元以該公司自有資金支應，其餘一、〇二九億元須由該公司舉債支應，未由國庫核撥經費，因不涉及國庫之負擔，自無本案立法院

決議應請「相關預算總匡國庫」之情事，該決議在實務上難於執行。

㈢就國家之國際信譽而言：

核四計畫係經長時間審慎評估，預算並經立法院審議通過　總統明令分行，乃政府既定政策，且已執行數年，如遽予終止，對於已執行部分將造成財務損失，而執行中之合約必須中止，將衍生違約、罰款或損害賠償等問題。核四主設備「核反應器及其附屬系統」與「核燃料」參標廠家均為國際知名廠家，由於信任核四為政府既定重大政策而前來投標，審標期間各參標廠家均已投入相當大的人力物力參與投標，目前主設備已決標，如驟然停建，台電公司將失信於廠家，勢必影響國際廠家日後參與國家重大建設投標意願，參標廠家亦可能提出抗

成我國加入世界貿易組織（ＷＴＯ）之不利局面。

(四)就投資損失而言：

核四計畫執行至今，工程費用已支出五十八億餘元，另外工地整地、排洪、地質調查、週邊道路等進行中工程已簽約未付款者有約三億四千四百萬元，合計約六十一億四千四百萬元，如驟然停建，將轉為損失。同時台電公司辦理核四計畫主設備採購標，於審標期間台電公司平均動用人力約八十人，期間五個月，另支付顧問公司約四百萬美元費用，如此龐大之人力財力物力均亦屬沉沒成本。將來如主設備重新邀標，至少尚須再耗時一年以上，屆時合格廠家是否願意再次投標亦

難以預料。

(五)就核四計畫之必要性而言：

1.符合國家安全需要及能源多元化政策

台灣地區天然資源貧乏，油、煤、天然氣幾乎全部仰賴進口，而水力資源未來的開發潛力已經相當有限。目前我國總體能源需求中已經有百分之九十五仰賴進口，經濟命脈可說是操之於人。為確保能源供應之安全及價格穩定，政府除積極開發自產的水力資源並陸續興建火力發電廠之外，仍有必要適度興建核能電廠，期能落實能源多元化政策，降低萬一國際局勢發生變化（如能源危機再度發生及兩岸關係緊張等），石油、煤炭、天然氣供應短缺或暴漲對國內經

儲存容易，一次裝填燃料可使用一年六個月，國內儲存量可供發電三年；以二〇〇萬瓩之核能機組為例，每年僅需六十噸的鈾燃料，僅一架次飛機即可，若以其它燃料替代，則需液化天然氣二〇〇萬噸，需五．五萬噸天然氣船三十六艘，或石油二八〇萬噸，需十萬噸油輪二十八艘，或四二〇萬噸煤，需十萬噸煤輪四十二艘；對於海上、內陸運輸以及貯存設備、場地都將帶來嚴重的壓力，可見核能發電對我國能源的安全性具舉足輕重之地位，因此我們將核燃料視為「準自產能源」，故為確保能源的穩定供應與能源多元化，行政院於「台灣地區能源政策」中明訂「繼續發展核能發電」。

就環保觀點而言，核能發電為清潔的能源，因為它不燃燒油、煤、天然氣，不會產生空氣污染，不致使環境品質惡化，也不會排放二氧化碳，因此，核四廠的興建有助於減緩溫室效應。按一九九四年三月生效之聯合國「氣候變化綱要公約」之目標，要求已開發國家承諾，至本世紀末將二氧化碳及蒙特婁議定書未管制之其他溫室氣體之人為排放回復到較早的水準。我國經濟仍將持續發展，使用能源每年迭有增加，二氧化碳之排放量若無適當節制，則難以因應該公約之要求。另，有鑒於近年來國際公約如「蒙特婁議定書」，屢屢給予我國貿易制裁的威脅，可知我國如無法符合上述公約的要求

，因此必須努力開發不排放二氧化碳之能源，核能四廠之興建正有助於我國能源之確保及環境之保護。

3.經濟發展必需依賴充裕電力：

電力是工業發展之母，充裕價廉的電力是經濟發展的原動力，目前核能一、二、三廠的發電量約占全部發電量的三〇%，在目前備轉容量不足之情況下，若無核能發電，相當於一年平均約有四個月無電力可供應，或者相當於一天有八小時無電力可供應，缺電情形將極度嚴重，根據統計資料，我國平均缺電成本每度電高達七十五元，將對我國經建發展造成極大衝擊。揆諸我國長期電源開發方案，

一、〇三〇萬瓩），各型發電機組，如能按計畫目標次第完工，廣大消費者與用戶將可免除限電之恐懼。但是民間興建電廠計畫仍遭遇廠址土地取得、輸配電線土地取得及地方民眾抗爭等問題，能否如期完成，尚待突破。而核四廠二部機組之容量約占上述開發計畫之一二%，如果貿然停止，勢必影響民眾生活與經濟之持續成長。

4. 核四計畫已經審慎評估：

核四計畫是首次經過「可行性研究」與「環境影響評估」審查程序才經政府核定之核能發電計畫，在這兩項審查過程中，包括電力供需、工程技術、核能安全、經濟效益、資金來源及環境保護等。其

面參與計畫審查，審議通過；其環境影響評估報告，則經行政院原子能委員會審議並獲准備查，整個過程審慎、透明。

5.台電核能電廠運轉技術在世界水準以上：

經濟部聘請國際核電專家對台電現有核電廠進行評估，認為台電核能電廠與世界其他核能電廠之水準相當，營運狀況可稱滿意，根據經濟部委託管理顧問公司專家對台電現有核一、二、三廠評估結果顯示，台電公司核能營運方面，世界核能運轉協會（ＷＡＮＯ）對全球核能電廠的營運績效，訂有十項指標加以比較，依統計結果，台電前七至八項優於世界平均值，足以證明台電營運能力應予肯定

數方面，已由八十年的二．三次降到八十四年約一．三次，顯示也在進步中，此一水準也在世界核能運轉協會（ＷＡＮＯ）標準之上。

㈥就核四計畫之安全性而言：

1.世界主要工業國家仍持續發展核能發電：

目前世界上有三十餘個國家擁有核能電廠，運轉中核能機組共有四四二部，興建中有四十三部，規劃中有四十七部，與我國同屬海島型經濟的日本，其運轉中的機組有五十二部、興建中三部、規劃中十六部；與我國具有貿易競爭的韓國，其運轉中的機組有十部、興建中六部、規劃中七部，均十分重視核電之開發，自產能源豐富之

，亦大量使用核電；至於對岸之大陸，則更有未來每年興建二部核能機組之計畫，由此可知核能發電世界各國仍持續發展中。

2.核能電廠安裝密度並非重要的技術考量：

台灣地區地窄人稠確屬事實，但是電廠密度在技術上，並非興建電廠的重要考量因素。就以日本為例，日本柏崎刈羽核電廠在同廠址有七部機組，未曾有人質疑其密度過高的問題，事實上核電廠如何確保營運安全才是最重要的。其他尚需考量用電區域均衡、線路損失、基載需要及廠址之地質條件等問題。

3.核四廠安全性較核一、二、三廠更高：

止輻射物質外洩，所以美國三哩島核能電廠，即使已發生爐心熔毀的事故，其排放出來的輻射仍遠低於必須採取緊急疏散之數值。而前蘇聯車諾比爾核電廠無論從原子爐爐心的基本特性、整體機組安全特性、建造成本及營運維修所需資金之支應等各方面，均無法與西方的輕水式反應器相比，且無圍阻體防護，因此造成了嚴重災難，兩者實不可相提並論。國際原子能總署在車諾比爾事故後，曾召集全世界知名核電專家，針對該事故做出通盤檢討，評估結論認為車諾比爾事故，絕無可能在任何西方輕水式的核能機組發生。核四廠反應器已經由美國奇異公司得標，使用之機型為進步型沸水式反

目前已達滿載運轉，其與目前核能電廠比較有(1)爐心熔毀機率降至每反應器年十萬分之一次以下，安全度提高十倍。(2)放射性廢料產量減為四分之一。(3)員工集體輻射劑量降低為四分之一。(4)跳機次數降為三分之一。故其安全確已大幅提高。

(七)就放射性廢料處置而言：

低放射性廢料處置在國際間如美、法、瑞典等國已有成熟的處置技術，已完成處置設施多處並已運轉順利、安全無虞。台電公司低放射性廢料境內與境外處置方案均在積極進行中，境內處置方面，目前已篩選出幾個合適地點，未來場址之選定將充分考量民意，採徵選方式積

公司亦已進行踏勘工作，即將進行先期可行性研究工作，此外俄羅斯及大陸亦將持續進行。核四運轉壽命期間所生的各類放射性廢料，均將暫時貯存於電廠內無需運往他廠，俟最終處置場興建完成後，再運往貯存，因此，與建核四廠與放射性廢料最終處置並不衝突。

(八)歷年核四計畫民意調查情形：

國內各界自民國七十六年以來，曾分別由大專院校、新聞媒體及專業調查機構等，針對核四計畫進行民意調查，前後共二十餘次，歷年來全國支持與建核四廠之比率約介於五成至六成之間，贊成興建核四廠的民眾仍佔多數，顯見興建核四符合全民利益。

三、總統八十五年六月六日立法院第二四八三次會議決議：「一、通過，呈請
總統核可後，移請立法院覆議。」並經呈奉
總統八十五年六月十一日(85)華總(一)義字第八五〇〇一六〇四一〇號咨函
核可。

政院公然違法 將成亂源

胡佛（台大政治系教授）

核四停建爭議將會一直鬧下去，一場前所未見的政治風暴即將來臨，現階段看不出有妥善的解決辦法，目前已不只是單純的核四問題，而是憲政體制問題。

此次停建核四也凸顯了政府領導人一個最不好的示範，立法院覆議過的案子，其效力形同法令，行政院卻可以公然不遵守，如果大家都可以不遵守法令的話，這已變成是一個道德問題。一個政府沒有制度，這個國家怎能不亂。

核四是單純的公共政策議題，但因各政黨有其意識形態的考量，使得核四存廢變得很複雜。我國憲法在過去四年中，前後共修了六次，把憲法修得四不像，很多問題都「僵」在那裡，使得立法院與行政院之間、總統府與行政院之間、多數黨與少數黨之間的權責、互動、制衡等關係，都僵住了。

我國憲法採雙首長制，但主其事者又不遵守雙首長制的精神。按法國雙首長制，行政院長應由立法院多數黨來擔任，這樣就不會有問題。因此根本之道，就是想辦法解決憲法問題，爲將來左右共治、聯合政府等制度鋪路。

在野的國民黨、親民黨、新黨及無黨籍立委，可以運用的因應對策，大抵有倒閣、罷免總統、杯葛總預算、提法律案、彈劾等多種，但都不能解決目前的核四停建爭議問題，只有從基本的憲法體制謀求根本解決之道，但這又是遙遙無期、緩不濟急的事，因此，核四存廢問題將很難解套。

依目前的態勢來看，以國民黨爲首的在野黨，可能提出的反制動作，可能會以提法律案、罷免總統等二種方式爲主，杯葛總預算是一定會作的；倒閣最容易通過，但國民黨自己不願意，而且就算眞的倒閣成功，陳水扁總統再換一個閣揆，在野黨又能奈他何，最後還是回到原點，而且這些方法都會引發政治風暴。

在美國當行政部門不執行法令時，可以聲請最高法院下達強制執行令，但在我國卻沒有法律規定，就算大法官會議作了解釋，立法院仍可以杯葛。立法院通過的預算案具有法律效力，行政院卻不遵守，大家僵在那裡，卻看不到有什麼解決辦法，無可避免地將經過一場前所未見的政治風暴。

（記者朱新強、張瀞文紀錄整理）

司法解釋 全文

【第 1/1 筆】

【解釋字號】
釋字第 391 號

【裁判日期】
84/12/08

【相關法條】
中華民國憲法第六十三條(0361225)
中華民國憲法第七十條(0361225)

【解釋全文】
解釋文

立法院依憲法第六十三條之規定有審議預算案之權，立法委員於審議中央政府總預算案時，應受憲法第七十條「立法院對於行政院所提預算案，不得爲增加支出之提議」之限制及本院相關解釋之拘束，雖得爲合理之刪減，惟基於預算案與法律案性質不同，尙不得比照審議法律案之方式逐條逐句增刪修改，而對各機關所編列預算之數額，在款項目節間移動增減並追加或削減原預算之項目。蓋就被移動增加或追加原預算之項目言，要難謂非上開憲法所指增加支出提議之一種，復涉及施政計畫內容之變動與調整，易導致政策成敗無所歸屬，責任政治難以建立，有違行政權與立法權分立，各本所司之制衡原理，應爲憲法所不許。

解釋理由書

立法院依憲法第六十三條之規定，有議決法律案、預算案、戒嚴案、大赦案、宣戰案、媾和案及條約案等之權限，立法院審議各種議案之過程及方式，依其成文或不成文之議事規則規定，有應經三讀程序者（如法律案及預算案），有僅須二讀者（法律案、預算案以外之議案），更有雖經二讀，但實質上未作逐條討論即付表決者，此類議案通常爲條約或國際書面協定，蓋審議時如對行政院提出之原案作條文之修改或文字之更動，勢將重開國際談判，如屬多邊公約，締約國爲數甚多，重新談判殆無可能，立法機關僅有批准與否之權。所以有上述之差異，皆係因議案性質不同之故。

預案案亦有其特殊性而與法律案不同：法律案無論關係院或立法委員皆有提案權，預算案則祇許行政院提出，此其一；法律案之提出及審議並無時程之限制，預算案則因關係政府整體年度之收支，須在一定期間內完成立法程序，故提案及審議皆有其時限，此其二；除此之外，預算案法律案尙有一項本質上之區別，即法律係對不特定人（包括政府機關與一般人民）之權利義務關係所作之抽象規定，並可無限制的反覆產生其規範效力，預算案係以具體數字記載政府機關維持其正常運作及執行各項施政計畫所須之經費，每一年度實施一次即失其效力，兩者規定之內容、拘束之對象及持續性完全不同，故預算案實質上爲行政行爲之一種，但基於民主憲政之原理，預算案又必須由立法機關審議通過而具有法律之形式，故有稱之爲措施性法律（ Massnahmegesetz ）者， 以有別於通常意義之法律。而現時立法院審議預算案常有在某機關之科目下，刪減總額若干元，細節由該機關自行調整之決議，亦足以證明預算案之審議與法律案有其根本之差異，在法律案則絕不允許法案通過，文字或條次由主管機關自行調整之情事。是立法機關審議預算案具有批准行政措施即年度施政計畫之性質，其審議方式自不得比照法律案作逐條逐句之增刪修改，而對各機關所編列預算之數額，在款項目節間移動增減並追加或削減原預算之項目，實質上變動施政計畫之內容，造成政策成敗無所歸屬，政治責任難予釐清之結果，有違立法權與行政權分立之憲政原理。

又憲法第七十條規定：「立法院對行政院所提預算案不得爲增加支出之提議」，立法院審議中央政府總預算案應受此一規定之限制，而立法院不得在預算案之外以委員提案方式爲增加支出之提議，復經本院釋字第二六四號解釋釋示有案。立法委員於審議預算案時，雖不變動總預算金額，僅對各機關原編預算之數額在款項目節間作移動增減，然就被移動而增加或追加之原預算項目言，要難謂非上開憲法所指增加支出提議之一種，其情形與不增加總預算金額，在預算案之外，以委員提案方式爲增加支出之提議，實質上亦無不同，既涉及施政計畫內容之變動與調整，易導致政策成敗無所歸屬，責任政治難以建立，尙非憲法之所許。

至立法委員對行政院所提預算案所顯示之重要政策如不贊同時，自得就其不贊同部分，依憲法所定程序決議移請行政院變更，其相關之預算項目，自亦隨之調整；或於審議預算案時如發現有不當之支出者，復得逕爲合理之刪減，均足達成監督施政，避免支出浮濫致增人民負擔之目的。

大法官會議主 席 施啓揚
大法官 翁岳生
劉鐵錚
吳 庚
王和雄
王澤鑑
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曾華松
董翔飛
楊慧英
戴東雄
蘇俊雄

部分不同意見書 大法官 城仲模

本件聲請解釋機關立法院爲立法委員審查總預算案時，可否在不變動總預算金額之前提下，對中央政府各機關所編列預算之數額在科目間酌予移動增減並追加或削減原預算之項目，適用憲法第七十條發生疑義，聲請解釋。其聲請之主旨至爲明確，解釋文相應認爲：立法院對各機關所編列預算之數額，在款項目節間移動增減並追加或削減原預算之項目，涉及施政計畫內容之變動與調整，易導致政策成敗無所歸屬，責任政治難以建立，有違行政權與立法權分立等。本席基於當前我國國會組織與秩序，尚待循序漸進以臻周至，固未持異見；惟解釋方法卻另擇預算案與法律案性質不同爲切入點，尤其解釋理由書竟以三分之二強的篇幅，細說二者之區別，並稱預算案爲形式意義之法律等，不無商榷之處，爰提部分不同意見書如次：

憲法第五十九條「行政院應將年度預算案提出於立法院」，第六十三條「立法院有議決預算案之權」之規定，同在建構制衡機能；憲法第七十條「立法院對於行政院所提預算案，不得爲增加支出之提議」，係對立法院議決預算案所設之特別限制條款。聲請解釋機關認爲：立法院對於預算案之審查，基於反映民意，能機動性地體察社會發展之所需，在不變動中央政府總預算金額之情形下挹彼注茲，酌予調整，以參與國家政策之最終決定，原本具有政治性格，並擁有潛在優位性，惟司法院釋字第二六四號解釋，就政府各單位預算之數額，在不變動總額情形下，其數字上得否酌予移動增減並追加或削減原預算之項目，未爲言及，乃有聲請解釋之提出。本解釋文對於如斯確切之聲請，不從國家政體、議會政黨政治、國家政策、施政計畫、資源分配之合理與公平、公共政策目標間的優先順序及主要預算活動者之互動關係等，並綜論憲政國家預算制度之本質，正面論述，卻另從預算案與法律案性質有別之觀點加以論釋，顯有圓鑿方枘或避重就輕之嫌，其與吾人所熟知之拉丁法諺：「文詞回應須遵從主要疑義以爲解釋（ Verba accipienda suntsecundum subjectam materiam ）」所揭示者，實有不合。

解釋理由書以全文七成之篇幅，猶如教科書之筆法細說與本解釋文相關卻不相屬的預算案與法律案制度性之歧異，顯有理由說明方法輕重倒置之偏差，不合法律解釋邏輯，且與司法院大法官數十年來已確立解釋文理由書之撰述傳統有悖。預算案及法律案因同爲立法院議事規則所明定應經三讀程序者，可見其具國會議事事項中最重要事項的昆仲關係；惟兩者究有重大不同，亦無人持有異論。因此，以其間之差異，一一點述，詳細釋說不得比照，邏輯上反而似在強調其原爲「相同」，馴至形成解釋上的自我矛盾。此種偏離主題又非能自圓其說的情況，復與拉丁法諺「一般文詞回應應限定於依主題或關係人之性質爲之（ Verba generalia restringuntur ad habilitatemrei vel aptitudinem personae ）」，顯有乖謬，實難謂其並無不當。

法律學上輒有「法（ Jus, Reght, droit, law ）」或「法律（ lex, Gesetz,loi,law or act ）之稱謂。前者亦稱廣義之法律，或實質意義的法律（ Gesetz im materiellen Sinne ），諸如我國國民大會通過的憲法、立法院通過總統公布的法律，行政機關訂定發布的規章命令，或甚其他具有法源性質的任何法規範（ Rechtsnormen ），如類屬間接法源的判例、先決例、習慣等，均屬之；後者亦稱狹義之法律，或形式意義的法律（ Gesetz im materiellen Sinne ），諸如我國中央法規標準法第二條所稱之法、律、條例、通則是。不問實質意義的法律或形式意義的法律，又均可按其成爲法的目的、功能、作用、時代性、久暫性、專業性、技術性等區別爲規範性法律（ Normengesetz）及處置性法律（ Massnahme-

gesetz）；前者如憲「法」、民、刑、訴訟「法」，後者如發展觀光「條例」、第一屆資深中央民意代表自願退職「條例」等是。形式意義的法律，通常包括於實質意義的法律之中，即前者與後者輒有重疊現象。在德國憲法或基本性聯邦法律上，未見有法定形式意義的法律與實質意義的法律之明確區分，其間之態樣、內容與關係，最多是法界學術性著書立論時的說明而已；法學界常稱預算案的確定（憲法第一百十條第二項）、國際間條約的同意簽署（憲法第五十九條第二項）等均係形式意義的法律，至於非屬於立法機關立法事項的法規命令或自治條例（ autonome Satzungen ），雖不經國會審議程序，卻是道地的實質意義之立法。預算案的確定，在德國固被認爲是形式意義的法律，但其並不對全體國民直接發生拘束力，因此，並不產生法秩序的問題；相反地，預算案確定後，來年會計年度國家活動的總方針、經濟社會國防文化等犖犖大者的政策方向之決定，才能於焉發軔，凡此極其重要的國家作用之定案，豈能以其非實質意義的法律視之？綜上論析，在我國現行實定法秩序中，引用國外憲法、法律制度或其相關著作，期能解釋我國之法現象與原理，而稱「預算案」之議決確定，即爲法律（ Gesetz ），顯然是乖違現實的一種抽象的援引比附而已，按諸理法寧不審慎。

不同意見書大法官　蘇俊雄　劉鐵錚

立法院依憲法第六十三條之規定有審議預算之權。立法委員於審議中央政府總預算案時，固應受憲法第七十條「立法院對於行政院所提預算案，不得爲增加支出之提議。」規定的限制，以及本院相關解釋之拘束；但是在不增加預算案的支出總額且不損及「預算同一性」原則的前提下，立法委員除可就預算案爲合理之刪減外，亦應得對各機關所編列之預算數額，在預算案之「項」、「目」、「節」等科目之間，爲數額之增減調整。立法院之此項預算修正權，並不牴觸憲法第七十條之規範意旨，且合乎現代法治國家實現「財政民主主義」，貫徹立法院與行政院相互間實現責任政治等理念，自應爲憲法所肯認。此項解釋原則與多數意見通過之解釋文及解釋理由，法理見解不盡相同，爰提不同意見書，說明理由如後：

一、依憲法第六十三條之規定，立法院有審議預算之權。憲法第七十條限制立法院對於行政院所提預算案，不得爲增加支出之提議，則係憲法上明定之預算議決的界限。解釋憲法第七十條規定，則立法委員於審議預算時，在不增加預算案總金額的原則下，對於各機關所編列之預算的數額爲科目間增減調整的修正議決，是否亦屬憲法第七十條禁止之「增加支出之提議」的範圍？多數通過之解釋文及解釋理由書就此係持肯定之見解，認爲立法院此種預算修正爲憲法所不許。惟多數大法官所持之見解主要則是涉及「財政憲法」上關於預算之法律性質的界定問題，而認爲預算「實質上爲行政行爲之一種」，但基於民主憲政的原理，其必須由立法院審議通過，而成爲「形式意義」的法律；立法院之預算議決乃相當於「批准」之性質，不能增減調整預算內之科目金額，逕行改變年度施政計畫這種「行政措施」之細節。此項見解，無疑與日本戰前所持之「預算行政說」（又名「承認說」）相當；但是此種戰前日本的學說，毋寧是在說明日本民治憲法下國會與天皇的角色扮演，反映「國政專屬於天皇」的思想，戰後日本學界早已無人主張「預算行政說」，且其他多數國家亦不採此種見解，我國學說亦然。多數大法官何以肯認此項過時的學說，實爲吾等所不解。

在我國民主憲政法秩序之下，預算的法律性質應採「預算法律說」（又名「特殊法律說」）的觀點；其「法規範」的性格徵諸憲法第六十三條關於立法院議決預算案之規定，以及預算法第二條對於「法定預算」之立法程序與效力之規定，意旨甚明。就其審議程序、規範對象乃至於效力的持續性而言，預算雖與普通法律有所不同，但是此正係其特殊性之所在，尚不能據而否認爲其規範性。而在「預算法律說」之立場下，此項規範應由立法權與行政權協力分工共同形成；且在尊重立法者於規範形成時具有民主正當性的理念下，自無逕而否定其修正調整預算之權限的道理。因此，得否以我國現實預算審議的若干特殊安排，遽而援引「預算行政說」之觀點，嚴格禁止立法委員調整預算之細節，而捨諸多當代財政法學界發展形成之理論於不顧？學術上自得討論批判；而多數大法官據以支持「預算行政說」之「責任政治」與「權力分立」等理由，是否得以使「預算行政說」與我國之民主憲政法秩序相容，從憲法解釋之立場，更有深入商榷之必要。

二、多數通過之解釋文認爲如果承認立法委員在預算審議程序中對於預算細目之修正權，則易導致政策成敗無所歸屬，責任政治難以建立，有違行政權與立法權分立，各本所司之原理。「責任政治」與「權力分立」誠爲憲法上重要的組織原理，但是多數通過之解釋文，並未就其判斷是否有違反此等憲法原理之標準，做充分而合理之推論與說明；從其文義觀察，則似乎只要立法委員就各機關編列之預算項目一有流動調整，就會「實質上變動施政計畫之內容」，而違反了責任政治與權力分立之原理。問題在於，多數通過之解釋文亦肯認立法院有合理刪減預算之權限，而此權限之行使結果當然亦會變動施政計畫之內容，又何以此時即無違憲之疑義？預算之調整修正與預算之刪減，同屬立法者之預算議決行爲，亦均會對行政部門之施政造成影響，多數意見實無法合理說明對此二者爲不同處理之論據。由此可見，多數意見似僅思及權限之「分立」，從「預算行政說」的立場僵硬地切割設定預算之提案權與議決權，從而單純地禁止立法委員爲預算內容的積極調整行爲；但卻未慮及權力間之「制衡」原理，以致法理上輕重失衡，無法導引出判斷是否違反責任政治與權力分立原則的合理標準。再就基本觀念而言，憲法上之責任

政治原理，不僅只適用於行政權；就民意政治而言，立法委員對其選民，亦負有積極參與政策形成之責任。政策形成既非專屬於行政權，在法治國依法行政的理念下，更有施政法律基礎之要求，而應重視立法者在政策形成上之民主正當性。此項理念，在預算之政策形成上亦然，故各國多不否認立法者就政府之預算案增刪變動之正當性，而僅基於預算之特殊性以及機能性之考量，對其權限行使加以合理限制。對於我國憲法第七十條有關立法院預算議決之界限規定的解釋，除了考量其規範意旨外，自亦應準此理念，以免對立法者之政策形成權限做不必要之限制。

另從權力分立之觀點來說，預算之編製權與提案權，本質上並無必然歸屬於行政權或立法權的道理；故法理上考量之重點，應在力求立法權與行政權之間，於各國之制度背景下，各有合理的參與空間。以美國爲例，其國會擁有預算之提案權；爲了保障行政部門之合理參與， 乃使行政部門（ OMB ）於事前有提供預算基礎資料之權責，總統則於事後享有預算否決權。而在我國，憲法已將預算案之提案權分派予行政院，則基於權力分立與制衡之原理，我國之規範重心毋寧應在強調「財政民主主義」，亦即「財政議會主義」之要求，以確保立法權之合理參與。

因此，若從責任政治與權力分立之憲政原理思考，憲法既將預算案視爲一特殊的法規範而非行政部門內部的施政計畫，且將預算案之提案權與議決權分別分派給行政院與立法院，使二者能共同參與形成國家預算秩序，基於財政民主主義的原則，自應確保立法院在預算形成程序上的參與空間，方能落實責任政治與權力分立的理念。多數通過的解釋文及解釋理由書所採取的「預算行政說」，認爲預算案之規範性格僅具形式意義，實質上仍係行政行爲，毋寧過度維護行政權，不足以說明現代民主法治國家責任政治與權力分立原理下的預算性質以及預算程序。此外，多數通過的解釋文另以預算案與法律案之不同，欲佐證其採取之「預算行政說」，亦存有法學方法論及邏輯推理上的問題：蓋預算案與法律案的審議程序乃至規範性格雖然存有差異，但並不表示預算案因此必然就是「實質的行政行爲」，而立法者就其細節毫無參與之餘地。多數意見之論證與立場既不足採，吾等乃認爲有必要重新探尋責任政治與權力分立原理對於預算程序之合理的規範準則；基於財政民主主義應係此等規範準則之重心的考量，乃有必要對於憲法第七十條做進一步之分析解釋，探求立法院議決預算之合理界限，據以判斷立法委員在不變動總預算金額之前提下對各機關原編預算之數額在款項目節間作移動增減的合憲性。

三、憲法第七十條規定：「立法院對於行政院所提預算案，不得爲增加支出之提議。」其既爲憲法明定之對立法院預算議決行爲的限制，自係判斷立法院諸預算議決行爲是否合憲的主要依據。考察其規範意旨，一方面誠如司法院釋字第二六四號解釋所闡明者，旨在避免「政府預算膨脹，致增人民之負擔」；另一方面，根據財政憲法之學理，其亦寓有保障行政院之主動提案權責，要求立法部門應尊重行政機關對於預算規畫之原初判斷（ primitivejudgement ）的意義。 換言之，在我國的預算形成程序上，行政院具有第一次之形成權，其後立法院議決權之行使，須對之加以尊重，維持權力分立及制衡的關係。不過，對於行政院預算提案權之尊重，絕不表示立法院之議決權是只能刪減預算而不能調整預算；對於行政院預算提案權之尊重，尚不足以排除、否定特定型式之立法院議決權的行使行爲。毋寧，不論是刪減預算或調整預算，立法院的議決行爲均存有一定之界限，以避免因立法者之參與及制衡，掏空了憲法對於行政院提案權之保障。就此，財政法學理上，乃發展出「預算同一性」原則，據以作爲立法部門議決行爲之界限。

「預算同一性」原則，係指立法部門之預算議決權限，必須在不過度變動行政部門所提預算案，即維持立法部門所議決之預算案與原行政部門所爲提案仍具有基本的「同一性」的範圍之內行使。蓋立法部門議決後之預算案若與原行政部門所爲提案不具有基本的「同一性」，將掏空憲法分派預算提案權予行政部門的實質意義，從權力分立的觀點，自然不被容許。相對的，若立法部門之預算審議決定沒有損及「預算同一性」的話，基於財政民主主義之理念，其政策形成亦應受到保障與尊重。至於「同一性」的認定，則是以立法者所造成之變動，是否會影響行政機關原欲達成之政策目標（如法定行政任務之履行等）而爲個案判斷。

援引「預算同一性」之法理輔助說明我國憲法對於立法院預算議決之限制，毋寧是必要的。多數通過之解釋文及解釋理由，既言立法委員對於原預算項目間之流用調整「要難謂非」憲法所指增加支出之提議的一種，又言立法委員對於預算案之不當支出得逕爲「合理」之刪減，惟均未明確交待其推論與認定之基準；其是否對於憲法上之各項價值與原理已爲充分的考量？是否有爲客觀之判斷？自不免令人質疑。故爲使憲法解釋得有客觀之評價基準，並兼顧行政權整體考量國家財政之權能與財政民主主義之要求，以「預算同一性」之法理補充說明憲法第七十條規定，其必要性與適當性均應予以肯定。

從而，對於立法委員在審議預算案時，不變動總預算金額而僅對各機關原編預算之數額在各預算單位間做移動增減之調整決定，是否有牴觸憲法第七十條之規定的問題，應可從二點來判定其容許性。首先，立法委員若不變動總預算之金額，其議決行爲即應認爲無違反憲法禁止立法委員於審議預算時「增加支出」的規範意旨，蓋此際並沒有會增加人民負擔之疑慮；其次，上述立法委員之預算修正，是否有侵犯行政院之預算提案權，則應求諸前引之「預算同一性」原則，進行個案之認定。抽象而言，立法委員若直接就

我國預算單位之「款」爲更動，勢必會改變預算之同一性而不應允許；在「項」際或「目」際間爲預算之調整，尚須參酌個案之內容爲判斷；至於對預算之「節」的調整，因其對於預算同一性之影響顯然甚微，應爲憲法所容許。因此，立法委員在不增加總預算支出而就原預算科目下之金額有所調整流用，只要不損及預算同一性，即不牴觸憲法第七十條之規定，應屬於合憲之行爲。

四、上述之解釋與判斷，容許立法委員在一定之界限內具有調整各預算項目金額之權限，亦可避免立法院在不同意行政院所提預算之一部分時，採取全部退回、或者全數刪除之「零和對立」的方式，毋寧可形成較有效率之權力分立與互動之模式。論者或謂若肯認立法委員之此項權限，將難以防止國會之濫權，故應禁止其爲此等預算議決；惟行政者未必即代表公益，立法者亦未必均會謀私濫權，在多數決之機制以及較具透明性、公開性與多元性之議會程序下，立法委員此項權限之行使，亦應得達成合理性之要求，而不應一昧之禁止。

綜上所述，在現代民主法治國家，預算應視爲由行政權與立法權共同參與形成之特殊法規範。而從責任政治、權力分立制衡等原理，乃至於由此進而推認的財政民主主義之要求，於預算提案權歸屬行政部門而其議決權歸屬於立法部門之國家，更應肯認立法者除得刪減預算，亦得有調整流用預算細部項目金額之權限。惟上開預算議決權之行使，於我國受有憲法第七十條之限制，不得增加總預算之支出以免增人民之負擔，亦不得損及「預算同一性」原則以合乎權力分立制衡原理之要求。是項推論與判斷未獲多數意見採納，爰爲此不同意見書如上。

中華民國八十二年四月八日

抄立法院聲請書　　(八二)台院議字第一０四六號

受文者：司法院

主　旨：爲本院委員審查總預算案時，可否在不變動總預算金額之前提下，對中央政府各機關所編列預算之數額在科目間酌予移動增減並追加或削減原預算之項目，適用憲法第七十條發生疑義，請 查照惠予解釋見復。

說　明：

一、本院委員陳水扁等二十三人及委員洪昭男等二十四人分別就前述事項所提之提案，經本院第二屆第一會期第十二次會議併案討論決議：「函請司法院解釋」。

二、　檢附關係文書各乙份。

院長 劉 松 藩

立法院議案關係文書　　中華民國八十二年四月二日印發

案由：本院委員陳水扁、王建㷗、洪昭男、程建人、施明德、張俊宏等二十三人，爲本院委員於審查八十三年度中央政府總預算案時，對於行政院所提出之預算案，可否在不變動總預算案金額之前提下，對中央政府各機關所編列預算之數額，在數字上予以移動增減並追加或削減原預算之項目，適用憲法第七十條發生疑義，特依「司法院大法官審理案件法」第五條第一項第三款之規定，聲請司法院大法官會議解釋。是否有當，請公決案。

說明：

壹、聲請解釋憲法的目的

一、憲法第七十條規定「立法院對行政院所提預算案，不得爲增加支出之提議。」係指立法院對於行政院所提中央政府總預算之金額總數，不得爲增加支出之提議，以防止政府之浪費並減輕人民之負擔。對於政府各機關預算之數額，只要不變動中央政府總預算金額，應可在數字上予以移動「增減」，自非屬憲法第七十條所限制之範圍。

二、中央政府總預算案之編列，其目的乃在建設國家、爲人民謀取福利，以符合人民之需要。倘將憲法第七十條「立法院對行政院所提預算案，不得爲增加支出之提議」解釋爲立法院僅有權刪除中央政府總預算中某部分的預算，而不得增加某部分切合人民實際所需的預算，則有違背立法院爲中央民意機關所應有的功能。故賦予立法院更大的彈性空間以審查預算，在立法院不變動總預算金額之情況下，對政府各機關預算之數額，在數字上酌爲增減，始切合憲法第七十條之立法原意，並符合人民之最所需。

貳、疑義性質及經過

立法院爲行使職權適用憲法發生疑義之事項，爰說明如下：

一、本聲請之提出係依據司法院大法官審理案件法第五條第一項第三款規定：「依立法委員現有總額三分之一以上之聲請，就其行使職權，適用憲法發生疑義」。

二、憲法第七十條規定「立法院對行政院所提預算案，不得爲增加支出之提議」。立法院爲行使憲法第六十三條所賦與之預算權，審理八十三年度中央政府所編列之總預算，對於中央政府各機關之預算，依法雖有權削減部分預算，然可否在不變動總預算金額之情況下，爲增加部分預算之提議，適用憲法第七十條發生疑義，故聲請解釋。

參、聲請解釋之理由及對本案所持之見解

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 97—1374

WILLIAM J. CLINTON, PRESIDENT OF THE UNITED STATES, et al., APPELLANTS *v.* CITY OF NEW YORK et al.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[June 25, 1998]

Justice Stevens delivered the opinion of the Court.

The Line Item Veto Act (Act), 110 Stat. 1200, 2 U.S.C. § 691 *et seq.* (1994 ed., Supp. II), was enac in April 1996 and became effective on January 1, 1997. The following day, six Members of Congress who had voted against the Act brought suit in the District Court for the District of Columbia challenging its constitutionality. On April 10, 1997, the District Court entered an order holding that the Act is unconstitutional. *Byrd* v. *Raines,* 956 F. Supp. 25. In obedience to the statutory direction to allow a dire expedited appeal to this Court, see § § 692(b)—(c), we promptly noted probable jurisdiction and expedite review, 520 U.S. ___ (1997). We determined, however, that the Members of Congress did not have standing to sue because they had not "alleged a sufficiently concrete injury to have established Article III standing," *Raines* v. *Byrd,* 521 U.S. ___, ___ (1997) (slip op., at 18); thus, "in … light of [the] overriding and time-honored concern about keeping the Judiciary ' s power within its proper constitutional sphere," *id.*, at ___ (slip op., at 8), we remanded the case to the District Court with instructions to dismiss the complaint for lack of jurisdiction.

Less than two months after our decision in that case, the President exercised his authority to cancel c provision in the Balanced Budget Act of 1997, Pub. L. 105 —33, 111 Stat. 251, 515, and two provisions in Taxpayer Relief Act of 1997, Pub. L. 105 —34, 111 Stat. 788, 895 —896, 990—993. Appellees, claiming tha they had been injured by two of those cancellations, filed these cases in the District Court. That Court again held the statute invalid, 985 F. Supp. 168, 177 —182 (1998), and we again expedited our review, 522 U.S. ___ (1998). We now hold that these appellees have standing to challenge the constitutionality of the / and, reaching the merits, we agree that the cancellation procedures set forth in the Act violate the Presentment Clause, Art. I, § 7, cl. 2, of the Constitution.

I

We begin by reviewing the canceled items that are at issue in these cases.

Section 4722(c) of the Balanced Budget Act

Title XIX of the Social Security Act, 79 Stat. 343, as amended, authorizes the Federal Government to

transfer huge sums of money to the States to help finance medical care for the indigent. See 42 U.S.C. 1396d(b). In 1991, Congress directed that those federal subsidies be reduced by the amount of certain tax levied by the States on health care providers. [1] In 1994, the Department of Health and Human Services (HH notified the State of New York that 15 of its taxes were covered by the 1991 Act, and that as of June 30, 1994, the statute therefore required New York to return $955 million to the United States. The notice adv the State that it could apply for a waiver on certain statutory grounds. New York did request a waiver i those tax programs, as well as for a number of others, but HHS has not formally acted on any of those wai requests. New York has estimated that the amount at issue for the period from October 1992 through March is as high as $2.6 billion.

Because HHS had not taken any action on the waiver requests, New York turned to Congress for relief. (August 5, 1997, Congress enacted a law that resolved the issue in New York ' s favor. Section 4722(c) of Balanced Budget Act of 1997 identifies the disputed taxes and provides that they "are deemed to be permissible health care related taxes and in compliance with the requirements " of the relevant provisi the 1991 statute. [2]

On August 11, 1997, the President sent identical notices to the Senate and to the House of Representatives canceling "one item of new direct spending, " specifying §4722(c) as that item, and stating that he had determined that "this cancellation will reduce the Federal budget deficit. " He explained that §4722(c) would have permitted New York "to continue relying upon impermissible provider taxes to finance its Medicaid program " and that "[t]his preferential treatment would have increased Medicaid costs, would have treated New York differently from all other States, and would have established costly precedent for other States to request comparable treatment. " [3]

Section 968 of the Taxpayer Relief Act

A person who realizes a profit from the sale of securities is generally subject to a capital gains tax. Under existing law, however, an ordinary business corporation can acquire a corporation, including a food processing or refining company, in a merger or stock -for-stock transaction in which no gain is recognized the seller, see 26 U.S.C. § 354(a), 368(a); the seller ' s tax payment, therefore, is deferred. If, howev the purchaser is a farmers ' cooperative, the parties cannot structure such a transaction because the stoc of the cooperative may be held only by its members, see 26 U.S.C. § 521(b)(2); thus, a seller dealing wi farmers' cooperative cannot obtain the benefits of tax deferral.

In §968 of the Taxpayer Relief Act of 1997, Congress amended §1042 of the Internal Revenue Code to permit owners of certain food refiners and processors to defer the recognition of gain if they sell their stock to eligible farmers ' cooperatives. [4] The purpose of the amendment, as repeatedly explained by its sponsors, was "to facilitate the transfer of refiners and processors to farmers ' cooperatives. " [5] The amendment to §1042 was one of the 79 "limited tax benefits" authorized by the Taxpayer Relief Act of 1 and specifically identified in Title XVII of that Act as "subject to [the] line item veto." [6]

On the same date that he canceled the "item of new direct spending" involving New York ' s healt care programs, the President also canceled this limited tax benefit. In his explanation of that action, the President endorsed the objective of encouraging "value-added farming through the purchase by farmers ' cooperatives of refiners or processors of agricultural goods, " [7] but concluded that the provision lacked safeguards and also "failed to target its benefits to small -and-medium-size cooperatives. " [8]

II

Appellees filed two separate actions against the President [9] and other federal officials challenging these two cancellations. The plaintiffs in the first case are the City of New York, two hospital associations, one hospital, and two unions representing health care employees. The plaintiffs in the second are a farmers' cooperative consisting of about 30 potato growers in Idaho and an individual farmer who is member and officer of the cooperative. The District Court consolidated the two cases and determined that at least one of the plaintiffs in each had standing under Article III of the Constitution.

Appellee New York City Health and Hospitals Corporation (NYCHHC) is responsible for the operation of public health care facilities throughout the City of New York. If HHS ultimately denies the State ' s wai requests, New York law will automatically require [10] NYCHHC to make retroactive tax payments to the State about $4 million for each of the years at issue. 985 F. Supp., at 172. This contingent liability for NYCHHC and comparable potential liabilities for the other appellee health care providers, were eliminated by §4 (c) of the Balanced Budget Act of 1997 and revived by the President ' s cancellation of that provision. Th District Court held that the cancellation of the statutory protection against these liabilities constituted

parties. We find no merit in the suggestion that New York ' s injury is merely speculative because HHS h yet acted on the State ' s waiver requests. The State now has a multibillion dollar contingent liability had been eliminated by § 4722(c) of the Balanced Budget Act of 1997. The District Court correctly conclu that the State, and the appellees, "suffered an immediate, concrete injury the moment that the Presider used the **Line Item Veto** to cancel section 4722(c) and deprived them of the benefits of that law. " 985 Supp., at 174. The self-evident significance of the contingent liability is confirmed by the fact that N York lobbied Congress for this relief, that Congress decided that it warranted statutory attention, and t the President selected for cancellation only this one provision in an act that occupies 536 pages of the Statutes-at-Large. His action was comparable to the judgment of an appellate court setting aside a verdic for the defendant and remanding for a new trial of a multibillion dollar damages claim. Even if the outco of the second trial is speculative, the reversal, like the President ' s cancellation, causes a signific immediate injury by depriving the defendant of the benefit of a favorable final judgment. The revival of substantial contingent liability immediately and directly affects the borrowing power, financial strength and fiscal planning of the potential obligor. [16]

We also reject the Government ' s argument that New York ' s claim is advanced by the wrong parties because the claim belongs to the State of New York, and not appellees. Under New York statutes that are already in place, it is clear that both the City of New York [17] and the appellee health care providers will be assessed by the State for substantial portions of any recoupment payments that the State may have make to the Federal Government. To the extent of such assessments, they have the same potential liability the State does. [19]

The Snake River farmers ' cooperative also suffered an immediate injury when the President canceled t limited tax benefit that Congress had enacted to facilitate the acquisition of processing plants. Three critical facts identify the specificity and the importance of that injury. First, Congress enacted § 96 the specific purpose of providing a benefit to a defined category of potential purchasers of a defined category of assets. [20] The members of that statutorily defined class received the equivalent of a statutory "bargaining chip" to use in carrying out the congressional plan to facilitate their purchase of such assets. Second, the President selected § 968 as one of only two tax benefits in the Taxpayer Relief Act o 1997 that should be canceled. The cancellation rested on his determination that the use of those bargainin chips would have a significant impact on the Federal budget deficit. Third, the Snake River cooperative wa organized for the very purpose of acquiring processing facilities, it had concrete plans to utilize the benefits of § 968, and it was engaged in ongoing negotiations with the owner of a processing plant who had expressed an interest in structuring a tax-deferred sale when the President canceled § 968. Moreover, it actively searching for other processing facilities for possible future purchase if the President ' s cancellation is reversed; and there are ample processing facilities in the State that Snake River may be al to purchase. [21] By depriving them of their statutory bargaining chip, the cancellation inflicted a sufficie likelihood of economic injury to establish standing under our precedents. See, *e.g.*, *Investment Company Institute* v. *Camp*, 401 U.S. 617, 620 (1971); 3 K. Davis & R. Pierce, Administrative Law Treatise 13 —14 ed. 1994) ("The Court routinely recognizes probable economic injury resulting from [governmental actions] that alter competitive conditions as sufficient to satisfy the [Article III 'injury-in-fact' requireme … . It follows logically that any … petitioner who is likely to suffer economic injury as a result of [governmental action] that changes market conditions satisfies this part of the standing test ").

Appellees' injury in this regard is at least as concrete as the injury suffered by the respondents in *Bryant* v. *Yellen*, 447 U.S. 352 (1980). In that case, we considered whether a rule that generally limited water deliveries from reclamation projects to 160 acres applied to the much larger tracts of the Imperial Irrigation District in southeastern California; application of that limitation would have given large landowners an incentive to sell excess lands at prices below the prevailing market price for irrigated land The District Court had held that the 160-acre limitation did not apply, and farmers who had hoped to purch the excess land sought to appeal. We acknowledged that the farmers had not presented "detailed informat about [their] financial resources, " and noted that "the prospect of windfall profits could attract a la number of potential purchasers " besides the farmers. *Id.*, at 367, n. 17. Nonetheless, "even though the could not with certainty establish that they would be able to purchase excess lands " if the judgment wer reversed, *id.*, at 367, we found standing because it was "likely that excess lands would become available less than market prices, " *id.*, at 368. The Snake River appellees have alleged an injury that is as specif and immediate as that in *Yellen*. See also *Duke Power Co.* v. *Carolina Environmental Study Group, Inc.*, 43 U.S. 59, 72—78 (1978). [22]

As with the New York case, the Government argues that the wrong parties are before the Court - that because the sellers of the processing facilities would have received the tax benefits, only they have standing to challenge the cancellation of § 968. This argument not only ignores the fact that the cooperatives were the intended beneficiaries of § 968, but also overlooks the self-evident proposition th more than one party may have standing to challenge a particular action or inaction. [23] Once it is determin that a particular plaintiff is harmed by the defendant, and that the harm will likely be redressed by a favorable decision, that plaintiff has standing - regardless of whether there are others who would also hav

standing to sue. Thus, we are satisfied that both of these actions are Article III "Cases" that we duty to decide.

IV ·

The Line Item Veto Act gives the President the power to "cancel in whole" three types of provisi that have been signed into law: "(1) any dollar amount of discretionary budget authority; (2) any it new direct spending; or (3) any limited tax benefit." 2 U.S.C. § 691(a) (1994 ed., Supp. II). It is undisputed that the New York case involves an "item of new direct spending" and that the Snake River involves a "limited tax benefit" as those terms are defined in the Act. It is also undisputed that ea those provisions had been signed into law pursuant to Article I, § 7, of the Constitution before it wa canceled.

The Act requires the President to adhere to precise procedures whenever he exercises his cancellatio authority. In identifying items for cancellation he must consider the legislative history, the purposes, other relevant information about the items. See 2 U.S.C. § 691(b) (1994 ed., Supp. II). He must deterr with respect to each cancellation, that it will "(i) reduce the Federal budget deficit; (ii) not impai essential Government functions; and (iii) not harm the national interest." § 691(a)(A). Moreover, he r transmit a special message to Congress notifying it of each cancellation within five calendar days (exclu Sundays) after the enactment of the canceled provision. See § 691(a)(B). It is undisputed that the Pres meticulously followed these procedures in these cases.

A cancellation takes effect upon receipt by Congress of the special message from the President. See 691b(a). If, however, a "disapproval bill" pertaining to a special message is enacted into law, the cancellations set forth in that message become "null and void." *Ibid.* The Act sets forth a detailed expedited procedure for the consideration of a "disapproval bill," see § 691d, but no such bill was p for either of the cancellations involved in these cases. [24] A majority vote of both Houses is sufficient enact a disapproval bill. The Act does not grant the President the authority to cancel a disapproval bill see § 691(c), but he does, of course, retain his constitutional authority to veto such a bill. [25]

The effect of a cancellation is plainly stated in § 691e, which defines the principal terms used in Act. With respect to both an item of new direct spending and a limited tax benefit, the cancellation prevents the item "from having legal force or effect." 2 U.S.C. § 691e(4)(B)—(C) (1994 ed., Supp. I Thus, under the plain text of the statute, the two actions of the President that are challenged in these cases prevented one section of the Balanced Budget Act of 1997 and one section of the Taxpayer Relief Act 1997 "from having legal force or effect." The remaining provisions of those statutes, with the exceptic of the second canceled item in the latter, continue to have the same force and effect as they had when signed into law.

In both legal and practical effect, the President has amended two Acts of Congress by repealing a por of each. "[R]epeal of statutes, no less than enactment, must conform with Art. I." *INS* v. *Chadha*, 462 919, 954 (1983). There is no provision in the Constitution that authorizes the President to enact, to amer or to repeal statutes. Both Article I and Article II assign responsibilities to the President that directl relate to the lawmaking process, but neither addresses the issue presented by these cases. The President "shall from time to time give to the Congress Information on the State of the Union, and recommend to the Consideration such Measures as he shall judge necessary and expedient ... ." Art. II, § 3. Thus, he may initiate and influence legislative proposals. [27] Moreover, after a bill has passed both Houses of Congress but "before it become[s] a Law," it must be presented to the President. If he approves it, "he shall it, but if not he shall return it, with his Objections to that House in which it shall have originated, wh shall enter the Objections at large on their Journal, and proceed to reconsider it." Art. I, § 7, cl. His "return" of a bill, which is usually described as a "veto," [29] is subject to being overridden by two-thirds vote in each House.

There are important differences between the President ' s "return" of a bill pursuant to Article I, 7, and the exercise of the President ' s cancellation authority pursuant to the Line Item Veto Act. The constitutional return takes place *before* the bill becomes law; the statutory cancellation occurs *after* bill becomes law. The constitutional return is of the entire bill; the statutory cancellation is of only a part. Although the Constitution expressly authorizes the President to play a role in the process of enacti statutes, it is silent on the subject of unilateral Presidential action that either repeals or amends part of duly enacted statutes.

There are powerful reasons for construing constitutional silence on this profoundly important issue as equivalent to an express prohibition. The procedures governing the enactment of statutes set forth in the text of Article I were the product of the great debates and compromises that produced the Constitution itself. Familiar historical materials provide abundant support for the conclusion that the power to enact

statutes may only "be exercised in accord with a single, finely wrought and exhaustively considered, procedure." *Chadha,* 462 U.S., at 951. Our first President understood the text of the Presentment Clause requiring that he either "approve all the parts of a Bill, or reject it in toto." [30] What has emerged these cases from the President's exercise of his statutory cancellation powers, however, are truncated versions of two bills that passed both Houses of Congress. They are not the product of the "finely wrought" procedure that the Framers designed.

At oral argument, the Government suggested that the cancellations at issue in these cases do not effe "repeal" of the canceled items because under the special "lockbox" provisions of the Act, [31] a cance item "retain[s] real, legal budgetary effect" insofar as it prevents Congress and the President from spending the savings that result from the cancellation. Tr. of Oral Arg. 10. [32] The text of the Act expre provides, however, that a cancellation prevents a direct spending or tax benefit provision "from havin legal force or effect." 2 U.S.C. § 691e(4)(B)—(C). That a canceled item may have "real, legal budge effect" as a result of the lockbox procedure does not change the fact that by canceling the items at i in these cases, the President made them entirely inoperative as to appellees. Section 968 of the Taxpayer Relief Act no longer provides a tax benefit, and §4722(c) of the Balanced Budget Act of 1997 no longer relieves New York of its contingent liability. [33] Such significant changes do not lose their character sin because the canceled provisions may have some continuing financial effect on the Government. [34] The cancellation of one section of a statute may be the functional equivalent of a partial repeal even if a portion of the section is not canceled.

V

The Government advances two related arguments to support its position that despite the unambiguous provisions of the Act, cancellations do not amend or repeal properly enacted statutes in violation of the Presentment Clause. First, relying primarily on *Field* v. *Clark,* 143 U.S. 649 (1892), the Government cont that the cancellations were merely exercises of discretionary authority granted to the President by the Balanced Budget Act and the Taxpayer Relief Act read in light of the previously enacted Line Item Veto Second, the Government submits that the substance of the authority to cancel tax and spending items "is practical effect, no more and no less than the power to 'decline to spend' specified sums of money, or 'decline to implement' specified tax measures." Brief for Appellants 40. Neither argument is persuasive.

In *Field* v. *Clark*, the Court upheld the constitutionality of the Tariff Act of 1890. Act of Oct. 1, 18 26 Stat. 567. That statute contained a "free list" of almost 300 specific articles that were exempted f import duties "unless otherwise specially provided for in this act." 26 Stat. 602. Section 3 was a spec provision that directed the President to suspend that exemption for sugar, molasses, coffee, tea, and hide "whenever, and so often" as he should be satisfied that any country producing and exporting those produc imposed duties on the agricultural products of the United States that he deemed to be "reciprocally une and unreasonable . . . ." 26 Stat. 612, quoted in *Field,* 143 U.S., at 680. The section then specified the dut to be imposed on those products during any such suspension. The Court provided this explanation for its conclusion that §3 had not delegated legislative power to the President:

"Nothing involving the expediency or the just operation of such legislation was left to the determination the President . . . . [W]hen he ascertained the fact that duties and exactions, reciprocally unequal and unreasonable, were imposed upon the agricultural or other products of the United States by a country producing and exporting sugar, molasses, coffee, tea or hides, it became his duty to issue a proclamation declaring the suspension, as to that country, which Congress had determined should occur. He had no discretion in the premises except in respect to the duration of the suspension so ordered. But that relate only to the enforcement of the policy established by Congress. As the suspension was absolutely required w the President ascertained the existence of a particular fact, it cannot be said that in ascertaining that fact and in issuing his proclamation, in obedience to the legislative will, he exercised the function of making laws . . . . It was a part of the law itself as it left the hands of Congress that the provisions, full and complete in themselves, permitting the free introduction of sugars, molasses, coffee, tea and hides, fr particular countries, should be suspended, in a given contingency, and that in case of such suspensions certain duties should be imposed." *Id.*, at 693.

This passage identifies three critical differences between the power to suspend the exemption from impo duties and the power to cancel portions of a duly enacted statute. First, the exercise of the suspension power was contingent upon a condition that did not exist when the Tariff Act was passed: the imposition of "reciprocally unequal and unreasonable" import duties by other countries. In contrast, the exercise of t cancellation power within five days after the enactment of the Balanced Budget and Tax Reform Acts necessarily was based on the same conditions that Congress evaluated when it passed those statutes. Second, under the Tariff Act, when the President determined that the contingency had arisen, he had a duty to suspend; in contrast, while it is true that the President was required by the Act to make three

determinations before he canceled a provision, see 2 U.S.C. § 691(a)(A) (1994 ed., Supp. II), those determinations did not qualify his discretion to cancel or not to cancel. Finally, whenever the President suspended an exemption under the Tariff Act, he was executing the policy that Congress had embodied in th statute. In contrast, whenever the President cancels an item of new direct spending or a limited tax be he is rejecting the policy judgment made by Congress and relying on his own policy judgment. [35] Thus, th conclusion in *Field* v. *Clark* that the suspensions mandated by the Tariff Act were not exercises of legislative power does not undermine our opinion that cancellations pursuant to the Line Item Veto Act the functional equivalent of partial repeals of Acts of Congress that fail to satisfy Article I, § 7.

The Government ' s reliance upon other tariff and import statutes, discussed in *Field*, that contain provisions similar to the one challenged in *Field* is unavailing for the same reasons. [36] Some of those statutes authorized the President to "suspen[d] and discontinu[e]" statutory duties upon his determina that discriminatory duties imposed by other nations had been abolished. See 143 U.S., at 686 —687 (disc Act of Jan. 7, 1824, ch. 4, § 4, 4 Stat. 3, and Act of May 24, 1828, ch. 111, 4 Stat. 308). [37] A slightl different statute, Act of May 31, 1830, ch. 219, § 2, 4 Stat. 425, provided that certain statutory provi imposing duties on foreign ships "shall be repealed" upon the same no-discrimination determination by President. See 143 U.S., at 687; see also *id.*, at 686 (discussing similar tariff statute, Act of Mar. 3, 1815, ch. 77, 3 Stat. 224, which provided that duties "are hereby repealed," "[s]uch repeal to take effect ··· whenever the President" makes the required determination).

The cited statutes all relate to foreign trade, and this Court has recognized that in the foreign affa arena, the President has "a degree of discretion and freedom from statutory restriction which would not l admissible were domestic affairs alone involved." *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S 304, 320 (1936). "Moreover, he, not Congress, has the better opportunity of knowing the conditions which prevail in foreign countries." *Ibid.* [38] More important, when enacting the statutes discussed in *Field*, Congress itself made the decision to suspend or repeal the particular provisions at issue upon the occurre of particular events subsequent to enactment, and it left only the determination of whether such events occurred up to the President. [39] The Line Item Veto Act authorizes the President himself to effect the rep of laws, for his own policy reasons, without observing the procedures set out in Article I, § 7. The fac that Congress intended such a result is of no moment. Although Congress presumably anticipated that the President might cancel some of the items in the Balanced Budget Act and in the Taxpayer Relief Act, Congre cannot alter the procedures set out in Article I, § 7, without amending the Constitution. [40]

Neither are we persuaded by the Government ' s contention that the President ' s authority to cancel ne direct spending and tax benefit items is no greater than his traditional authority to decline to spend appropriated funds. The Government has reviewed in some detail the series of statutes in which Congress has given the Executive broad discretion over the expenditure of appropriated funds. For example, the First Congress appropriated "sum[s] not exceeding" specified amounts to be spent on various Government operations. See, *e.g.*, Act of Sept. 29, 1789, ch. 23, § 1, 1 Stat. 95; Act of Mar. 26, 1790, ch. 4, § 1, Stat. 104; Act of Feb. 11, 1791, ch. 6, 1 Stat. 190. In those statutes, as in later years, the President wa given wide discretion with respect to both the amounts to be spent and how the money would be allocated amc different functions. It is argued that the Line Item Veto Act merely confers comparable discretionary authority over the expenditure of appropriated funds. The critical difference between this statute and all its predecessors, however, is that unlike any of them, this Act gives the President the unilateral power to change the text of duly enacted statutes. None of the Act ' s predecessors could even arguably have been construed to authorize such a change.

VI

Although they are implicit in what we have already written, the profound importance of these cases make it appropriate to emphasize three points.

First, we express no opinion about the wisdom of the procedures authorized by the Line Item Veto Act Many members of both major political parties who have served in the Legislative and the Executive Branches have long advocated the enactment of such procedures for the purpose of "ensur[ing] greater fiscal accountability in Washington." H. R. Conf. Rep. 104 —491, p. 15 (1996). [41] The text of the Act was itself product of much debate and deliberation in both Houses of Congress and that precise text was signed into la by the President. We do not lightly conclude that their action was unauthorized by the Constitution. [42] We have, however, twice had full argument and briefing on the question and have concluded that our duty is clear.

Second, although appellees challenge the validity of the Act on alternative grounds, the only issue we address concerns the "finely wrought" procedure commanded by the Constitution. *Chadha*, 462 U.S., at 951 We have been favored with extensive debate about the scope of Congress ' power to delegate law-making

authority, or its functional equivalent, to the President. The excellent briefs filed by the parties and their *amici curiae* have provided us with valuable historical information that illuminates the delegation issue but does not really bear on the narrow issue that is dispositive of these cases. Thus, because we conclude that the Act's cancellation provisions violate Article I, § 7, of the Constitution, we find i unnecessary to consider the District Court's alternative holding that the Act "impermissibly disrupts balance of powers among the three branches of government." 985 F. Supp., at 179. [43]

Third, our decision rests on the narrow ground that the procedures authorized by the **Line Item Vet** are not authorized by the Constitution. The Balanced Budget Act of 1997 is a 500 -page document that bec "Public Law 105—33" after three procedural steps were taken: (1) a bill containing its exact text was approved by a majority of the Members of the House of Representatives; (2) the Senate approved precisely same text; and (3) that text was signed into law by the President. The Constitution explicitly requires t each of those three steps be taken before a bill may "become a law." Art. I, § 7. If one paragraph of text had been omitted at any one of those three stages, Public Law 105 —33 would not have been validly enacted. If the **Line Item Veto** Act were valid, it would authorize the President to create a different la one whose text was not voted on by either House of Congress or presented to the President for signature. Something that might be known as "Public Law 105—33 as modified by the President" may or may not be desirable, but it is surely not a document that may "become a law" pursuant to the procedures designe the Framers of Article I, § 7, of the Constitution.

If there is to be a new procedure in which the President will play a different role in determining th final text of what may "become a law," such change must come not by legislation but through the amendm procedures set forth in Article V of the Constitution. Cf. *U.S. Term Limits, Inc.* v. *Thornton,* 514 U.S. 837 (1995).

The judgment of the District Court is affirmed.

Notes

1. Medicaid Voluntary Contribution and Provider -Specific Tax Amendments of 1991, Pub. L. 102 —234, 105 1793, 42 U.S.C. § 1396b(w).

2. Section 4722(c) provides: "(c) WAIVER OF CERTAIN PROVIDER TAX PROVISIONS. - Notwithstanding any other provision of law, taxes, fees, or assessments, as defined in section 1903(w)(3)(A) of the Social Security Act (42 U.S.C. 1396b(w)(3)(A)), that were collected by the State of New York from a health care provider before June 1, 1997, and for which a waiver of the provisions of subparagraph (B) or (C) of secti 1903(w)(3) of such Act has been applied for, or that would, but for this subsection require that such a waiver be applied for, in accordance with subparagraph (E) of such section; and, (if so applied for) upon which action by the Secretary of Health and Human Services (including any judicial review of any such proceeding) has not been completed as of July 23, 1997, are deemed to be permissible health care related taxes and in compliance with the requirements of subparagraphs (B) and (C) of section 1903(w)(3) of such Act." 111 Stat. 515.

3. App. to Juris. Statement 63a —64a (Cancellation No. 97 —3). The quoted text is an excerpt from the statement of reasons for the cancellation, which is required by the **Line Item Veto** Act. See 2 U.S.C. § (1994 ed., Supp. II).

4. Section 968 of the Taxpayer Relief Act of 1997 amended 26 U.S.C. § 1042 by adding a new subsection which defined the sellers eligible for the exemption as follows: "(2) QUALIFIED REFINER OR PROCESSOR. - For purposes of this subsection, the term 'qualified refiner or processor' means a domesti corporation - "(A) substantially all of the activities of which consist of the active conduct of the trade or business of refining or processing agricultural or horticultural products, and "(B) whic during the 1 -year period ending on the date of the sale, purchases more than one -half of such products t refined or processed from - "(i) farmers who make up the eligible farmers' cooperative which purchasing stock in the corporation in a transaction to which this subsection is to apply, or such cooperative." 111 Stat. 896.

5. H. R. Rep. No. 105—148, p. 420 (1997); see also 141 Cong. Rec. S18739 (Dec. 15, 1995) (Senator Hatch. introducing a previous version of the bill, stating that it "would provide farmers who form farmers cooperatives the opportunity for an ownership interest in the processing and marketing of their products *ibid.* (Senator Craig, cosponsor of a previous bill, stating that "[c]urrently, farmers cannot compete w other business entities … in buying such [processing] businesses because of the advantages inherent in th tax deferrals available in transactions with these other purchases"; bill "would be helpful to farmers cooperatives"); App. 116—117 (Letter from Congresspersons Roberts and Stenholm (Dec. 1, 1995))

(congressional sponsors stating that a previous version of the bill was intended to "provide American farmers a more firm economic footing and more control over their economic destiny. We believe this propo will help farmers, through their cooperatives, purchase facilities to refine and process their raw commodities into value-added products. … It will encourage farmers to help themselves in a more market oriented environment by vertically integrating. If this legislation is passed, we are confident that, 10 years from now, we will look on this bill as one of the most beneficial actions Congress took for U.S. farmers").

6. § 1701, 111 Stat. 1101.

7. App. to Juris. Statement 71a (Cancellation No. 97-2). On the day the President canceled § 968, he stated: "Because I strongly support family farmers, farm cooperatives, and the acquisition of productio facilities by co-ops, this was a very difficult decision for me." App. 125. He added that creating incentives so that farmers' cooperatives can obtain processing facilities is a "very worthy goal." at 130.

8. App. to Juris. Statement 71a (Cancellation No. 97-2). Section 968 was one of the two limited tax benefits in the Taxpayer Relief Act of 1997 that the President canceled.

9. In both actions, the plaintiffs sought a declaratory judgment that the Line Item Veto Act is unconstitutional and that the particular cancellation was invalid; neither set of plaintiffs sought injunctive relief against the President.

10. See, *e.g.*, N. Y. Pub. Health Law § 2807-c(18)(e) (Supp. 1997-1998) ("In the event the secretary the department of health and human services determines that the assessments do not … qualify based on . such exclusion, then the exclusion shall be deemed to have been null and void … and the commissioner sl collect any retroactive amount due as a result … . Interest and penalties shall be measured from the due date of ninety days following notice from the commissioner "); § 2807-d(12) (1993) (same); § 2807-j(1 (Supp. 1997-1998) (same); § 2807-s(8) (same).

11. As the District Court explained: "These laws reflected the best judgment of both Houses. The laws t resulted after the President's line item veto were different from those consented to by both Houses of Congress. There is no way of knowing whether these laws, in their truncated form, would have received the requisite support from both the House and the Senate. Because the laws that emerged after the Line Item are not the same laws that proceeded through the legislative process, as required, the resulting laws are valid." 985 F. Supp., at 178-179.

12. "Unilateral action by any single participant in the law-making process is precisely what the Bicameralism and Presentment Clauses were designed to prevent. Once a bill becomes law, it can only be repealed or amended through another, independent legislative enactment, which itself must conform with the requirements of Article I. Any rescissions must be agreed upon by a majority of both Houses of Congress. T President cannot single-handedly revise the work of the other two participants in the lawmaking process, a he did here when he vetoed certain provisions of these statutes." Ibid.

13. Although in ordinary usage both "individual" and "person" often refer to an individual human be see, *e.g.*, Webster's Third New International Dictionary 1152, 1686 (1986) ("individual" defined as a "single human being"; "person" defined as "an individual human being"), "person" often has a brc meaning in the law, see, *e.g.*, 1 U.S.C. § 1 ("person" includes "corporations, companies, association: firms, partnerships, societies, and joint stock companies, as well as individuals").

14. Justice Scalia objects to our conclusion that the Government's reading of the statute would produc absurd result. *Post*, at 2-3. Nonetheless, he states that "'the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination i this Court.'" *Post*, at 3-4 (quoting this Court's Rule 11). Unlike Justice Scalia, however, we need no rely on our *own* sense of the importance of the issue involved; instead, the structure of § 692 makes it that *Congress* believed the issue warranted expedited review and, therefore, that Congress did not intend the result that the word "individual" would dictate in other contexts.

15. To meet the standing requirements of Article III, "[a] plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Allen* v. *Wright*, 468 U.S. 737, 751 (1984).

16. Because the cancellation of the legislative equivalent of a favorable final judgment causes immediate injury, the Government's reliance on *Anderson* v. *Green*, 513 U.S. 557 (1995) *(per curiam)*, is misplaced. case involved a challenge to a California statute that would have imposed limits on welfare payments to ne residents during their first year of residence in California. The statute could not become effective witho

a waiver from HHS. Although such a waiver had been in effect when the action was filed, it had been vacat in a separate proceeding and HHS had not sought review of that judgment. Accordingly, at the time the *Anderson* case reached this Court, the plaintiffs were receiving the same benefits as long term residents; they had suffered no injury. We held that the case was not ripe because, unless and until HHS issued a ne waiver, any future injury was purely conjectural. 513 U.S., at 559 ("The parties [*i.e.* the plaintiffs California, but not HHS] have no live dispute now, and whether one will arise in the future is conjectural"). Unlike New York in this case, they were not contingently liable for anything.

17. App. 106—107.

18. See n. 10, *supra.*

19. The Government relies on *Warth* v. *Seldin,* 422 U.S. 490 (1975), to support its argument that the Sta and not appellees, should be bringing this claim. In *Warth* we held, *inter alia*, that citizens of Roches did not have standing to challenge the exclusionary zoning practices of another community because their claimed injury of increased taxation turned on the prospective actions of Rochester officials. *Id.*, at Appellees' injury in this case, however, does not turn on the independent actions of third parties, as existing New York law will automatically require that appellees reimburse the State. Because both the City of New York and the health care appellees have standing, we need not consider whether the appellee unions also have standing to sue. See, *e.g.*, *Bowsher* v. *Synar,* 478 U.S. 714, 721 (1986).

20. See n. 5, *supra*.

21. App. 111—115 (Declaration of Mike Cranney).

22. The Government argues that there can be an Article III injury only if Snake River would have actually obtained a facility on favorable terms. We have held, however, that a denial of a benefit in the bargainin process can itself create an Article III injury, irrespective of the end result. See *Northeastern Fla. Chapter, Associated Gen. Contractors of America* v. *Jacksonville*, 508 U.S. 656, 666 (1993). In that case a association of contractors challenged a city ordinance that accorded preferential treatment to certain minority-owned businesses in the award of city contracts. The Court of Appeals had held that the associati lacked standing "because it failed to allege that one or more of its members would have been awarded a contract but for the challenged ordinance." *Id.*, at 664. We rejected the Court of Appeals ' position, stating that it "cannot be reconciled with our precedents." *Ibid.* Even though the preference applied to only a small percentage of the city ' s business, and even though there was no showing that any party would have received a contract absent the ordinance, we held that the prospective bidders had standing; the "injury in fact" was the harm to the contractors in the negotiation process, "not the ultimate inabili to obtain the benefit." *Id.*, at 666. Having found that both the New York and Snake River appellees ar actually injured, traceability and redressability are easily satisfied - each injury is traceable to the President' s cancellation of § 4722(c) or § 968, and would be redressed by a declaratory judgment that the cancellations are invalid.

23. *Allen* v. *Wright,* 468 U.S. 737 (1984), and *Simon* v. *Eastern Ky. Welfare Rights Organization,* 426 U.S (1976), are distinguishable, as each of those cases involved a speculative chain of causation quite differe from the situation here. In *Allen*, parents of black public school children alleged that, even though it wa the policy of the Internal Revenue Service (IRS) to deny tax -exempt status to racially discriminatory schools, the IRS had "not adopted sufficient standards and procedures" to enforce this policy. *Allen*, U.S., at 739. The parents alleged that the lax enforcement caused white students to attend discriminatory *private* schools and, therefore, interfered with their children ' s opportunity to attend desegregated *pub* schools. We held that the chain of causation between the challenged action and the alleged injury was too attenuated to confer standing: "It is, first, uncertain how many racially discriminatory private schools in fact receiving tax exemptions. Moreover, it is entirely speculative … whether withdrawal of a tax exemption from any particular school would lead the school to change its policies … . It is just as speculative whether any given parent of a child attending such a private school would decide to transfer th child to public school as a result of any changes in educational or financial policy made by the private school once it was threatened with loss of tax -exempt status. It is also pure speculation whether, in a particular community, a large enough number of the numerous relevant school officials and parents would rea decisions that collectively would have a significant impact on the racial composition of the public schools." *Id.*, at 758 (footnote omitted). Similarly, in *Simon*, the respondents challenged an IRS Rev Ruling that granted favorable tax treatment to nonprofit hospitals that offered only emergency -room serv to the poor. The respondents argued that the Revenue Ruling " 'encouraged' hospitals to deny services t indigents." *Simon*, 426 U.S., at 42. As in *Allen*, we held that the chain of causation was too attenuated: "It is purely speculative whether the denials of service … fairly can be traced to [the IRS ' s] 'encouragement' or instead result from decisions made by the hospitals without regard to the tax implications. "It is equally speculative whether the desired exercise of the court ' s remedial power in this suit would result in the availability to respondents of such services. So far as the complaint shed light, it is just as plausible that the hospitals to which respondents may apply for service would elect to

forgo favorable tax treatment to avoid the undetermined financial drain of an increase in the level of uncompensated services." 426 U.S., at 42—43. See also *id.*, at 45 ("Speculative inferences are necessa to connect [respondents'] injury to the challenged actions of petitioners"). The injury in the pr case is comparable to the repeal of a law granting a subsidy to sellers of processing plants if, and only they sell to farmers' cooperatives. Every farmers' cooperative seeking to buy a processing plant is ha by that repeal.

24. Congress failed to act upon proposed legislation to disapprove these cancellations. See S. 1157, H. I 2444, S. 1144, and H. R. 2436, 105th Cong., 1st Sess. (1997). Indeed, despite the fact that the President canceled at least 82 items since the Act was passed, see Statement of June E. O'Neill, Director, Congressional Budget Office, Line Item Veto Act After One Year, The Process and Its Implementation, befo the Subcommittee on Legislative and Budget Process of the House Committee on Rules, 105th Cong., 2d Sess. (Mar. 11—12, 1998), Congress has enacted only one law, over a Presidential veto, disapproving *any* cancellation, see Pub. L. 105—159, 112 Stat. 19 (1998) (disapproving the cancellation of 38 military construction spending items).

25. See n. 29, *infra*.

26. The term "cancel," used in connection with any dollar amount of discretionary budget authority, me "to rescind." 2 U.S.C. § 691e(4)(A). The entire definition reads as follows: "The term 'cancel 'cancellation' means— "(A) with respect to any dollar amount of discretionary budget authority, t rescind; "(B) with respect to any item of new direct spending— "(i) that is budget authority provided by law (other than an appropriation law), to prevent such budget authority from having legal force or effect; "(ii) that is entitlement authority, to prevent the specific legal obligation of the United States from having legal force or effect; or "(iii) through the food program, to prevent the specific provision of law that results in an increase in budget authority or outla for that program from having legal force or effect; and "(C) with respect to a limited tax benefit, prevent the specific provision of law that provides such benefit from having legal force or effect." 2 U.S.C. § 691e(4) (1994 ed., Supp. II).

27. See 3 J. Story, Commentaries on the Constitution of the United States § 1555, p. 413 (1833) (Art. I § 3, enables the President "to point out the evil, and to suggest the remedy").

28. The full text of the relevant paragraph of § 7 provides: "Every Bill which shall have passed th House of Representatives and the Senate, shall, before it become a Law, be presented to the President of th United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prever its Return, in which Case it shall not be a Law."

29. "In constitutional terms, 'veto' is used to describe the President's power under Art. I, § 7, o the Constitution." *INS* v. *Chadha*, 462 U.S. 919, 925, n. 2 (1983) (citing Black's Law Dictionary 1403 (5 ed. 1979)).

30. 33 Writings of George Washington 96 (J. Fitzpatrick ed., 1940); see also W. Taft, The Presidency: Its Duties, Its Powers, Its Opportunities and Its Limitations 11 (1916) (stating that the President "has no power to veto part of a bill and let the rest become a law"); cf. 1 W. Blackstone, Commentaries *154 ("crown cannot begin of itself any alterations in the present established law; but it may approve or disappro of the alterations suggested and consented to by the two houses").

31. The lockbox procedure ensures that savings resulting from cancellations are used to reduce the deficit rather than to offset deficit increases arising from other laws. See 2 U.S.C. § 691c(a)—(b); see also H. R. Conf. Rep. No. 104—491, pp. 23—24 (1996). The Office of Management and Budget (OMB) estimates the deficit reduction resulting from each cancellation of new direct spending or limited tax benefit items a presents its estimate as a separate entry in the "pay-as-you-go" report submitted to Congress pursuant § 252(d) of the Balanced Budget and Emergency Deficit Control Act of 1985 (or "Gramm-Rudman-Hollings Act"), 2 U.S.C. § 902(d). See § 691c(a)(2)(A) (1994 ed., Supp. II); see also H. R. Conf. Rep. No. 104-491, at 23. The "pay-as-you-go" requirement acts as a self-imposed limitation on Congress' ability to increase spending and/or reduce revenue: if spending increases are not offset by revenue increases (or if revenue reductions are not offset by spending reductions), then a "sequester" of the excess budgeted fu is required. See 2 U.S.C. § 900(b), 901(a)(1), 902(b), 906(/). OMB does not include the estimated saving:

resulting from a cancellation in the report it must submit under § § 252(b) and 254 of the Balanced Bud and Emergency Deficit Control Act of 1985, 2 U.S.C. § 902(b), 904. See § 691c(a)(2)(B). By providing i this way that such savings "shall not be included in the pay -as-you-go balances," Congress ensures th "savings from the cancellation of new direct spending or limited tax benefits are devoted to deficit reduction and are not available to offset a deficit increase in another law." H. R. Conf. Rep. No. 104 491, at 23. Thus, the "pay-as-you-go" cap does not change upon cancellation because the canceled item not treated as canceled. Moreover, if Congress enacts a disapproval bill, "OMB will not score this legislation as increasing the deficit under pay as you go." *Ibid.*

32. The Snake River appellees have argued that the lockbox provisions have no such effect with respect to the canceled tax benefits at issue. Because we reject the Government's suggestion that the lockbox provisions alter our constitutional analysis, however, we find it unnecessary to resolve the dispute over details of the lockbox procedure's applicability.

33. Thus, although "Congress's use of infelicitous terminology cannot transform the cancellation into unconstitutional amendment or repeal of an enacted law," Brief for Appellants 40—41 (citations omitted the actual effect of a cancellation is entirely consistent with the language of the Act.

34. Moreover, Congress always retains the option of statutorily amending or repealing the lockbox provisi and/or the Gramm-Rudman-Hollings Act, so as to eliminate any lingering financial effect of canceled item

35. For example, one reason that the President gave for canceling § 968 of the Taxpayer Relief Act was h conclusion that "this provision failed to target its benefits to small -and-medium size cooperatives." to Juris. Statement 71a (Cancellation No. 97—2); see n. 8, *supra*. Because the Line Item Veto Act requir the President to act within five days, *every* exercise of the cancellation power will necessarily be based the same facts and circumstances that Congress considered, and therefore constitute a rejection of the poli choice made by Congress.

36. The Court did not, of course, expressly consider in *Field* whether those statutes comported with the requirements of the Presentment Clause.

37. Cf. 143 U.S., at 688 (discussing Act of Mar. 6, 1866, ch. 12, § 2, 14 Stat. 4, which permitted the President to "declare the provisions of this act to be inoperative" and lift import restrictions on foreign cattle and hides upon a showing that such importation would not endanger U.S. cattle).

38. Indeed, the Court in *Field* v. *Clark*, 143 U.S. 649 (1892), so limited its reasoning: "in the judgmer the legislative branch of the government, it is often desirable, if not essential for the protection of the interests of our people, against the unfriendly or discriminating regulations established by foreign governments, … to invest the President with large discretion in matters arising out of the execution of statutes relating to trade and commerce with other nations." *Id.*, at 691.

39. See also *J. W. Hampton, Jr., & Co.* v. *United States*, 276 U.S. 394, 407 (1928) ("Congress may feel itself unable conveniently to determine exactly when its exercise of the legislative power should become effective, because dependent on future conditions, and it may leave the determination of such time to the decision of an Executive").

40. The Government argues that the Rules Enabling Act, 28 U.S.C. § 2072(b), permits this Court to "repeal" prior laws without violating Article I, § 7. Section 2072(b) provides that this Court may promulgate rules of procedure for the lower federal courts and that "[a]ll laws in conflict with such ru shall be of no further force or effect after such rules have taken effect." See *Sibbach* v. *Wilson & Co.*, U.S. 1, 10 (1941) (stating that the procedural rules that this Court promulgates, "if they are within th authority granted by Congress, repeal" a prior inconsistent procedural statute); see also *Henderson* v. *United States*, 517 U.S. 654, 664 (1996) (citing § 2072(b)). In enacting § 2072(b), however, Congress expressly provided that laws inconsistent with the procedural rules promulgated by this Court would automatically be repealed upon the enactment of new rules in order to create a uniform system of rules for Article III courts. As in the tariff statutes, Congress itself made the decision to repeal prior rules upon the occurrence of a particular event - here, the promulgation of procedural rules by this Court.

41. Cf. Taft, The Presidency, *supra* n. 30, at 21 ("A President with the power to veto items in appropriation bills might exercise a good restraining influence in cutting down the total annual expenses o the government. But this is not the right way").

42. See *Bowsher*, 478 U.S., at 736 (Stevens, J., concurring in judgment) ("When this Court is asked to invalidate a statutory provision that has been approved by both Houses of the Congress and signed by the President, particularly an Act of Congress that confronts a deeply vexing national problem, it should only d so for the most compelling constitutional reasons").

43. We also find it unnecessary to consider whether the provisions of the Act relating to discretionary budget authority are severable from the Act ' s tax benefit and direct spending provisions. We note, howe that the Act contains no severability clause; a severability provision that had appeared in the Senate bil was dropped in conference without explanation. H. R. Conf. Rep. No. 104 —491, at 17, 41.

條文內容

法規名稱： 中央政府附屬單位預算執行要點 (民國 87 年 10 月 06 日 修正)

壹 總則

第 1 條 一 中央政府附屬單位預算（包括營業基金及非營業基金，以下簡稱基金）之執行，除法令另有規定者外，依本要點辦理。

第 2 條 二 各基金管理機構應依分期實施計畫及收支估計表切實執行，並設法提高產銷營運（作業）量，增加收入，抑減成本費用，以達成預算盈餘（賸餘）目標。同時應加強資本支出預算之執行，以提昇生產（服務）能量及品質。

第 3 條 三 各基金年度預算執行績效及計畫執行進度，除作爲年度考核之依據外，並供作核列以後年度預算之重要參考。

貳 分期實施計畫及收支估計表之編製與核定

第 4 條 四 各基金管理機構應依其業務情形，核實編造分期實施計畫及收支估計表（格式如附表一），並附具總說明，其內容應包括：

（一）收支及盈虧（餘絀）估計。
（二）主要產品產銷（營運或作業）計畫。
（三）資本支出計畫。
（四）長期債務舉借及償還計畫。
（五）資金運用計畫。
（六）其他計畫。

前項分期實施計畫及收支估計表全年分爲兩期，各期應估測執行期間產銷（營運）狀況可能發生之變化，評估其得失，就本期內能達成之業績予以編列；資本支出計畫應考量財務狀況，衡酌需要緩急，在可用預算（包括當年度法定預算數、以前年度保留數及奉准先行辦理補辦預算數）範圍內，審慎估計外，爲擴大國內需求，維持經濟穩定成長，各項資本支出可提前辦理者，應按實際需要予以編列；如屬公共建設，前六個月之估計數，以達可用預算百分之六十爲原則。但辦理年度決算時，仍應與法定預算比較。

第一期實施計畫及收支估計表，應於年度開始二十五天內編成，第二期應於下半年度開始三十天內編成，分別陳報主管機關核定。

分期實施計畫及收支估計表經主管機關核定後，如有重大變動時，應即修正陳報主管機關核定。

（法源資訊編：附表一請參閱臺灣省政府公報 87 年冬字第 26 期 31～36 頁）

第 5 條 五 各基金之主管機關核定分期實施計畫及收支估計表時，除應注意本要點參、預算之控制與執行規定外，並應就各項估計數與預算目標差異情形，審核分析其原因，如有重大差異或情形特殊者，由主管機關視其差異原因及嚴重程度召開會議審查，有關事業或作業主持人應列席備詢。

各基金之主管機關，應於收到分期實施計畫及收支估計表十五天內核定，並轉送行政院主計處、審計部及財政部備查。

參 預算之控制與執行

第 6條　六　各基金管理機構爲發揮預算功能，便利控制及追蹤考核，得根據核定之分期實施計畫及收支估計表，按責任中心或部門別，予以分配。但業務（作業）單純或事實上未區分責任中心或部門別者，得由業務部門依核定之分期實施計畫及收支估計表管制執行。分配後如有重大變動時，應配合分期實施計畫及收支估計表予以修正。
各基金管理機構之會計部門，應依據前項分配結果，編造責任預算分配表，經事業或作業主持人核定後，送由各責任中心或部門據以執行。

第 7條　七　營業（作業）收支之執行，應依照下列規定辦理：
（一）各基金管理機構應以企業化經營原則，積極研究發展及推行責任中心制度，改進產銷及管理技術，提高產品及服務品質，以提昇經營績效，除政策性因素及經營所不能控制者外，應達成年度法定預算盈餘（賸餘）目標。
（二）預算執行期間，因市況變動或業務之實際需要，而增加營業（作業）之收支，列入年度決算辦理。但下列營業（作業）支出項目之執行，仍應依規定辦理：
1 各基金管理機構應加強精簡組織及員額，非經專案報經主管機關核轉行政院核准，不得較法定預算超額用人。
2 營業基金年度用人費用，應切實依照行政院訂定之「公營事業機構員工待遇授權訂定基本原則」（附錄一）、行政院台八十人政肆字第四八七一一號函核定之經營績效獎金核發原則（附錄二）及相關規定辦理；非營業基金年度用人費用，應切實依照「全國軍公教員工待遇支給要點」及相關規定辦理。各基金有關員工待遇、福利、獎金或其他給與事項，應照行政院訂定之有關規定辦理，不得自訂標準支給。
3 出國計畫，應依據核定計畫執行，如計畫須修正或須辦理未奉核定之出國案件，營業基金應依行政院台七十八孝授二字第〇〇七五五號函（附錄三）規定，非營業基金應依行政院台八十三孝授三字第〇六〇六八號函（附錄四）規定辦理。
4 公共關係費之列支，應受法定預算之限制。但行銷（業務）費用與製造費用項下之公共關係費，如營業或作業收入超過預算數時，得在營業或作業收入增加比例之範圍內，報由主管機關核准後，酌予增加。但不得超過公共關係費原預算數之百分之三十。
5 以政府撥款或補助爲財源之項目，除有自有資金可供支應或專案報經主管機關核轉行政院核定者外，其支出不得較預算超出。
6 非營業基金以特定收入用以支應特定政事用途者，除有以前年度未分配賸餘可供支應或專案報經主管機關核轉行政院核定者外，其實際作業總支出，應在實際作業總收入額度內辦理。
7 其他法令訂有支用標準或核定程序者，仍應先依其規定辦理。

第 8條　八　各基金年度決算盈餘（賸餘）之分配及虧損（短絀）之填補，除應依法定程序辦理外，營業基金並應依行政院訂定之「國營事業機構營業盈餘解庫注意事項」（附錄五）規定；非營業基金並應依行政院訂定之「中央政府各機關非營業循環基金賸餘分配及短絀填補注意事項」（附錄六）規定辦理。
前項盈餘（賸餘）分配中，特別公積除法律有明定或經行政院專案核准者外，應在法定預算範圍內提列。盈餘（賸餘）分配結果，應行繳庫之盈餘（賸餘）超過預算者，非經行政院專案核准，應一律解庫，不得保留。

第 9條　九　資本支出之執行，應依照下列規定辦理：
（一）一般執行原則：
1 各基金管理機構應切實依預算編列項目及主管機關核定之分期實施計畫執行。
2 原未編列預算或預算編列不足支應之項目，如年度進行中，確爲應業務需要必須於當年度辦理者，計畫型資本支出項目，得在同一計畫已列預算總額內調整容納；非計畫型資本支出項目，得在當年度非計畫型資本支出預算總額內調整容納者，由各基金管理機構自行依有關規定核辦。

3 計畫型及非計畫型資本支出內，「房屋及建築」科目中之新建或購置各項辦公房屋、宿舍，及「交通及運輸設備」科目中之購置公務車輛，應依預算切實執行。年度內如因價格或其他特殊原因，致原預算確有不敷，須在同一計畫型資本支出已列預算總額或非計畫型資本支出當年度預算總額內調整容納者，應專案報由主管機關核轉行政院核定。

4 興建公有建築物及公共工程，其有關規劃、設計、發包、監造、驗收及施工品質等作業，應依照行政院訂定之「各機關辦理公有建築物作業要點」（附錄七）及「「公共工程施工品質管理制度」（附錄八）規定辦理。

5 辦理公有建築物須委託建築師設計監造者，其酬金應依照行政院訂定之「公有建築物委託建築師規劃設計監造酬金標準表」（附錄九）所定範圍辦理。

6 工程管理費用之支用，應依照行政院訂定之「中央政府各機關工程管理費用支用要點」（附錄十）規定辦理。

7 委託技術顧問機構承辦技術服務費之支用，應依照行政院訂定之「各機關委託技術顧問機構承辦技術服務處理要點」（附錄十一）規定辦理。

（二）計畫型資本支出，於年度進行中，如因財務狀況欠佳，資金來源無著，或因情勢變遷，無法達成預期效益，或因其他原因，經詳予檢討，認爲應予緩辦或停辦者，除在分期實施計畫及收支估計表表達外，並應依下列規定辦理：

1 原計畫係依相關規定送請行政院經濟建設委員會審議者，應專案報由主管機關核轉行政院核定。

2 其餘計畫，應專案報由主管機關核定。

奉准緩辦之計畫，其緩辦期限非經行政院專案核准者，以二年爲限。在期限內因財務狀況改善或實際需要，經檢討後須恢復繼續辦理者，仍應循緩辦之程序辦理。奉准停辦之計畫，如必須於以後年度辦理者，應依預算程序辦理。

（三）計畫型資本支出預算之執行，如年度進行中爲配合業務需要，計畫須予修正，其程序如下：

1 其不影響原計畫目標及不增加投資總額者，由各基金管理機構自行依有關規定核辦，報主管機關核備。

2 因計畫內容部分變更，或因外在因素，致增加投資總額者：

（1）增加金額在新台幣五億元以下者，由基金管理機構自行依有關規定核辦，報主管機關核備。

（2）增加金額超過新台幣五億元且在新台幣二十億元以下，或超過新台幣二十億元且在原投資總額百分之二十以內者，應擬具處理意見，報由主管機關核定。

（3）增加金額超過新台幣二十億元且超過原投資總額百分之二十者，應專案報由主管機關核轉行政院核定。但原計畫係依相關規定送請行政院經濟建設委員會審議，或修正後達送請該會審議標準者，應先送請該會審議。

3 計畫修正涉及國庫負擔經費者，均應專案報由主管機關核轉行政院核定。

4 計畫修正致當年度分年投資金額超過當年度預算部分，經依 1. 至 3. 之程序報奉核定後，得先行辦理，並應補辦預算；修正以後年度預算部分，循預算程序辦理。

5 計畫型資本支出須整個計畫內容及預算變更者，原計畫應依本（第九）點之（二）規定報請停辦，擬辦之計畫應依本（第九）點之（四）之 1. 規定辦理。

（四）尚未奉核定之資本支出，如確因市場狀況之重大變遷或業務之實際需要，而必須於當年度舉辦者，其程序如下：

1 計畫型資本支出，應專案報由主管機關核轉行政院核定，並應補辦預算。

2 非計畫型資本支出原未編列預算或預算編列不足支應項目，經檢討無法依本（第九）點之（一）之 2. 規定辦理者，除「房屋及建築」科目中之新建或購置各項辦公房屋、宿舍，及「交通及運輸設備」科目中之購置公務車輛暨涉及國庫負擔經費者，應專案報由主管機關核轉行政院核定外，其他項目金額在新台幣五千萬元以下者，應專案報由主管機關核定；其金額超過新台幣五千萬

元者，應專案報由主管機關核轉行政院核定。並均應補辦預算。

（五）資本支出預算之保留，依下列規定辦理：

1 多年期之資本支出項目，其已分年編列預算者，應依預算執行；如因特殊原因，當年度內不能完成者，應依業務實際需要列入保留數，自動結轉以後年度繼續支用。

2 多年期之資本支出項目，分年預算已至最後一個年度，或一年期資本支出項目，其因奉准延長完工期限，或已發生權責或因特殊原因，未能完成者，得申請保留轉入下年度繼續支用，其餘未支用之預算餘額，應即停止支用。

3 申請保留預算時，應填具資本支出預算保留申請表（格式如附表二之一），並敘明理由，必要時檢附有關文件，最遲應於年度終了後一個月內報由主管機關核定。

（六）重大災害損失之復舊工程，除應依行政院訂定之「重大天然災害搶救復建經費簡化會計審計手續處理要點」（附錄十二）規定辦理外，其所需復舊工程經費已列有「災害復舊工程」預算或可依本（第九）點之（一）之 2. 規定辦理者，由各基金管理機構自行依有關規定核辦；其餘除涉及國庫負擔經費者，應專案報由主管機關核轉行政院核定外，由各基金管理機構自行依有關規定核辦，事後專案報主管機關核備。當年度分年投資金額超過年度預算部分，並應補辦預算。

（七）為配合擴大內需，維持經濟穩定成長，對已奉核定之資本支出計畫，應儘量提前辦理，執行進度落後者，應予追蹤管制，加強推動；尚未奉核定之資本支出計畫，凡已完成先期規劃及效益評估者，可檢討報經核准先行辦理，補辦以後年度預算。以上如涉及計畫修正、未列預算或預算編列不足支應項目者，均應依本（第九）點有關規定程序辦理。

第 10 條　一〇　資金轉投資及處分之執行，應依照下列規定辦理：

（一）各基金管理機構應切實依預算編列項目及主管機關核定之分期實施計畫執行，並依行政院訂定之「中央政府營業及非營業基金參加民營事業投資管理要點」（附錄十三）規定辦理。

（二）已奉核定之轉投資計畫確因業務實際需要，須緩辦或停辦者，應專案報由主管機關核定。奉准緩辦計畫經檢討後須恢復辦理者，仍應報由主管機關核定。奉准停辦之計畫，如必須於以後年度辦理者，應依預算程序辦理。

（三）年度進行中，不變更原有投資對象，而確因業際實務需要，計畫須予修正，其增加投資總額超過新台幣五千萬元或涉及國庫負擔經費者，應專案報由主管機關核轉行政院核定；其餘報由主管機關核定。計畫修正致當年度分年投資金額超過年度預算部分，並應補辦預算；修正以後年度預算部分，循預算程序辦理。

（四）尚未奉核定之轉投資計畫，於年度進行中，如確因業務實際需要必須於當年度辦理者，應專案報由主管機關核轉行政院核定，並應補辦預算。

（五）年度進行中，配合被投資事業辦理現金增資，依原持股比例認購股份，除涉及國庫負擔經費者，應專案報由主管機關核轉行政院核定外，其餘應專案報由主管機關核定，並均應補辦預算；無償獲配股票股利，不作為投資之增加，僅註記股數增加，並按增加後之總股數重新計算每股成本或帳面值。

（六）年度進行中，如確因市場狀況之重大變遷或業務之實務需要，須預算外處分轉投資者，應專案報由主管機關核定，並應補辦預算

（七）轉投資之增加與處分預算未及於當年度執行而有保留必要者，準用第九點之（五）規定辦理（格式如附表二之二）。

（法源資訊編：附表二－一～二－二請參閱臺灣省政府公報 87 年冬字第 26 期 36～37 頁）

第 11 條　一一　長期債務舉借之執行，應依照下列規定辦理：

（一）各基金管理機構應切實依預算編列項目及主管機關核定之分期實施計畫執行。

（二）已奉核定之長期債務舉借計畫，於年度進行中，確因業務實際需要，須變更舉借對象或方式者，由各基金管理機構依有關規定自行核辦。

（三）配合資本支出或資金轉投資編列之長期債務舉借預算，於年度進行中，因該資本支出或資金轉投資計畫須停辦、緩辦、修正或增列時，應隨同檢討長期債務舉借計畫之停辦、緩辦、修正或增列，併案報請核定。當年度舉借金額超過年度預算部分，並應補辦預算。

（四）年度進行中，其他須預算外舉借長期債務者，營業基金，除涉及國庫負擔，應專案報由主管機關核轉行政院核定者外，其舉借金額在新台幣五千萬元以下者，由各基金管理機構依有關規定自行核辦，金額超過新台幣五千萬元者，應報由主管機關核定；非營業基金應報由主管機關核轉行政院核定。並均應補辦預算。

（五）長期債務之舉借預算未及於當年度執行而有保留必要者，準用第九點之（五）規定辦理。（格式如附表二之三）

(法源資訊編：附表二－三請參閱臺灣省政府公報 87 年冬字第 26 期 37 頁)

第 12 條　一二　固定資產變賣之執行，應依照下列規定辦理：

（一）各基金管理機構應切實依預算編列項目及主管機關核定之分期實施計畫執行。

（二）已奉核定之固定資產變賣，確因業務實際需要，須停辦或緩辦者，由各基金管理機構自行核辦。

（三）未列預算之固定資產變賣，如確因業務實際需要必須於當年度辦理者，除其他法令另有規定者，依其規定外；其帳面金額在新台幣五千萬元以下者，由基金管理機構自行依有關規定核辦；超過新台幣五千萬元者，報由主管機關核定。並均應補辦預算。

（四）固定資產變賣預算未及於當年度執行而有保留必要者，準用第九點之（五）規定（格式如附表二之四）。

(法源資訊編：附表二－四請參閱臺灣省政府公報 87 年冬字第 26 期 37 頁)

第 13 條　一三　增資（增撥基金）之執行，應依照下列規定辦理：

（一）辦理現金增資（增撥基金）或盈餘重投資（賸餘轉撥基金），均應依其法定預算執行。於年度進行中，其配合業務實際需要，須修正已列預算之增資計畫，或未列預算之增資計畫必須於當年度辦理者，應專案報由主管機關核轉行政院核定。當年度增資金額超過年度預算部分，並應補辦預算。

（二）辦理以前年度公積轉帳增資，應依其法定預算執行。如原未編列預算，確因業務實際需要必須於當年度辦理，或增資金額須較預算增加者，應專案報由主管機關核轉行政院核定，並應補辦預算。

（三）已奉核定之增資計畫，須停辦或緩辦者，應專案報由主管機關核定。奉准緩辦計畫經檢討後須恢復辦理者，仍應報由主管機關核定。奉准停辦之計畫，如必須於以後年度辦理者，應依預算程序辦理。

（四）增資預算未及於當年度執行而有保留必要者，準用第九點之（五）規定辦理（格式如附表二之五）。

(法源資訊編：附表二－五請參閱臺灣省政府公報 87 年冬字第 26 期 37 頁)

第 14 條 一四 各基金或所屬部門辦理移轉民營，其預算執行，應依照下列規定辦理：

（一）各基金或所屬部門經主管機關審視情勢，認已無公營必要者，應報由行政院核定轉讓民營，並循預算程序辦理。

（二）配合經濟政策需要及市場狀況，必要時，主管機關得報經行政院核准先行辦理移轉民營，並應補辦預算。

（三）移轉民營時，應由基金負擔之各項經費，依實際需要核實列支，超出預算部分併決算辦理。

（四）年度進行中完成移轉民營者，應自移轉民營基準日起停止執行該基金或部門預算，並辦理決（結）算。

第 15 條 一五 營業基金於年度開始後，如預算未經立法院審議通過，應依立法院通過之「中央政府總預算案附屬單位預算及綜計表（營業部分）暨臺灣省菸酒公賣局營業預算案未能依法完成法定程序之補救辦法」（附錄十四）規定辦理。

分期實施計畫及收支估計表、會計月報及績效報告中法定預算數欄，在立法院未審議通過前，暫按行政院核定數編列，俟收到法定預算通知日起十天內調整修正分期實施計畫及收支估計表報主管機關，會計月報及績效報告合則自次月份（期）按法定預算數編列。主管機關收到修正之分期實施計畫及收支估計表，應依第五點規定辦理。

第 16 條 一六 依本要點規定奉准辦理，並應補辦預算項目，應於辦理後以適當科目列入決算，並於以後年度依預算編審程序補辦預算。年度終了時，如尚未辦理完成，得於以後年度依案繼續辦理。

肆 預算執行之檢討報告與考核

第 17 條 一七 各基金管理機構應編製會計月報（格式如附表三），於次月十五日前分送行政院主計處（第二局、會計作業小組）、審計部、財政部及其主管機關。

前項會計報告應就盈虧（餘絀）及業務計畫、資本支出預算執行情形詳予檢討。其未達預算目標或計畫進度落後者，各基金管理機構應敘明理由檢討改進。

（法源資訊編：附表三請參閱臺灣省政府公報 87 年冬字第 26 期 38～40 頁）

第 18 條 一八 行政院主計處爲應業務需要，得指定各基金管理機構依規定格式編製定期或不定期報表，各基金管理機構應在限期內詳實填報。

第 19 條 一九 各基金管理機構應隨時蒐集國內、外同業（或類似機構）之經營及財務狀況資料，分析比較，作爲改進業務經營之依據。所蒐集及分析之資料，並送主管機關、行政院主計處（第二局、會計作業小組）及財政部參考。

第 20 條 二〇 各基金業務計畫預算執行部門，應就各該部門計畫預算執行情形，按期編製報告，並詳予分析差異原因，其差異超過百分之十以上者，應提出改進意見，送由會計部門彙總分析，擬具綜合之建議，視差異程度，適時提報業務會報或董（理）事會、管理委員會檢討採取對策。

第 21 條 二一 各基金管理機構，對於預算之執行結果，以半年爲一期，按期綜合檢討，並編製績效報告（格式如附表四），加具封面及封底，裝訂成冊，於各期結束後一個月內報由主管機關核轉行政院主計處（第二局、會計作業小組）、審計部及財政部備查。其第二期報告，應以全年度估計數爲基準作比較。
各基金管理機構編送績效報告時，應就實際數與分期實施計畫及收支估計數間重大差異（百分之二十以上）情形，詳予分析，說明原因，並加具改進意見，一併附送有關機關參核。

(法源資訊編：附表四請參閱臺灣省政府公報 87 年冬字第 26 期 41～44 頁)

第 22 條 二二 各基金管理機構每年應對以往年度完成且尚在營運之計畫型資本支出，檢討其產能利用及實際效益情形，並與原預訂目標比較分析差異原因，提出改進措施，於年度終了後二個月內報由主管機關核轉行政院主計處（第二局、會計作業小組）審計部及財政部備查。（格式如附表五）

(法源資訊編：附表五請參閱臺灣省政府公報 87 年冬字第 26 期 45 頁)

第 23 條 二三 辦理自償性公共建設計畫之非營業基金，應於計畫完工營運後，每半年檢討營運情形及債務負擔狀況，如有無法達成原訂自償率之虞時，應即檢討提出改進措施，報主管機關核辦，核辦副本抄送審計部、行政院經濟建設委員會、主計處、公共工程委員會及財政部。但遇有重大問題或差異發生時應隨時檢討。各項服務費率，應按原訂財務計畫適時調整，以確保自償率之達成。

第 24 條 二四 各基金主管機關對預算之執行，應隨時注意督導考核，如有偏差，應及時糾正，考核結果除併年度考成辦理外，並應根據審計法第六十二條規定通知審計部。各基金管理機構對其所屬各責任中心（部門）預算執行結果之考核，由各該機構自行訂定，報由主管機關核備。

第 25 條 二五 資本支出全年度計畫執行進度未達百分之八十者，或全年度前九個月之計畫執行進度未達百分之六十者，除不可抗拒之特殊因素外，該機構首長及相關主管應予議處。

第 26 條 二六 資本支出計畫中之公共建設，其全年度前六個月之執行進度未達分期實施計畫及收支估計表所列進度者，應切實檢討分析落後原因，陳報主管機關，主管機關應予適當核處。至執行達可用預算百分之六十以上者，主管機關應予獎勵。

第 27 條 二七 主管機關及行政院主計處爲應業務需要，得依預算法第六十二條、決算法第二十條及會計法第一百零六條之規定，定期或不定期派員赴各基金管理機構訪查或查核預算執行或決算辦理情形。

伍 附則

第 28 條 二八 依本要點規定由各基金管理機構自行核辦，報主管機關核備或應專案報由主管機關核定事項，核備或核定副本應抄送行政院主計處、審計部及財政部；應專案報由主管機關核轉行政院核定事項，核定副本應抄送審計部及財政部。

第 29 條 二九 依本要點規定授權主管機關核定或核備事項，主管機關不得再授權各基金管理機構辦理。
各基金設有董（理）事會或管理委員會者，依本要點規定授權各基金管理機構自行核辦事項，由各基金自行決定董（理）事會或管理委員會與事業或作業主持人之權責劃分。

第 30 條　三〇　行政院所屬事業（作業）機構，如爲一級機關，其有關本要點之各種授權，得比照其他各主管機關辦理。

第 31 條　三一　編製附屬單位預算分預算之基金，適用本要點之規定。

證十三

條文內容

法規名稱： 行政院暨所屬各機關計畫預算執行考核獎懲作業要點 (民國 89 年 08 月 03 日 修正)

1 一 為期行政院暨所屬各部、會、行、處、局、署（含國立故宮博物院，以下簡稱各部會）及其附屬機關之資本支出及固定資產投資計畫（以下簡稱計畫）能嚴密執行，有效推動，特訂定本要點。

2 二 本要點以各計畫全年度計畫預算執行進度為考核對象，並依分層負責原則，分別由各部會及行政院審核小組辦理考核，其權責區分如下：

（一）行政院列管或全年度可支用預算在十億元以上之計畫（以下簡稱重大計畫），由各部會初核後，送行政院審核小組複核。

（二）非屬前款之計畫（以下簡稱其他計畫），由各部會負責考核後，送行政院備查。

3 三 考核程序如下：

（一）各執行機關（指各部會之執行單位及附屬機關）於其年度決算編竣後，應就該年度計畫執行結果詳加檢討，併同執行差異之理由填寫「年度計畫預算執行結果檢討表」，於一個月內報請上級主管部會審核；符合獎勵要件之計畫，得併提「年度計畫建議獎勵審查表」辦理審核。

（二）各部會收到所屬各執行機關依前款所報資料後，應由研考、會計、人事及相關單位共同組成審核小組進行審核，並依第四點規定之獎懲標準作成獎懲建議，必要時得請執行機關提供說明或辦理實地查證，於一個半月內完成審核，並將所主管計畫之執行結果彙整為一覽表，併同綜合審核意見送行政院及行政院審核小組辦理第二點規定之備查及複核；其中送行政院審核小組部分，應併附部會審核小組初核同意之「年度計畫預算執行結果檢討表」及「年度計畫建議獎勵審查表」。

（三）行政院審核小組由行政院秘書處、法規委員會、主計處、人事行政局、經濟建設委員會、國家科學委員會、研究發展考核委員會及公共工程委員會等機關共同組成，於收到各部會所送資料後，應對重大計畫加以審核，必要時得請各部會就審核意見提供說明或辦理實地查證。

（四）各執行機關應依規定時限，提供各項計畫完整確實資料，並配合審核小組之要求，提供相關佐證資料。

（五）行政院審核小組完成各重大計畫之複核後，擬訂綜合審核意見陳報院長核定。於簽陳院長前，行政院審核小組應將未達考核標準計畫之複核意見函知相關部會，並副知執行機關；各部會得於接到通知之日起十五日內提出申復，由行政院審核小組再予審核，申復以一次為限，未提出或逾期提出申復者，行政院審核小組即維持原審核意見。經奉院長核定未達考核標準之計畫，各部會不得再提申復。

（六）相關主管人員之獎懲，應於前款綜合審核意見報奉院長核定後四個月內，由各部會依第四點規定之獎懲標準完成獎懲作業，並報行政院備查。

前項各款作業方式，由行政院審核小組定之。

4 四 獎懲標準如下：

（一）全年度計畫預算實際已執行進度（全年度可支用預算數之實際支付數加計計畫執行賸餘繳庫款。但不包括預付款未扣回部分）達全年度百分之九十五，且達成原訂施政目標，產生預期效益，著有績效者。相關主管人員依核定之下列等級予以獎勵：

1 特優者，記一大功。

2 優等者，記功一次。

3 甲等者，嘉獎二次。

（二）全年度計畫預算執行進度（全年度可支用預算數之實際支付數加計

已執行之應付未付數及不可抗拒之特殊因素影響數）未達全年度百分之九十者，相關主管人員依下列標準予以議處：

1 全年度計畫預算執行進度達百分之八十以上，未達百分之九十者，應予申誡。

2 全年度計畫預算執行進度達百分之七十以上，未達百分之八十者，記過一次。

3 全年度計畫預算執行進度達百分之六十以上，未達百分之七十者，記過二次。

4 全年度計畫預算執行進度未達百分之六十者，記一大過。

5 五 第四點第二款所稱不可抗拒之特殊因素，係指各執行機關執行年度資本支出及固定資產投資計畫，已善盡職責，但因遭遇非各該機關所能掌控情事、受天災等自然環境影響或為健全政府財政執行節約措施，致進度落後或延誤，或預算產生節餘等因素，或其他事由經審核小組認定者，其規定如下：

（一）非執行機關所能掌控者，包括：

1 因民意機關之決議，或未能適時審議通過相關法案，致所列預算無法據以執行，進度落後、緩辦或停辦者。

2 因政府法令新定、變更，或因民眾、相關權益人抗爭影響，須調整原計畫或變更設計，或須協調解決紛爭，致進度落後者。

3 執行機關已在合理時間提出申請，而相關權責機關未能在規定作業期間核發核准文件，致影響計畫執行進度者。

4 因不可歸責於執行機關之事由，經招標未決，進度落後者。

5 收支併列性質之支出，因收入短收，致支出須相對減支者。

6 國外採購支出，因受他國政府、國外廠商未能配合，致進度落後者。

（二）受天災、地質及天侯等自然環境影響，無法順利施工，致工期延長、進度落後或未執行者。

（三）執行政府節約措施或辦理招標，致預算節餘未辦保留者。

（四）其他不可歸責於執行機關之事由，經審核小組認定者。

6 六 行政院以外之其他中央政府機關與其所屬機關計畫預算執行之考核獎懲作業，由其自訂辦法或參考本要點辦理。

司法解釋 要旨

【共 1 筆】

1.【解釋字號】釋字第 461 號 【解釋日期】87/07/24

【解釋文】

中華民國八十六年七月二十一日公布施行之憲法增修條文第三條第二項第一款規定行政院有向立法院提出施政方針及施政報告之責，立法委員在開會時，有向行政院院長及行政院各部會首長質詢之權，此為憲法基於民意政治及責任政治之原理所為制度性之設計。國防部主管全國國防事務，立法委員就行政院提出施政方針及施政報告關於國防事務方面，自得向行政院院長及國防部部長質詢之。至參謀總長在行政系統為國防部部長之幕僚長，直接對國防部部長負責，自非憲法規定之部會首長，無上開條文之適用。

立法院為國家最高立法機關，有議決法律、預算等議案及國家重要事項之權。立法院為行使憲法所賦予上開職權，得依憲法第六十七條規定，設各種委員會，邀請政府人員及社會上有關係人員到會備詢。鑑諸行政院應依憲法規定對立法院負責，故凡行政院各部會首長及其所屬公務員，除依法獨立行使職權，不受外部干涉之人員外，於立法院各種委員會依憲法第六十七條第二項規定邀請到會備詢時，有應邀說明之義務。參謀總長為國防部部長之幕僚長，負責國防之重要事項，包括預算之擬編及執行，與立法院之權限密切相關，自屬憲法第六十七條第二項所指政府人員，除非因執行關係國家安全之軍事業務而有正當理由外，不得拒絕應邀到會備詢，惟詢問內容涉及重要國防機密事項者，免予答覆。至司法、考試、監察三院院長，本於五院間相互尊重之立場，並依循憲政慣例，得不受邀請備詢。三院所屬非獨立行使職權而負行政職務之人員，於其提出之法律案及有關預算案涉及之事項，亦有上開憲法規定之適用。

【共 1 筆】

國營事業最近十年度(80至88下及89)計畫型資本支出停辦情形彙總表

單位：新臺幣千元

機關名稱	原計畫內容					停辦情形		監察院及審計機關意見
	計畫名稱	起迄年度	投資總額	已列預算		奉准停辦年度	停辦原因	
				執行數	未執行數			
台電公司	烏山頭水力發電工程計畫（利用既有水利設施之落差，興建水力電廠）	85-88	612,969	18,526	3,835	87	土地取得困難（該計畫之地權屬嘉南水利會所有，因雙方無法達成共識，故該會不肯出具土地變更同意書），經報奉行政院准予停辦。	一、88年度審核報告所提其他事項指出，台電公司「烏山頭水力發電工程計畫」，在「建廠用地」、「電廠興建及營運契約書」未取得嘉南農田水利會確切承諾前，即委請顧問公司進行設計，嗣因雙方合作條件未能達成協議，致已支付之設計費用形同虛擲案，案經監察院派委員調查竣事，認定台電公司對本計畫之辦理，及經濟部未確實審議本計畫，均有違失。 二、嗣經行政院於88年12月16日依據經濟部函報情形答復監察院略以：臺電公司為公營事業，在計畫未經核定之前，無法與嘉南農田水利會簽訂契約，本案有關「建廠用地」、「電廠興建與營運契約書」、顧問公司之遴選等前置作業，為縮短工期，採併行作業方式辦理，尚無不當。爾後審議水力發電計

機關名稱	原計畫內容					停辦情形		監察院及審計機關意見
	計畫名稱	起迄年度	投資總額	已列預算		奉准停辦年度	停辦原因	
				執行數	未執行數			
								畫時，將增聘水權主管機關及土地權屬單位會同審議，以降低計畫之不確定性及風險性。 三、迄今尚無進一步之處理。
台電公司	澎湖發電廠第九、十部機發電工程計畫	80-83	1,900,926	216	400,162	84	因澎湖縣政府基於民情考量，無法順利協助辦理墳基遷葬，致土地取得困難，經報奉行政院准予停辦。	無意見。
台電公司	高屏電廠竹門分廠更新工程計畫	79-84	288,080	9,479	121,379	83	台電公司基於施工考量，擬拆除既有廠房，惟引起地方人士異議，嗣經內政部公告將該廠列為三級古蹟，而報奉行政院准予停辦。	無意見。
台電公司	林口-深澳電廠供煤系統工程計畫	75-80	2,197,954	40,405	2,157,549	82	以該計畫原規劃運煤之龍井線路支線遭龍井鄉民(恐其對地方繁榮有負面影響)反對，而又無其他適當鐵路支線替代方案，經報奉行政院准予停辦。	無意見。
中油公司	高廠第四低硫燃油煉製工場計畫	79-83	8,600,000	-	1,224,000	81	因印尼 DURI 低硫原油二期開採成功，產量將大幅增加，該公司進口摻配效果良好，另大林廠輸儲設備增建計畫完成後已能克服高流動點油品進口問題，基於考量進口油品較自製更具經濟效益，報奉行政院准予停辦。	無意見
中油公司	二、三輕節	75-80	1,200,000	641,041	558,959	82	因當時石化業景氣極佳，對石化	一、86 年度審核報告其他重要事

機關名稱	原計畫內容					停辦情形		監察院及審計機關意見
	計畫名稱	起迄年度	投資總額	已列預算		奉准停辦年度	停辦原因	
				執行數	未執行數			
	約能源設備計畫						基本原料需求孔急，且因五輕計畫執行受阻，業者因新增原料遙不可及，反對本計畫停爐施工，遂予暫緩執行，嗣經報奉行政院核准停辦。	項指出，中油公司「二、三輕節約能源設備計畫」由於規劃草率，未能審慎評估國內主要石化基本原料產品供不應求情況下，停爐施工之可行性，仍擬辦理本計畫，又在施工進度表之排定時間遲延，致必須延期執行，嗣後再以石化原料短缺，及執行無實益而停辦。而其間已列支之規劃設計服務費一億二千餘萬元全數無法回收外，對於已採購之器材及物料，亦有四億餘元之閒置浪費，殊有未當。 二、案經監察院對經濟部及該公司提案糾正。本案諸多缺失經濟部已責請中油公司檢討改進，該公司並已議處失職人員。
中油公司	北部油輪碼頭輸儲設備興建計畫	82-86	18,664,000	-	300,000	83	因基隆港務局原擬收回中油於西三十三號碼頭之優先靠泊權，經中油爭取後，該局不堅持收回，致興建觀音港碼頭之迫切性得以紓緩。及原規劃防波堤費用受台塑專用港移至麥寮影響，中油所需負擔經費需加倍等	無意見。

機關名稱	原計畫內容					停辦情形		監察院及審計機關意見
	計畫名稱	起迄年度	投資總額	已列預算		奉准停辦年度	停辦原因	
				執行數	未執行數			
							原因，報奉行政院准停辦。	
台糖公司	擴展肉牛飼養計畫	77-80	171,000	33,931	128,069	80	因國內毛牛市價低落，經營情勢不易好轉，報奉行政院核准停辦。	無意見
台糖公司	高雄育樂園開發計畫	79-80	287,700	—	287,700	82	本地區目前已有高雄都會公園、大型購物中心等重大開發計畫進行施工或規劃中，如再開發育樂園因與前項政府計畫功能重疊，大大減低開發經濟效益，爰報奉行政院核准停辦，俟政府政策上需配合開發時，再另案依規定程序辦理。	無意見。
台糖公司	鹿寮溪水庫風景遊樂區開發計畫	79-81	479,088	295	395,093	81	由於計畫範圍內部分使用軍方土地，歷經多年與軍方有關單位折衝協調，軍方因顧及附近靶場射擊之安全問題，始終未出具土地使用權同意書，致無法動工，短期內恐難以獲得解決，為免久懸不決，爰報奉行政院核准停辦，一旦獲得解決再重新研報投資計畫。	無意見。
台糖公司	製糖工場遷越計畫	87-88下及89	306,600	11,807	4,793	88	因越南政府改變政策規定產品必須外銷，且原料量不足，導致投資報酬率過低，經報奉經濟部核准停辦。	無意見。
台機公司	連鑄機計畫	77	69,483		69,483	80	經該公司審慎衡量經營情況後，決定移轉民營後，視市場情	無意見。

機關名稱	原計畫內容					停辦情形		監察院及審計機關意見
	計畫名稱	起迄年度	投資總額	已列預算		奉准停辦年度	停辦原因	
				執行數	未執行數			
							況再行規劃辦理，報奉行政院核准停辦。	
台灣銀行	宜蘭分行臨時行舍新建工程	87-88	67,931	—	67,931	88	行舍已列入古蹟保存，需配合宜蘭縣都市計畫（尚未奉核定），重新提出基地整體開發計畫，故報奉財政部核准停辦。	無意見。
臺灣土地銀行	南區檔案倉庫新建工程	88下及89	99,940	—	99,940	88下及89	本工程因考量與台灣銀行及中央信託局合併方案未確定及現有行舍利用情形未通盤檢討前，為避免重複投資，經報奉財政部核准停辦。	本(88下及89)年度始奉准停辦因尚未列入決算，故審計部尚未提出審查意見。
合作金庫	購置岡山支庫土地	87	123,000	—	123,000	88	該標的之管理人擬將土地變更為非公用財產後讓售，嗣達known省經報奉財政部核准停辦。	無意見。
合作金庫	購置松山支庫土地	87	10,000	—	10,000	88	該標的之業主與他人有財物訴訟，因未解決前無法讓售，經報奉財政部核准停辦。	無意見。
合作金庫	瑞安支庫新建工程	88	90,000	—	90,000	88下及89	因未能取得建造執照，經重新檢討後，報奉財政部核准停辦。	本(88下及89)年度始奉准停辦因尚未列入決算，故審計部尚未提出審查意見。
合作金庫	屏東地區辦公室工程	88	25,500	—	25,500	88下及89	因未獲當地建管主管機關核准開工，經報奉財政部核准停辦。	本(88下及89)年度始奉准停辦因尚未列入決算，故審計部尚未提出審查意見。
合作金庫	新總庫大樓新建工程	88	200,000	—	200,000	88	該標的之週邊時零地多次議價不成，經報奉行政院同意緩辦兩年。嗣經立法院審查該庫88年下半年及89年度預算時全數刪	無意見。

機關名稱	原計畫內容					停辦情形		監察院及審計機關意見
	計畫名稱	起迄年度	投資總額	已列預算		奉准停辦年度	停辦原因	
				執行數	未執行數			
							除，並同時停止興建。	
菸酒公賣局	宜蘭酒廠遷建計畫(遷至宜蘭利澤工業區)	87-92	4,481,230	—	941,206	88下及89	該酒廠遷建計畫原係為解決地方民間利益衝突及地方政府整體發展考量而提出之解決方案。時至今日，地方政府與民意代表已改變主意，希望該廠留在原地，經考量公賣局整體經營績效，以及改制後將面臨之競爭與市場不確定性，爰於88年8月報奉行政院核定停辦。	本(88下及89)年度始奉准停辦因尚未列入決算，故審計部尚未提出審查意見。
台汽公司	高雄地區場組遷建	76-84	323,500	17,341	118,578	88下及89	該公司路線班次檢討後，依計畫經營規模，以目前高雄場組場地面積，尚可解決停車問題，本計畫已無續辦需要，經報奉交通部核准停辦。	本(88下及89)年度始奉准停辦因尚未列入決算，故審計部尚未提出審查意見。
台汽公司	購車計畫－中興號596輛（其中96輛停辦）	88下及89	432,000	—	432,000	88下及89	計畫內自有資金購置96輛車部分，因公司財務狀況欠佳，且交通部已編列補助購車預算在案，本項預算經報奉交通部核准停辦。	本(88下及89)年度始奉准停辦因尚未列入決算，故審計部尚未提出審查意見。

備註：1.本表係就國營事業（不包含原省營事業）最近十年度停辦情形予以彙整。

2.國營事業計畫型資本支出因財政狀況欠佳或因情勢變遷等因素經檢討應予停辦者，依「中央政府附屬單位預算執行要點」第九點之(二)規定，原計畫依規定送行政院經建會審議者，應專案報由主管機關核轉行政院核定，其餘計畫，應專案報由主管機關核定。

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台灣電力股份有限公司　函

機關地址：台北市羅斯福路三段二四二號
傳　真：(〇二)二三六五〇〇三七

受文者：如行文單位

速別：最速件
密等及解密條件：
發文日期：中華民國八十九年十二月十四日
發文字號：電核火字第八九一一一一九二號
附件：

主旨：針對核四停建發展現況，茲補充說明本公司前所陳報有關暫停合約執行措施所面臨之問題臚陳如后，陳請　鑒核賜覆。

說明：

一、依據　鈞部八十九年十一月十八日經(八九)能字第八九〇三二九四七號函轉行政院秘書長八十九年十一月七日台八十九經字第三一九〇八號函辦理。

二、另為因應行政院八十九年十月二十七日對外公開宣佈決定停建核四，本公司已於八十九年十一月八日以電核火字第八九一一一一〇四三九號函陳報　鈞部說明本公司已配合於當日採取通知各合約廠商「暫停執行合約」之措施，並請　鈞部就核四停建相關合約處理作業予以明確指示，俾憑遵循辦理。(如附件)

三、惟上項請示迄今尚未獲 鈞部有所明確指示，而 鈞部於十一月十八日函轉行政院秘書長函送行政院第二七〇六次會議，院長對於 鈞部所報核四計畫再評估結論建議一案之提示，亦僅送請本公司「卓參」；另目前大法官會議已受理行政院所提送就核四停建之決定是否合憲之釋憲案，依媒體報導行政院將會尊重大法官會議對此一釋憲案所做之解釋，故核四最終是否停建或續建，將靜待大法官會議做出解釋後方能定論。

四、基於上述核四存廢之進展，其結果恐尚需等待一段時日，故本公司謹就前所陳報暫停合約執行措施之分析考量，以及依目前狀況所可能面臨之問題，再予以闡述說明臚陳於后：

（一）依本公司與各廠商所簽訂之合約內容，基本上均包括暫停(Suspension for Convenience)條款與終止(Termination for Convenience)條款，其中終止條款係指本公司於合約執行期間，基於自身利益之考量，做出不再繼續執行該合約之決定，並依此決定通知廠商終止合約執行之相關規定；而暫停條款則係指本公司在合約執行期間，因某種外在因素或事故之發生，基於公司利益之考量而通知廠商於一定期間內暫停執行合約之措施。

（二）依各合約談判簽約時之考量，合約暫停執行係屬一暫時性之措施，該條款之設計是希望暫停原因排除後，合約仍能恢復繼續執行；但依終止合約條款，本公司一旦通知廠商終止合約後，則將直接進入合約終止執行並進行合約清算及結束等後續工作，且日後無法再恢復合約之執行。

（三）由於行政院於本（八十九）年十月二十七日午后召開記者會宣佈停建核四，本公司因屬計畫執行單位，自應配合採取必要之適當措施，因此，在尚未接獲政府有關停建核四之

正式函示前，僅能先行通知各廠商暫停合約之執行以為因應，以避免各廠商因繼續執行各該合約，使得日後需依約支付之費用增加，導致停建損失擴大。並期盼政府會在最短期間正式通知本公司有關核四停建之指示，然後再據以遵循辦理相關停建手續。

（四）惟政府於十月二十七日宣佈核四停建後，並未立即以書面通知本公司有關核四停建之指示，且考量因合約暫停執行，廠商可依合約相關條款或我國相關民法規定，就暫停期間所產生之額外費用向本公司提出求償。故若各合約持續暫停執行，則所產生之暫停費用亦將持續與日增加，導致日後停建總損失擴大，此並非本公司原採暫停措施之本意。因此，本公司乃於十一月八日專函陳報　鈞部，亟盼政府對核四停建儘速有正式明確指示，並就本公司所採暫停合約執行措施是否合宜一併請示，俾可遵循配合辦理。

（五）另基於核四案目前已進入提請大法官會議解釋階段，在大法官會議未做出解釋而政府對停建亦未有正式指示前，核四目前係處於不確定狀態，此導致本公司面臨下列新的難題：

1、在核四是否停建未確定之狀態下，若本公司仍以暫停執行合約之措施處理，則日後不論停建或續建核四，其停建損失或續建費用均將增加。

2、本公司目前通知廠商合約暫停執行期間係至本（八十九）年十二月三十一日止，屆時將面臨合約是否仍以持續暫停方式處理之抉擇，況且，依國內工程施工合約條款而言，若暫停期間超過三個月，廠商依約即有權要求終止合約，一旦合約終止，日後核四若確定續建時，對工程之恢復動工將增添許多變數與困難。

3、因核四目前處於不確定狀態，本公司前為配合停建而成立之各因應處理小組，即僅能停

留於研究規劃之階段，無法正常積極推動若停建後所需辦理之各項工作，尤其設法先期與各廠商討論有關合約後續處理（包括設備處置）之問題，已發生實質上之困難。

4、因核四預算係經立法院審查通過之法定預算，核四計畫執行期間又因興建與否曾送立法院覆議通過興建，故使法定預算是否一定等同法律案成為兩院爭議之所在。然本公司為計畫執行單位，且相關員工均具廣義公務員身分，理應有執行該項計畫與預算之責任，若於核四釋憲結果未定期間，持續以暫停合約執行來處理核四計畫時，恐遭外界質疑有怠忽職守之嫌，此為同仁所顧慮。

五、基於上述分析，本公司除期待大法官會議能在最短期間內作出解釋使核四興建與否及早確定外，亦請　鈞部對目前本公司所採「暫停合約執行」措施得當與否，能有所明示，俾便遵循；若至年底大法官會議對核四釋憲案仍未有所結論，而本公司亦未蒙　鈞部有所指示時，上項「暫停合約執行」措施本公司仍將再繼續執行。敬請　鑒核。

董事長　席時濟

正本：國營事業委員會轉　經濟部
副本：

行政院決議停止執行核四相關預算憲法疑義意見書

關係機關立法院委任代理人政治大學法律系教授蘇永欽

提出於民國八十九年十二月二十一日司法院

大　綱

一、有關本案程序及憲法疑義的說明

本案源於行政院台八十九規字第三二二四二號函提出的解釋聲請，內含憲法疑義及法律統一解釋兩項，而其原因事由則爲該院決議停止興建核能四廠並停止執行相關預算。法律統一解釋部份因行政、立法兩院各有決議，對於預算法解釋明顯分歧，符合　大院受理解釋要件，固不待深論。憲法疑義部分，則依司法院大法官審理案件法第五條第一項第一款，須聲請機關「於其行使職權，適用憲法發生疑義」，或「因行使職權與其他機關之職權，發生適用憲法之爭議」，始符合受理要件。聲請機關行政院以本案事實同時發生兩種疑義而提出聲請，該院於民國八十九年十月二十七日第二七零六次會議作成停止興建核四電廠、不繼續執行核四預算案的決定，認爲是「在憲政體制所賦予的權限裡」；立法院旋即針對該決定於同年十一月七日第四屆第四會期第十二次會議通過移請監察院依法糾彈行政院院長及相關失職人員的決議，認爲行政院有執行核四預算的義務，逕不執行有違憲法上的依法行政義務，則兩院間就有關預算執行的權利義務，發生重大爭議，應無可疑。至於聲請機關就憲法第五十三條及憲法增修條文第三條第二項第一款的適用所生疑義，是因自己行爲而起，當時若無合憲確信，豈有逕爲決定之理；但若果有合憲確信，又何來憲法

疑義？程序上難謂全無瑕疵。惟無論如何，亦因確已發生兩院職權重大爭議， 大院仍以受理解釋爲當。

其次，行政、立法兩院爭議雖以停止執行核四預算有無違反依法行政原則爲其重心，但本件職權爭議解釋標的爲停止執行核四預算相關的職權問題，自不必囿於兩機關在爭議中所提主張。立法院通過的預算縱無強制行政院執行的效力，如行政院所主張，若行政院未依憲法所定民主程序停止執行，其停止仍屬違憲。此一「程序違憲」觀點，以行政院無執行法定預算義務爲其論述前提，與有義務的「實體違憲」觀點，雖不相侔，但 大院解釋結果將拘束全國各機關與人民，性質上爲「公益程序」，自無不許關係機關從此二不同觀點提出意見，以利 大院徹底釐清兩院職權爭議之理，此從 大院指示到院陳述重點兼含上述程序觀點（第三、四、五點），而不以有無違反依法行政原則問題（第六、七點）爲限，亦可理解。此亦所以本人雖曾在報端發表不贊同實體違憲的意見[1]，基於同樣追求憲政主義落實的理念，仍十分樂意接受關係機關立法院的委任，依個人確信，從行政院停止執行核四預算有無違反憲法所定程序的角度，代理立法院表達以下的憲法意見，僅供 大院卓參。

二、行政院重大事項應經立法院議決

我國憲法所定中央政府體制，在民主政體類型中如何定位，向有爭議，但無論如何解釋，皆不得偏離「民主」原則（憲法第一條），及所由引申的民意政治、責任政治（釋字第三八七號、第四六一號解釋參照）與權力分立（釋字第四一九號解釋參照）等原理，則無可疑。行政院雖爲國家最高行政機關，院長與總統爲互有制衡作用的兩個職位（憲法第三十七條、增修條文第二條第二、三項、第三條第二項第二款、釋字第四一九號解釋理由書參照），因院長及所屬行政院成員皆無任何民意基礎，其所爲重大決定若未經其負責對象（憲法增修條文第三條第二項），即由民選立法委員組成的立法院議決，自難符合民意政治的要求，此所以有憲法第五十八條與第六十三條之設。民國八十六年修改憲法，並未改變此一行政、立法兩院的基本關係， 大院於釋字第四六一號解釋中曾有極明確的闡釋。憲法在這兩個條文特別於列舉法律案、預算案、戒嚴案、大赦案、宣戰案、媾和案、條約案之後，加上一個概括的「國家其他重要事項」，以免掛一漏萬，其意旨尤其明顯。 大院在釋字第三二九號解釋理由書中，特別將條約從形式意義的條約擴張到實質意義的條約，即以所涉「重要性」爲度，指出「憲法所稱之條約，係指我國（包括主管機關授權之機構或團體）與其他國家（包括其授權之機關或團體）或國際組織所締結之國際書面協定，名稱用條約或公約者，或用協定等其他名稱而其內容直接涉及國防、外交、財政、經濟等之國家重要事項或直接涉及人民之權利義務且具有法律上效力者而

[1] 拙文，不是違憲問題，是少數政府問題，中國時報，民國八十九年十月二十八日

言」。用意亦在回歸民意政治，實不待言。「又因我國憲法上中央政制，與一般內閣制有別，立法委員既不得兼任官吏」（釋字第四六一號解釋理由書），則重要事項提送立法院議決，以回應民意，尤爲體制所必要。

惟若任何重要事項皆須經由國會議決，顯不符合民主政治最起碼的效率考量，故各國體制凡因行政部門無民意基礎而須對國會負責者，幾乎皆採施政報告制度，使行政部門得定期就其長短期重要施政方針向國會報告，俾國會得有機會就其施政內容加以臧否，而間接爲其注入民意正當性。我國憲法第五十七條第一款規定：「行政院有向立法院提出施政方針及施政報告之責。立法委員在開會時，有向行政院院長及行政院各部會首長質詢之權」，第二款復規定：「立法院對於行政院之重要政策不贊同時，得以決議移請行政院變更之。行政院對於立法院之決議，得經總統之核可，移請立法院覆議。覆議時，如經出席立法委員三分之二維持原決議，行政院院長應即接受該決議或辭職」，其中寓有減輕立法院負擔，無須每事經其議決之意，十分明顯。立法委員既可藉質詢而促使行政部門檢討一般政策，又可對於「重要政策」（不含法律案等）移請行政院變更，則其未移請變更者，應可認爲已「默示同意」。從而第五十八條及第六十三條所稱「應」向立法院提出的其他重大事項，應僅指施政報告後所發生事項，或有關既定重大政策「變更」事項，而非所有國家重大事項[2]。內閣制或類似內閣的體制，行政與立法分工而不徹底分權[3]，此類互動機制即可爲其分工所提高的效率，同時建立民主正當性。民國八十六年修憲後，增修條文第三條第二項仍保留施政報告制度，惟原來較溫和的移請變更及覆議制度，已還原爲「一般內閣制」的不信任投票制（同條項第三款），使行政院對立法院的負責關係更爲緊密，但憲法第五十八條及第六十三條的規定均未改變，則無論從貫徹民意政治原理，或從體制求其順暢、避免不信任投票所生巨大社會成本的角度而觀，都應該解釋行政院在處理施政報告所未及的重大事項，或對既定重大政策決議變更時，應依憲法第六十三條提出於立法院議決。此一憲法上的程序義務，斷不因行政院有提出不信任案加以制衡之權，即可率爾認爲多餘。

三、停止執行核四預算應屬重大事項

本案行政院作成停止執行核四預算的決定，時間在唐飛及張俊雄兩位院長所爲施政方針報告之後，而在報告中均未有隻字提及。此一政策變更，是否應由立法院

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[2] 大院在第四一九號解釋中，對於立法院作成要求總統爲一定行爲或不爲一定行爲的決議，認爲已逾越「國家重要事項」，因爲「依憲法之規定，向立法院負責者爲行政院」，即把此處所稱國家重要事項原則上侷限於與行政院有關事項。

[3] 英國憲法向來認爲行政與立法只有分工而無分權（division of functions, not of powers），參閱 Birch, A.H., The British System of Government, 1986, 175; 德國學者則認爲其行政與立法間僅有不徹底的分權與分工，可參 Ipsen, J., Staatsrecht I, 7A., 1995, 220

議決，關鍵在於該政策變更是否屬於憲法第六十三條所稱「國家其他重要事項」。

基於民主政治運作的效率考量，此處重要性的認定自不宜過於浮濫，而應爲行政院保留合理自主決策空間[4]。所謂重要性，至少應從其直接影響層面，包括人權保障、國計民生、社會安定、財政動支等，及連帶影響層面，如配套的制度調整、可能承擔的責任風險、國際觀瞻等，綜合評估，尚難輕易量化。核四預算案在立法院自民國七十五年七月起，歷經凍結、恢復、通過、廢核、覆議等程序，總預算金額爲一千六百九十七億元（含七一至七五年度一一二億元、八四年度一一二五億元、八五至八六年度三億元及九一至九四年度四五七億元），電廠工程迄民國八十九年四月底止，累計進度爲百分之三一點三，累計契約應付金額爲四六六點八億元，核四電廠第一、第二部機組分別預定於九十三年七月及九十四年七月商業運轉，其裝置容量每部機組各爲一三五千瓦，合計二七零千瓦。其存廢影響到的民生供給及財政幅度之大，自非普通公共工程可比。且核四存廢不僅爲單純能源政策問題，其對環境生態的影響，涉及社會永續發展理念是否及如何落實問題，在幾乎所有工業國家皆演變爲最重要的政策議題，有關核能發電從開放設廠、比例限制，到逐漸減少，乃至凍核、廢核，無不經過民意機關長期論辯，往往成爲政權輪替主要關鍵，甚至不乏爲此舉行公民投票者[5]。故今天若還有人質疑核能政策的「重要性」，殊難想像。至於我國因台電購地、建廠及訂定種種技術合約，可能因停止興建核四而產生拆除回填的費用、上千人失業、高逾千億的賠償及國際信譽損失等等，反倒不是最主要的考量了。

不僅如此，有關核四存廢的政策爭議，早於民國八十五年即已發生。立法院於當年五月二十四日通過不贊同行政院核能政策，要求廢止核能電廠興建案，行政院不同意變更而於同年六月十二日移請立法院覆議，立法院於同年十月十八日表決通過行政院提案，原廢核決議不予維持。當時所依憲法第五十七條第二款程序，即以廢核四屬「重要政策」爲其前提，兩院就此均無異議。此一憲法機關的共識，自應爲司法機關所尊重。立法院對於停止執行核四預算案有議決權，應可確定。

四、違反向立院報告的最低程序義務

值得再進一步討論的，就是在平衡分權（工）與民意政治、責任政治原理的前提下，可否容許兩院在一定情形簡化其互動機制，包括憲法第六十三條？民國八十八年一月制定，經三度修正的立法院職權行使法，其第十七條即規定：「行政院遇有重要事項發生，或施政方針變更時，行政院院長或有關部會首長應向立法院院會提

[4] 林紀東在逐條釋義中也認爲「宜從狹義解釋，限於與立法院列舉各職權有最密切之關係」者，參閱第二冊，頁 320

[5] 瑞典與奧地利均曾舉行核電廠公民投票。

出報告，並備質詢。　前項情事發生時，如有立法委員提議，三十人以上連署或附議，經院會議決，亦得邀請行政院院長或有關部會首長向立法院院會報告，並備質詢」，從其所定兩種情形，均屬憲法第六十三條所稱國家其他重要事項看來，顯然就是參考憲法第五十七條第一款的設計，「簡化」第六十三條程序規定的特別機制，並非根本排除立法院的重要事項議決權。故若行政院依此規定向立法院提出報告，而立法院並未就此進行討論，雖可認爲「默示同意」而不構成違憲，但只要立法院認爲有提出討論決定的必要，而提出討論，也只是依憲法規定行使其固有的議決權而已。這可說是依「法律合憲解釋」方法，使本條合憲的唯一可能。至於同法第二十七條對質詢事項所設限制，應認爲只是議事程序上的限制（質詢程序不得轉爲討論程序），不得理解爲對立法院就第十七條所涉事項爲討論決定的限制，否則第十七條、二十七條即違反了憲法第六十三條的意旨。

換言之，行政院縱使不履踐憲法第五十八條、六十三條的義務，於決定停止執行核四預算後，立即提出於立法院議決，至少也有依立法院職權行使法第十七條前段，立即向立法院院會提出報告的義務；行政院當然沒有未完成報告答詢，即逕自開始執行之權。至於同條後段所定程序爲立法院主動邀請報告之權，得由立法院裁量行使，行政院的提出報告義務，自不因立法院未主動邀請行政院院長或有關部會首長到院報告而解除。更何況本案從立法院作成移請監察院彈劾的決議可知，其未依第十七條後段邀請行政院院長報告，只是因爲確信行政院必須依法行政，並非默示同意政策變更，則行政院更不能逕自開始執行停止核四預算執行的決定。從而行政院於民國八十九年十一月七日以台八十九經字第三一九零七號函令經濟部「請照本院第二七零六次會議決議辦理」，即已構成違憲。敬請　大院於闡明行政、立法兩院職權爭議時，一併就此爲明確的違憲宣告，以昭民主憲政的精神。

五、正本清源在於回歸多數統治原則

本案誠如行政院一再強調，我國既經政黨輪替，新組成的行政院爲反映民意，自無不可變更政策之理。但憲法所以規定行政、立法兩院互動的基本程序，即用以保障多數民意得以彰顯，政策權柄不至於爲少數人把持，而做出違逆多數的決定。故如行政院爲反映民意而變更政策，即應循憲法所定程序進行，且不論法定預算有無強制行政機關執行的效力，核能政策皆可經由民意機關討論而改變，採否定說者，行政院固可於完成憲法第六十三條程序後停止執行，縱採肯定說，亦得於下年度編制新預算，核能政策絕非一經定案，即永世不得超生。西方民主國家在擁核反核間徘徊者，也十分常見，卻從未見如我國行政院一樣，刻意規避國會討論，片面作成如此重大決定，而猶宣稱是爲了反映民意者。其根本原因，恐怕還是在於行政院的組成，自民國八十九年五月二十日起，即已逸出民主政治常軌，形成無法對立法院負責的少數政府，其決策既不易獲得立法院支持，自難免陷入若非一事無成，即如

本案，將如此重要決定當成一般決定，無視社會洶洶民意，逕由行政院單獨作成決定的兩難。決策一旦脫離民主程序，究竟是否符合多數民意，即已無從檢驗。其他重要事項若也依循此一決策模式，憲法所宣示的民主共和國原則，豈非如同鏡花水月。足見程序違憲之惡，猶愈實體違憲，此所以本人自始認爲，核四問題尚不在決策本身，而在其程序。

多數統治原則發源於古典民主理論，而體現於現代民主憲法，鮮有爭議[6]。多數統治原則對於民主政治而言，具有雙重意義。其一是爲政權取得者建立堅強的正當性，這也是民主理論比較強調的部分－統治者必須得到被統治者的同意，每隔幾年，人民一定要有一個機會，重新決定把政權託付給誰，也就是除了個別決定需要多數決外，還要有一個政權託付的多數決。多數統治另外還有一層功能上的意義，就是建立穩定持久的行政立法互動關係，讓政府順暢運作。道理很簡單，因爲縱使認爲民主政治不必然要是多數統治，終究不能否認國會的合議制必須以多數決來運作。多數決的程序要求，使得結構上的少數政府必須爲每一個大大小小的決定，去和多數的反對者討價還價，政治過程勢將陷入極度的無效率，對政黨制度的發展早已超越單純選舉機器的多數國家，甚至會使政局癱瘓。不僅如此，少數政府還會使國家的政策變得方向不明，時而依附多數，時而堅持少數，對於需要作長期規劃的現代人民來說，將平添極大的風險成本。足見多數統治原則對於民主政治來說，除了建立正當性外，還有體制功能上的重要意義，也就是把民主政治在決策效率上的弱點降到最低。這就是爲什麼民主體制雖可有多種選擇，但萬變不離其宗，均須符合多數統治原則。我國憲法使行政高權分由總統與行政院行使，總統因其選舉採相對多數決，已使少數總統的情形無法排除，若由總統任命、對立法院負責的行政院院長，又無法得到立法院多數政黨或政黨聯盟的支持，將使行政部門完全欠缺多數基礎。在少數政府的結構下，行政院一再做出違反民主程序的決定，即很難避免。此時總統同樣不能以立法院有提出不信任案之權而不行使，解除其依多數統治原則任命行政院院長的義務，或作爲少數政府不違憲的藉口[7]。

有關行政院的組成違反多數統治原則一點，形式上雖非本案爭點，實質上則爲

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[6] 德國權威憲法註釋書 Maunz-Dürig-Herzog, GG, 1991, 在闡釋民主時就說，民主的首要之義就在多數統治，並舉五十年代兩個被宣告違憲的政黨，都是因爲所追求政治目標抵觸此一原則來作說明，參 Art.20, Rn.14; BverfGE2, 12f.; 5, 197ff.; 美國的民主理論家 Spitz, E., 則檢視了多數和統治的各種意義，認爲多數統治的意義應不侷限於政治決策，還應該是凝聚社會的「社會習慣」(social practice)，參閱所著 Majority rule, 1984

[7] 因此憲法增修條文第三條第一項第一句賦予總統的任命權，並非完全自由的政治裁量，而須依增修條文設計的通盤意旨，基於憲法第一條民主原則所涵的多數統治原理來行使，在總統非國會多數黨領袖的情形，只能提名可獲得多數支持的人來組閣，這在該條提案的說明中也說得很清楚：「現行行政院長由總統提名，經立法院同意的設計，一旦立法院無任一政黨控制過半席次時，恐不利於政治之穩定，本項調整旨在賦予總統根據民意逕行任命行政院長的權力。惟該項權力之行使仍必須考量立法院之政治情勢，任命多數黨可接受之人選」。此一意旨明確的修憲資料，對於現行政府體制應具有關鍵性（司法院大法官審理案件法第十三條參照），實不待言。

行政院作成違憲決定的主要原因。從憲法創設疑義解釋制度的目的，在於釐清相關職權疑義，使體制得以順暢運作這一點來看，參酌　大院在釋字第四四五號就人民聲請解釋範圍所作闡明的意旨，以其攸關我國民主憲政未來運作成敗之切，若能於本案中爲適當的提示，當可發生正本清源，撥亂反正的宏大功效，而與　大院在釋字第二六一號解釋，一舉扭轉違憲的萬年國會體制的先例，先後輝映，再次寫下歷史新頁。

行政院停止執行核四預算釋憲案審查會

民國八十九年十二月二十一日（上午九時至十二時）
司法院三樓會議室

意 見 書

湯德宗

中央研究院社科所研究員
國立台灣大學國發所教授
（立法院委任訴訟代理人）

壹、本件聲請「統一解釋」案應不予受理
　一、聲請書所稱「立法院決議」，非屬立法院「行使職權」適用法律之行爲
　二、所稱立法院決議並無拘束力，迄未形成「爭議」，無統一解釋之必要

貳、本件聲請「憲法解釋」案應予受理
　一、本件爲「機關權限爭議」應予受理
　二、本件決策不涉及核能決策之實質判斷，非屬「政治問題」

參、行政院逕自停止執行核四預算，剝奪憲法賦予立法院之覆議權，應屬違憲
　一、增修條文第三條第二項第二款旨在解決行政、立法兩院之政策爭議
　　（一）凡經立法院決議之法律案、預算案、條約案，對於行政院即有拘束力，行政院應切實執行
　　（二）行政院不贊同立法院決議之法律案、預算案、條約案時，僅能循覆議途徑嘗試變更
　　（三）任何企圖規避覆議，使之流於空洞化的作法，概屬違憲
　二、新政府（新任行政院長）不贊同立法院決議之多年期跨年預算時，應循覆議途徑尋求變更
　三、遵循憲法大道，方能可長可久

肆、結論

壹、本件聲請「統一解釋」案應不予受理

聲請人（行政院）以立法院於民國八十九年十一月七日逕以二讀程序通過決議，「函請監察院就行政院長張俊雄及相關失職人員蔑視法律、違法失職之行爲，予以依法糾彈」[1]爲由，認與行政院就職權上適用「預算法」所持見解有異，聲請　貴院爲「統一解釋」。

按司法院大法官審理案件法(82/02/03)第七條第一項第一款規定：「有左列情形之一者，得聲請統一解釋：一、中央或地方機關，就其職權上適用法律或命令所持見解，與本機關或他機關適用同一法律或命令時所已表示之見解有異者。但該機關依法應受本機關或他機關見解之拘束，或得變更其見解者，不在此限」。同法同條第三項規定：「聲請統一解釋不合前二項規定者，應不受理」。本院以爲，本件聲請與前揭統一解釋之要件不符，　貴院應不予受理。

一、聲請書所稱「立法院決議」，非屬立法院「行使職權」適用法律之行為

關於立法院之職權，　大院釋字第四一九號解釋(85/12/31)解釋理由書說明甚詳：

> 立法院爲國家最高立法機關，憲法第六十二條定有明文。立法院之職權，憲法第六十三條有概括之規定：「立法院有議決法律案、預算案、戒嚴案、大赦案、宣戰案、媾和案、條約案及國家其他重要事項之權。」之外，諸如總統依憲法第五十五條提名行政院院長、依第一百零四條提名監察院審計長，均應經立法院之同意；依憲法第三十九條決議移請總統解嚴；依憲法第五十七條第一款立法委員在開會時有聽取行政院施政報告並向行政院院長及行政院各部會首長質詢之權；依同條第二款及第三款有決議變更行政院重要政策及對行政院移請覆議事項決議是否維持原案之權；依憲法第一百零五條規定審議審計長所提出之決算審核報告之權；依憲法第一百十一條中央與地方遇有權限爭議時，亦規定由立法院解決；依憲法第一百七十四條第二款立法院亦得對憲法擬定修正案提請國民大會複決；又依憲法增修條文第二條第四項總統發布之緊急命令，須於十日內

[1] 參見《立法院公報》，第八十九卷第六十一期（上），頁 54-60（民國八十九年十一月十一日）。

> 提交立法院追認；再者依本院釋字第三二五號解釋立法院院會就議案涉及事項，得決議向有關機關調閱文件原本，以上所舉皆屬憲法或有憲法效力之規範所定屬於立法院之職權，內容甚為廣泛。上述憲法所定屬於立法院職權之事項，立法院依法定之議事程序所作各種決議，按其性質有拘束全國人民或有關機關之效力。惟任何國家機關之職權均應遵守憲法之界限，凡憲法依權力分立原則將特定職權自立法、行政或司法等部門權限中劃歸其他國家機關行使；或依制憲者之設計根本不採爲憲法上建制者，各個部門即有嚴格遵守之憲法義務。

前揭聲請書所指立法院「函請監察院糾彈失職人員」之決議，既非立法院行使職權所表示之見解，自無勞煩　貴院爲「統一解釋」之必要[2]。

二、所稱立法院決議並無拘束力，迄未形成「爭議」，無統一解釋之必要

前揭聲請書所稱立法院之決議，既非立法院行使職權之行爲，按諸大法官釋字第四一九號解釋(85/12/31)[3]原不生拘束監察院之效力。此所謂（立法院）「見解」，既僅具建議或告發之性質，實難謂有何爭議（「見解有異」），欠缺「統一解釋」之實益（必要）！

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[2] 參見大法官釋字第二號解釋（「適用法律或命令發生疑義時，則有適用職權之中央或地方機關皆應自行研究，以確定其意義而為適用，殊無許其聲請司法院解釋之理由。惟此項機關適用法律或命令時所持見解，與本機關或他機關適用同一法律或命令時所已表示之見解有異者，苟非該機關依法應受本機關或他機關見解之拘束或得變更其見解，則對於同一法律或命令之解釋必將發生歧異之結果，於是乃有統一解釋之必要。故限於有此種情形時，始得聲請統一解釋。」）。

[3] 釋字第四一九號解釋：「依憲法之規定，向立法院負責者為行政院，立法院除憲法所規定之事項外，並無決議要求總統為一定行為或不為一定行為之權限。故立法院於中華民國八十五年六月十一日所為「咨請總統儘速重新提名行政院院長，並咨請立法院同意」之決議，逾越憲法所定立法院之職權，僅屬建議性質，對總統並無憲法上之拘束力」）。並參見湯德宗〈副總統兼任行政院長釋憲案鑑定意見書〉，輯於氏著，《權力分立新論》，頁 616-617（「查本件釋憲聲請案所牽涉之「立法院以二讀會議決通過資請總統重新提名行政院院長決議乙案」，既未經三讀程序，且無有條文，自非「法律案」，不生法律效力，不能拘束總統。」）（台北：自刊，2000 年 12 月增訂二版）。

貳、本件聲請「憲法解釋」案應予受理

按司法院大法官審理案件法(82/02/03)第五條第一項規定：「有左列情形之一者，得聲請解釋憲法：一、中央或地方機關，於其行使職權，適用憲法發生疑義，或因行使職權與其他機關之職權，發生適用憲法之爭議，或適用法律與命令發生有牴觸憲法之疑義者。」

一、本件為「機關權限爭議」，應予受理

關於本件繫爭事項，立法院前依憲法第六十三條賦予之預算審查權，於民國八十三年七月十二日三讀通過興建核四預算。嗣立法院於民國八十五年五月二十四日決議函請行政院停建核四，行政院於同年六月十二日提請覆議，經立法院於同年十八日覆議，原決議不予維持（即核四應繼續興建）。茲行政院於民國八十九年十一月八日第二七０八次會議決議停建核四，並停止執行相關預算，應認為行政、立法兩院關於「應否繼續興建核四」發生爭議。

二、本件聲請解釋不涉及核能決策之實質判斷，非屬「政治問題」

「核四應否興建」應由政治部門（行政及立法）決定，屬於政治決策，而為「政治問題」(political question)[4]。惟本件聲請人聲請解釋者厥為行政、立法兩權按憲法規定，應循如何程序以求化解該項爭議。 貴院於解釋之際，只需把握釋憲原則，不涉入實質決策之價值判斷，即無虞介入「政治問題」之裁判。

又，本人一貫主張「政治問題」原則，乃在維護「權力分立原則」。是如適用之結果，反而破壞「權力分立原則」，自非其本意。[5]本案因行政院片面停止

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[4] 按「政治問題法院不予審查原則」(political question doctrine)初於一八〇三年由美國聯邦最高法院於 *Marbury v. Madison* (5 U.S. (1 Cranch) 137 (1803)) 案創設。迄一九六二年 *Baker v. Carr* (369 U.S. 186 (1962)) 案，大法官 William J. Brennan 在其主筆的法院意見中，始嘗試梳理該院裁判先例，提出較明確之判準：「凡憲法已明文將該問題委由與本院平行的某個政治部門處理者；或欠缺法院可以察悉並適用的裁決基準者；或非先作成顯然不屬於司法裁量的初步政策決定，法院即無從為審查者；或法院如獨立解決，則勢必造成對於其他平行的政府部門之不尊重者；或有特別必要，應無異議地遵循已作成之政治決定者；或就同一問題可能形成政府不同部門發表不同聲明之尷尬局面者，即可認為顯然涉有政治問題。」(Id. at 217).

[5] 參見湯德宗，〈國大延任修憲案違憲疑義解釋案大法官審查說明會意見書（二）〉，輯於

執行核四預算，剝奪立法院覆議之權，而破壞憲法上「權力分立」之設計（後詳），本案要非「政治問題」。

參、行政院逕自停止執行核四預算，剝奪憲法賦予立法院之覆議權，應屬違憲

行政院片面決定停止執行本院審議通過之核四興建預算，乃公然違背憲法之行爲，應明確宣告爲無效。

一、增修條文第三條第二項第二款旨在解決行政、立法兩院之政策爭議

按權力分立原則(Doctrine of Separation of Power)爲現代民主法治國家建構憲法所依循的基本原理。爲追求效率、避免專制，各國憲法無不採取「分權」(separation of powers)與「制衡」(checks and balances)的設計。惟憲法諸權力間實難截然劃分，乃需以適度的混合(blending)或重疊(overlapping)，使其相互制衡。此在行政、立法兩權間，尤爲明顯。此由憲法第五十八條第二項與第六十三條之規定觀之即明。

「預算」即爲行政、立法兩權分享之權力。預算案應由行政院提出，經立法院審議通過（稱爲「法定預算」），再交由相關機關（含行政院）執行。如此密切之互動過程中，難免發生意見紛歧；尤其憲法在民國八十七年增修，停止適用憲法五十五條[6]，將行政院院長改由總統直接任命之後，行政、立法兩院意見分歧可以想見當更爲平常。爲使兩權「分立之中，仍相聯屬」，雖有歧見仍能循序解決，不至僵持不下，形成憲政危機，乃有增修條文第三條第二項第二款「覆議」(reconsideration)制度之設：

> 二、行政院對於立法院決議之法律案、預算案、條約案，如認爲有窒礙難行時，得經總統之核可，於該決議案送達行政院十日內，移請立法院覆議。立法院對於行政院移請覆議案，應於送達十五日內作成決議。如爲休會期間，立法院應於七日內自行集會，並於開議十五日內作成決議。覆議案逾期未議決者，原決議失效。覆議時，如經全體立法委員二分之一以上決議維

氏著，《權力分立新論》，頁 702 以下，頁 706（台北：自刊，2000 年 12 月）。

[6] 憲法第五十五條第一項：「行政院院長由總統提名，經立法院同意任命之。」

持原案，行政院院長應即接受該決議。

上開規定乃現時行政、立法兩權制衡關係之主要規範。其意涵至少可以分析如下：

（一）凡經立法院決議之法律案、預算案、條約案，對於行政院即有拘束力，行政院應切實執行

如立法院決議之法律案、預算案、條約案，行政院可逕自不予執行，何需規定「行政院…如認爲有窒礙難行時，得…於該決議案送達行政院十日內，移請立法院覆議」？至大法官釋字第三九一號解釋(84/12/08)所謂「立法委員於審議中央政府總預算案時，…雖得爲合理之刪減，惟…尚不得…對各機關所編列預算之數額，在款項目節間移動增減並追加或削減原預算之項目」，乃指預算案與法律案因性質不同，預算案之「審議」乃不能比照審議法律案之方式，作逐條逐句之增刪修改，並非謂行政院對於立法院決議之預算案，可不受拘束。蓋如此解釋顯然牴觸前揭增修條文第三條第二項第二款之規定，破壞兩權制衡關係。

（二）行政院不贊同立法院決議之法律案、預算案、條約案時，僅能循覆議途徑嘗試變更

前揭增修條文第三條第二項第二款之規定毋寧爲一配套制衡設計（參見【圖一】）。亦即，行政院不贊同立法院決議之法律案、預算案、條約案時，僅能循該款所定之「覆議」程序，試圖擺脫前述立法院決議之拘束。而其能否翻案成功，端視立法院覆議之結果而定。換言之，覆議時，如經全體立法委員二分之一以上決議維持原案，行政院院長應即接受該決議（覆議失敗）。反之，如未有全體立法委員二分之一以上決議維持原案，則原決議之法律案、預算案、條約案失效（覆議成功）。不論覆議成功與否，兩院歧見皆獲化解！

（三）任何企圖規避覆議，使之流於空洞化的作法，概屬違憲

現制下前揭覆議機制對於化解兩院爭議至爲緊要，不容許任何方式規避。按類似本件爭議僵持之情形，在內閣制國家固難想像（殆已因倒閣或解散國會重新改選而化解），在總統制國家則非罕見。我國行政、立法兩權發生本件爭議雖是首次，美國行政、立法兩權企圖以各種方式規避覆議機制，則屢見不鮮。美國聯邦最高法院的處理方式足堪借鏡。

按覆議制度源於美國聯邦憲法。其第一條第七項第二款[7]規定：「凡須經參眾兩院一致同意之命令、決議或投票，均應送呈合眾國總統經其批准後方生效力，如總統不予批准，則參眾兩院可依通過法案之程序與限制，各以三分之二之多數，重予通過使之生效。」通稱爲「送呈條款」(Presentment Clause or Presentation Clause)（參見【圖二】）。上開條文並未區分法律案與預算案，而統稱爲「法案」(bills)。

規避覆議的方法之一，即所謂「立法否決權」(legislative veto)---法律規定總統（或其他行政機關）之特定作爲，須於法定期間內，送請國會決議始生效力。聯邦最高法院(US Supreme Court)於 *INS v. Chadha* 案[8]中明白宣告：「立法否決權」行使的結果，總統（行政權）既無從否決，無異剝奪總統（按前揭「送呈條款」）否決法案的權力，故爲違憲。

同理，總統剝奪國會依據前揭「送呈條款」得對總統否決進行覆議（推翻總統否決）之機會時，亦屬違憲。例如 Kendall v. U.S. *ex rel* Stokes[9]案，美國聯邦最高法院即明白宣示：總統並無拒不執行國會決議預算之權，蓋如許總統逕自保留國會決議通過之預算(impoundment)，無異於剝奪國會覆議之機會，故為違憲而無效！又如 Clinton v. City of New York[10]案，美國聯邦最高法院亦宣示：繫爭之 Line Item Veto Act of 1996 授權總統於簽署預算法案後，猶得於法定情形下，逕自「取消」(cancel)某項支出或賦稅優惠之規定，無異於剝奪國會覆議之機會，故為違憲而無效！

行政院[11]及若干論者[12]力主預算案決議之性質爲「授權」，認爲法定預算僅

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[7] U.S. CONST. art I, § 7, cl. 2: "Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States: If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law."

[8] 462 U.S. 919, 103 S. Ct. 2764 (1983).

[9] 37 U.S. (12 Pet.) 524 (1838).

[10] 524 U.S. 417, 118 S. Ct. 2091, 141 L.Ed.2d 393 (1998).

[11] 參見行政院，〈聲請解釋憲法聲請書〉，頁 9（民國八十九年十一月十日）。

[12] 參見蘇永欽，〈不是違憲問題 是少數政府問題〉，中國時報，民國八十九年十月二十八日；蔡宗珍，〈核四興建與否是政策決定 而非合法性問題〉，中國時報，民國八十九年十月三十日；李建良，〈論停建核四電廠的憲法爭議〉，《月旦法學雜誌》，第六十七期，頁 37

在規範行政部門動支數額之上限，行政院自得不爲執行（所謂「停止執行」）。此種見解顯然未能體認前揭增修條文第三條第二項第二款規定之「覆議」制度之意旨。

「預算授權說」如能成立，則立法院決議之預算案將無拘束行政院之效力，前揭增修條文第三條第二項第二款所謂「行政院對於立法院決議之法律案、預算案、條約案，…得…移請立法院覆議」之規定，豈非形同具文？！又，「預算授權說」如能成立，行政院大可不必於前揭增修條文第三條第二項第二款所定之十日期限內移請「覆議」，而俟預算案確定後，片面決定「停止執行」即是。如此覆議制度如何維持？！總之，任何規避覆議機制的作法（包括片面停止執行預算），皆應因其不提請覆議致剝奪立法院的覆議權，嚴重破壞憲法「權力分立」原則而無效。

二、新政府（新任行政院長）不贊同立法院決議之多年期跨年預算時，應循覆議途徑尋求變更

立法院決議之預算案對於行政院具有拘束力，已如前述。一般預算（年度預算）當年度即已實施完成而失效，並無是否拘束新政府之問題。至於多年期跨年預算基於施政延續、經濟成本等考量，應推定其繼續拘束新政府。惟所謂「既定政策」（包括以法定預算所執行的政策）並非不得變更，畢竟「後法優於前法」、「新民意優於舊民意」。新政府爲推動新的施政理念（包括履行競選承諾）當然可以試圖變更預算，但應循前揭增修條文第三條第二項第二款所定之覆議程序，俾立法院可有覆議之機會，而非以「停止執行」爲名，架空立法院的覆議權！

三、遵循憲法大道，方能可長可久

以總統爲首的行政部門和國會的多數分由不同政黨掌握時，政治學上輒以「分裂的多數」(divided majority, split majority)稱之。覆議制度即在解決分裂的多數所造成的憲政僵局，而我國的覆議制度相較於美國，理論上更能避免僵局。質言之，美國總統不能掌握國會兩院多數時，將無法通過希望的「法案」（含法律案與預算案），但只要其仍可掌握國會某一院的三分之一以上議員時，即足否決國會決議的法案。此時如雙方互不退讓（拒絕協商），彼此都將一無所獲，是謂僵局。反觀我國憲法增修條文第三條第二項第二款規定立法院覆議時，如有

以下，頁 40-41（2000 年 12 月）；葉俊榮，〈論核四所引發的憲法爭議〉，《月旦法學雜誌》，第六十七期，頁 50 以下，頁 52-53（2000 年 12 月）；

全體立委二分之一以上決議維持原案，則行政院長應即接受該決議。雖然總統立於相對較爲不利的地位，但卻可相對減少發生憲政僵局的機會（參見【圖三】）。不意如此可以「避險」的憲法，竟被操作得如此「艱困」。後之視今，亦如今之視昔，能不慎乎？停止執行核四預算涉及鉅額賠償（經濟部初估在新台幣七百五十一億至九百零三億元之間），縱使今日能以「停止執行」規避（剝奪）立法院參與決策（覆議）的機會，明日無需立法院協力編列預算賠償？

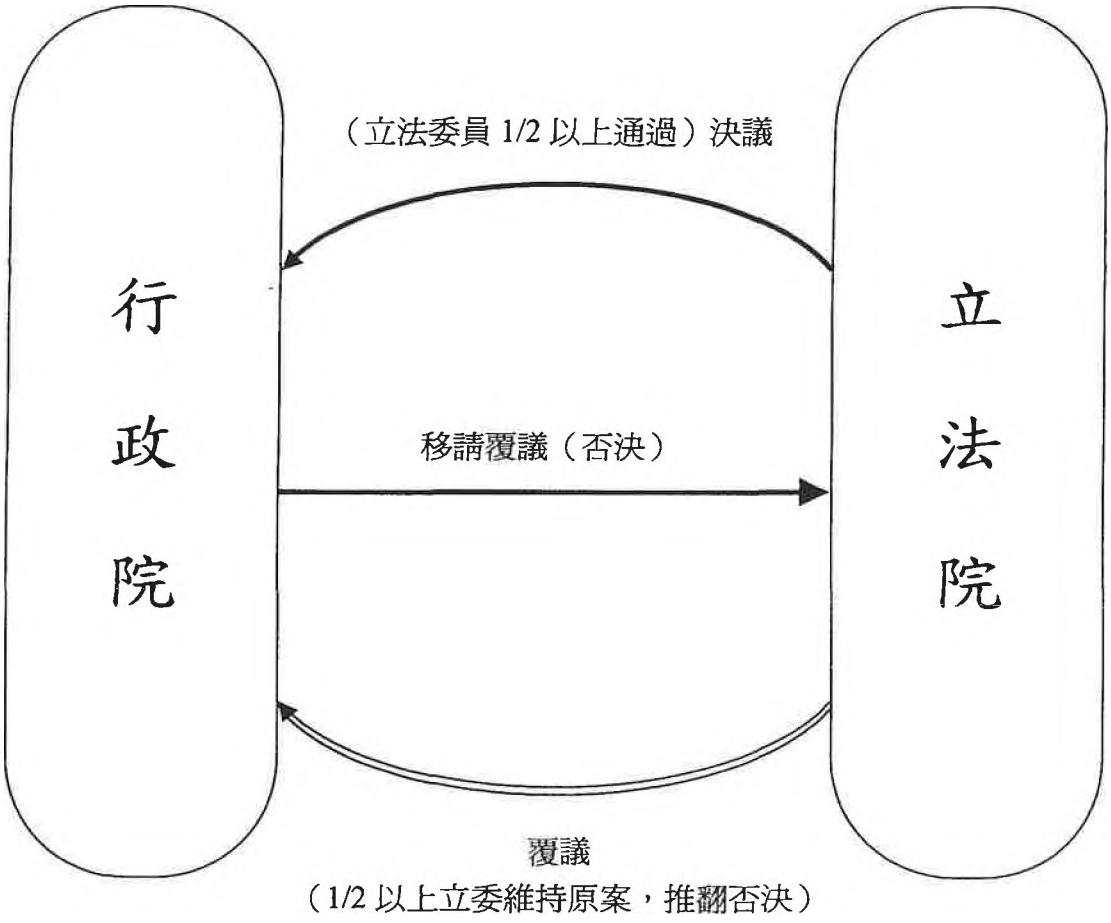
肆、結論

茲據前揭說明，懇請　大院作成憲法解釋，明確宣示：

一、行政院逕自停止執行核四預算，剝奪憲法賦予立法院之覆議權，乃屬違憲。

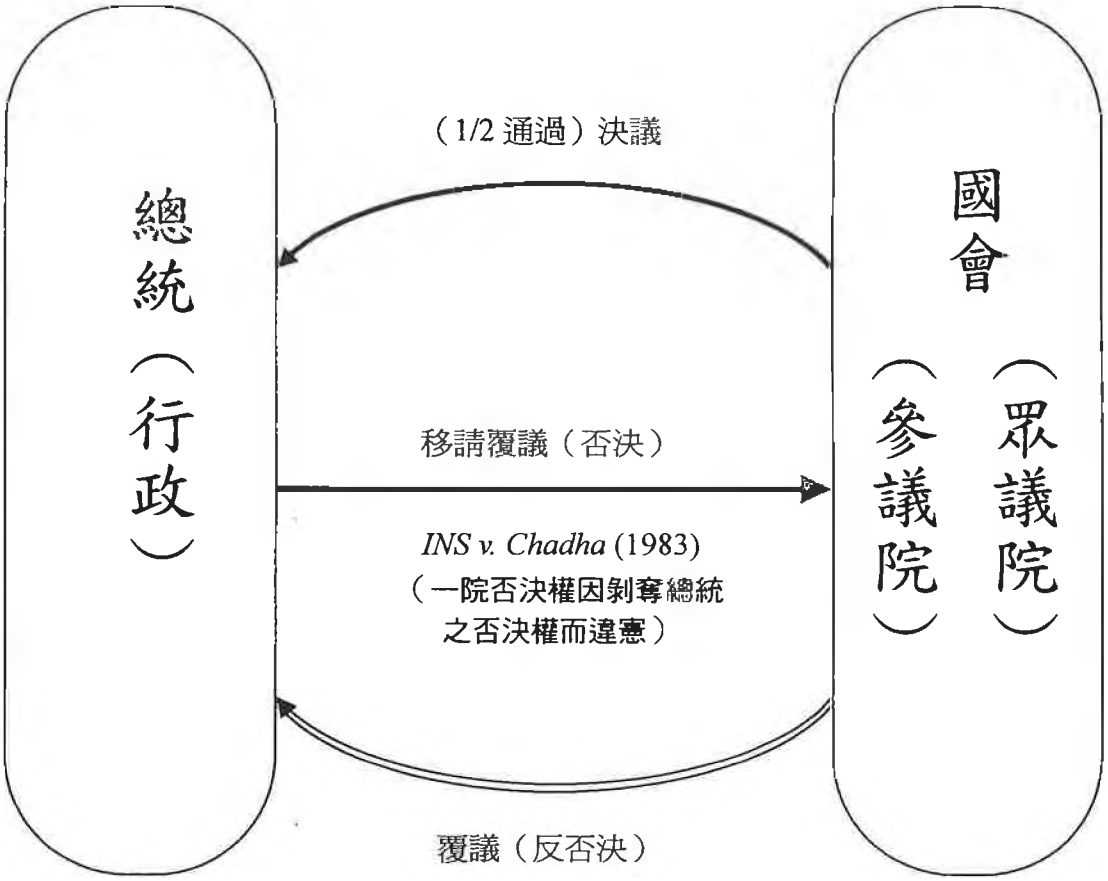
二、行政院院會停止興建核四並停止執行相關預算之決議，非經總統核可移請立法院覆議，並經立法院決議變更原（預算）案，不生效力。

圖一：行政、立法兩權制衡機制



「二、行政院對於立法院決議之法律案、預算案、條約案，如認爲有窒礙難行時，得經總統之核可，於該決議案送達行政院十日內，移請立法院覆議。立法院對於行政院移請覆議案，應於送達十五日內作成決議。如爲休會期間，立法院應於七日內自行集會，並於開議十五日內作成決議。覆議案逾期未議決者，原決議失效。覆議時，如經全體立法委員二分之一以上決議維持原案，行政院院長應即接受該決議」（憲法增修條文(89/04/25)第三條第二項第二款）

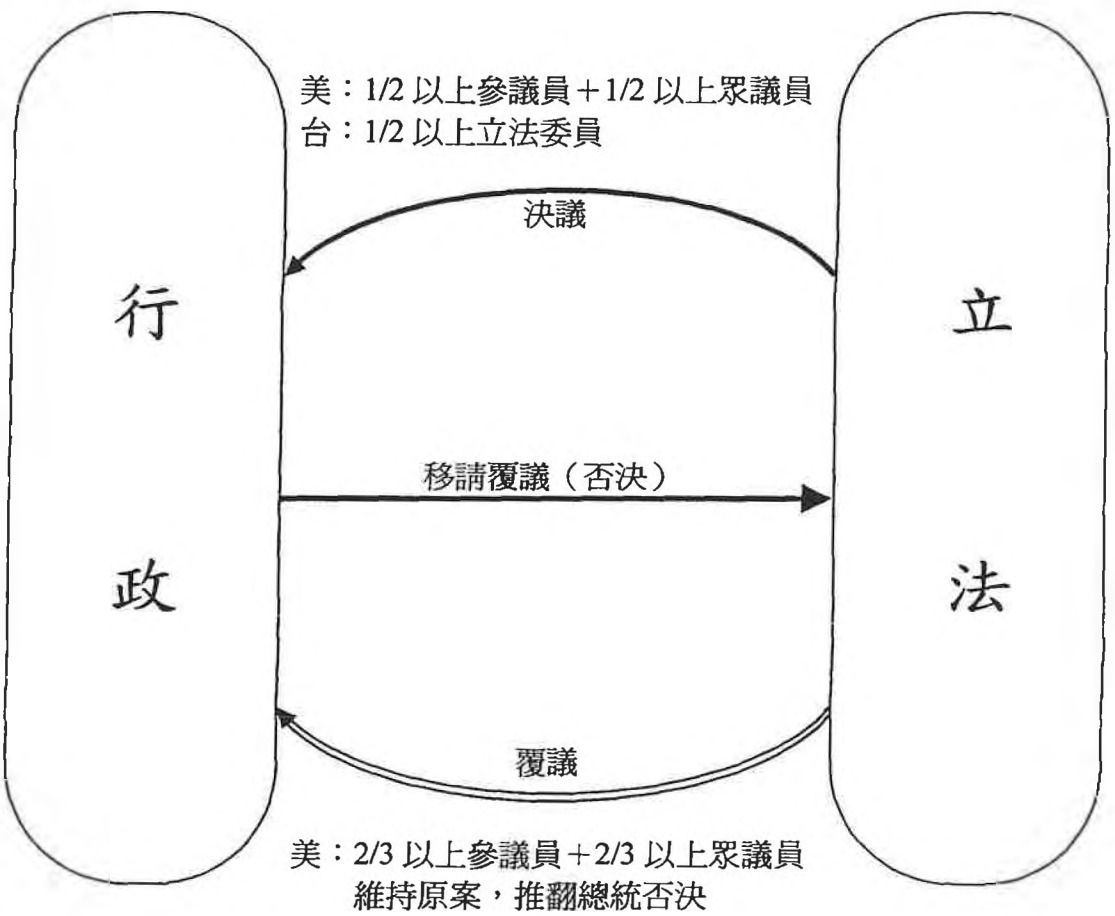
圖二：美國行政、立法兩權制衡機制



Clinton v. City of New York (1998)
（Line Item Veto Act of 1996 授權總統於簽署預算法案後，遇有法定情形得逕自「取銷」某項支出或賦稅優惠之規定，因其剝奪國會覆議之機會而違憲）

Kendall v. U.S. ex rel. Stokes (1838)
（總統逕行保留國會通過之預算，因剝奪國會覆議之機會而違憲）

圖三：美國與台灣行政、立法兩權制衡之比較



就行政院停止執行核四預算案解釋憲法意見書

解釋憲法意見書

聲請人 法定代理人 代表人 或代理人	（姓名及身分證統一編號，如係法人團體或政黨請記明其名稱代表人姓名。）	關係院 代表人 代理人
	性別	立法院 高育仁委員 周錫瑋委員 營志宏委員 李念祖律師
	出生年月日	
	職業	
	出生地	
	住居所、營業所、主事務所及電話號碼	
	送達代收人姓名、住址及電話號碼	

本案乍觀之，為本院與行政院間關於核能電廠興建與否之政策爭議，然此僅為表象而已。究其實質，本案之憲政重要性，實遠甚於表象之政策取捨，而關係到我國憲法上本院與行政院兩者間之基本定位。蓋本案中，行政院聲請　貴院解釋者，不在彼者核能電廠續建與否之政策內容是否合於憲法，而係在於請求　貴院同意行政院可以單方自行決定、無須本院之授權或參與，即拒絕執行經過本院兩度以多數決通過、行政院院長兩度具名簽署表示應予執行之法定預算。　貴院對於本案之解釋，即攸關我國憲政制度未來能否持續民意政治、責任政治、各權平等相維之立憲精神，抑或走入行政獨大、立法附庸、有權無責，以至憲政瀕於灰飛煙滅、土崩瓦解的困境。如果行政院在本案中享有其所主張之權力，則不僅在其他預算案，乃至在其他法律案上，將乏不得享此權力之理由。此種看法，勢必澈底否定或摧毀我國憲法上立法與行政權之間的結構關係。本院乃對行政院之立場，抱持強烈不同之意見，並已決議就此案件移請監察院處理，行政院則以此為由，聲請　貴院解釋。本院認為，　貴院受理本案憲法解釋之理由，應在於行政院與本院發生「爭議」，而非僅行使職權發生適用憲法之「疑義」而已。本院乃有敬謹詳陳理由之必要。以下即行說明本院認為本案中行政院違反憲法之憲政制度上理由。

一、行政院無權決定不再執行本院通過之法定預算

本院基於下述四項憲法原理，認為行政院無權決定不再執行法定之預算。

甲、依法行政之制衡法理

依法行政原則所表彰者，為民主憲政國家共通之制衡原理，而為權力分立制度所不可無。我國憲法雖無「依法行政」四字之明文，但從憲法第一百七十二條（命令不得牴觸法律）、第三十七條（副署制度）、增修條文第三條（原憲法第五十七條）（行政向立法負責、覆議制度）均可推演得出，學界亦向無爭議。依法行政，初不以依據「法律」行政為限，尚應依據「預算」行政（註一）。蓋法律與預算均構成本院授權行政院履行職務之依據，也均對行政院構成其有拘束力之規範。依　貴院釋字第三九一號解釋，預算案雖與一般法律案之「內容、拘束之對象及持續性」有異，但　貴院大法官對行政權具有法的拘束力，則無異辭，不僅解釋理由書稱之為「措施性法律」，即附隨提出之兩篇不同意見書，亦皆同意預算案具有法的拘束力（城仲模大法官之意見書認為確定之預算案為「實質意義的法律」、蘇俊雄大法官、劉鐵錚大法官之意見書則採取「預算法律說」之觀點）。本

院通過之預算案對行政院具有法的拘束力，當不僅限於行政權執行預算不得逾越上限而已，而應發生行政權不得拒絕執行預算之強制力。行政院為相異之主張，無非據於「預算行政說」之立場而已，然則「預算行政說」雖然認為執行預算為實質之行政行為，此與執行法律之為實質之行政行為並無二致。能從執行法律為行政行為導出「行政有權拒絕執止法律」之結論乎？美國最高法院首席大法官倫奎斯特（William Rehnquist）曾云：「我們難以接受某種憲法理論，而將行政部門拒絕遵守國會通過之支出決定，解釋為正當行為。財政支出可能被認為係行政權之固有功能。然而，執行法律原就是行政權之固有功能，卻絕難從行政權有執行法律之功能推論行政權遂有抗拒執行法律之權。」（註二），其意完全相同。自亦不能因行政權有權執行預算，即認定行政權有權不執行本院通過之法定預算。

乙、民意政治與責任政治原理

「民主政治以民意政治及責任政治為重要內涵」、「行政院對立法院負責」、「立法委員在開會時，有向行政院院長及行政院各部會首長質詢之權，此為憲法基於民意政治及責任政治之原理所為

制度性設計」，貴院釋字第三八七號、第四六一號解釋均明白闡述在案。就預算而言，法定預算雖為本院對於行政部門之授權，但亦無礙於執行法定預算同時亦為行政部門之責任與義務。

預算權由本院與行政院共同行使，為民意指揮政府之民意政治的表現。貴院前任大法官林紀東教授曾經迻譯日本學者松村三郎氏之見解，頗見精到：『然預算提案權，屬於行政部門之原則，亦未必為論理上之必然。如始終認定預算為行政作用之一種，則由權力分立論之觀點，提案權當然屬於行政部門，惟於預算何以須經議會議決之問題，恐難解答。足見預算提案權之屬於行政部門，係因其最適任，係以合於目的為其根據。此於預算龐大化技術化之今日，尤見其然。惟在另一方面宜加考慮者，為預算之政治的性格。預算，乃國家之收入支出計劃，以國民之負擔為其基礎，為決定租稅及其他國民賦課限度之標準。其形成，與國民有最關心之利害關係，故應由國民之代表者，為澈底之審查，最終之決定。倘就賦課國民之租稅，及其他歸其負擔之費用支出，應由國民參與之原則，為全面之貫澈……則在法理上，較屬於行政部門，更為合理。現雖由合於目的之必要，預算提案權屬於行政部門，幾成不動之原則，然議會對於行政部門作成之預算，加以限制；或以制定法

律，需要經費之方式，仍可對行政部門之作成預算，加以影響。上述理論，認為議會對於預算，有全面之審議權或影響力，亦可稱為立法部門對預算潛在的優位性之發現。』（註三）　貴院蘇俊雄大法官、劉鐵錚大法官所稱「財政民主主義」，其意當屬相同。（註四）

預算權既應由代表民意之議會享有優位之影響力，若竟猶主張行政院可以拒絕執行代表人民行使預算權之本院所通過預算，焉能認為合於民意政治之精神？美國著名憲法學者、哈佛大學教授 Laurence Tribe 於其公元二千年之新作「美國憲法」（American Constitutional Law）書中認為，國會，「是憲法刻意造就、看管公眾荷包的主人（master）」，不能「降格扮演只向行政部門提供可遭任意擱置之財政建議的角色」（註五）。美國總統為民選之行政首長，尚不能將國會通過之預算視做具有上限的財政建議，何況我國之行政院並非民選之部門，怎可任意擱置國會所通過之預算不予執行？如此而謂「民意政治」，可以得乎？矧我國總統在預算權之行使上，並非預算案之提案機關，亦非預算案之審議機關，並無主導預算案內容之憲法上地位，行政院亦無憲法依據，徒以執行總統政策為由，自行拒絕執行本院之法定預算；而行政院在本案中，並非以執行總統之政策意志為

做成拒絕執行預算決議之根據，行政院如屬有權，即係以一非民選機關竟可不問本院之政策意向而拒絕執行任何預算，如此而謂「民意政治」，可以得乎？

行政院必先有執行預算之責任，始能就不執行預算之行為負擔後果。如果行政院有權裁量是否執行預算，則不執行預算乃是行政權力之一部分，審計機關將無追究違法、失職責任之依據。預算制度中之審計機關，亦將失去意義。行政院有拒絕執行預算之大權，卻竟無執行預算之責任，謂之為責任政治，可以得乎？本院有審查預算之權，行政院卻無執行預算之責，謂之為責任政治，可以得乎？

丙、副署制度之法理

副署制度為內閣制（或雙首長制）之產物，在總統制則由總統簽署國會通過之法案，無須他人副署。惟無論為副署、正署，執掌行政權之行政首長均應簽署法案，其理由則在於行政首長須簽署法律，以示負責執行法律之意。法律案如此，預算案亦莫不皆然，德意志聯邦共和國基本法第八十二條第一款、第一百十條規定總理需副署預算法案以示負責，即為一例（註六）。我國憲法第卅七條

規定行政院院長之副署制度，行政院院長對於立法院通過、總統公布之預算，亦恆為副署，以示負責執行，本案系爭之預算案，行政院院長曾於民國八十三年六月十五日副署表示負責執行，使之生效（註七）（嗣後並曾由行政院院長於民國八十五年六月間針對立法院變更政策案向立法院具名提出覆議），行政院豈可享有拒絕執行其已副署之本案預算之裁量權？果然有此裁量權，憲法規定副署制度又有何意義？

在內閣制國家，行政與立法二位同體，內閣既為控制議會多數之議員組成，如不欲執行某項預算，內閣逕於議會中取得同意即可；實務上發生內閣不肯執行預算、議會加以爭執之案例，殊難預期。學者雖有引用德國法制主張預算僅為立法對於行政之授權，行政有權拒絕執行預算之說法者，不見引述任何德國憲政實例（註八），不為無故；未見其等解釋德國總理副署預算法案之憲法意義何在，則顯有論理上之缺陷。

在總統制國家，立法與行政構成成員互為敵體，憲政實務上乃可能發生總統簽署國會預算立法之後，又不願執行預算而引起國會爭議之現象。美國最高法院於一八三八年 Kendall v. U.S. exrel.

Stokes (37 U.S. 524, 1938)簽發強制令，強迫郵政總局局長執行國會通過的預算，最高法院認為，「主張可從總統忠實執行法律的義務中得出制止執行法律的權力，是憲法的荒謬解釋，完全難以成立」（註九）。美國國會則曾於一九七四年立法禁止總統未經國會一院之同意拒絕執行預算（註十），以防止總統逕不執行預算，論者亦認為總統之裁量，僅及於如何執行預算，不包括拒不執行預算之權（註十一）。一九七四年之國會立法，於一九八三年最高法院於 INS v. Chadha (462 U.S. 919, 1983)案中做成「立法否決」違憲之案例後，於一九八七年被法院宣告為無效（註十二）；一九九六年國會復行立法授權總統有取銷個別預算之權力（註十三），亦於一九九八年為最高法院於 Clinton v. City of New York（524 U.S. 417, 1998）案中，以之為違反法律保留原則而宣告為違憲。亦即美國最高法院不僅於十九世紀起即宣佈行政部門無權拒不執行行政首長業已簽署、國會通過的預算，而且於一九八三、一九九八年兩次認為國會即使為此種授權，亦會違反行政立法分權制衡、禁止立法否決、以及法律保留等項原則，而屬違憲。

我國憲法雖然規定副署制度，但憲法第七十五條禁止立法委員兼任官吏，行政與立法兩院成員，不

能重疊，乃如美國然，實務上即可能發生經過行政院院長副署之決定預算，復遭行政院院長拒絕繼續執行之問題，於此美國之憲法案例自有參照之價值。惟本案系爭爭點，尚不需討論立法否決制度在我國是否合憲之問題，也不發生有無逾越法律保留原則的問題。貴院僅需重申美國最高法院自十九世紀以來即未曾改過的法律見解—行政部門不得拒絕執行國會通過且經行政首長簽署的法定預算，即為已足。

或謂行政院拒絕執行國會預算，國會逕行倒閣可也，只是政策之爭，何需以之為違憲？此則為倒果為因之論。在內閣制國家，內閣如未取得議會多數，恐已根本失去執政條件，難以為繼，實無從發生拒絕執行預算的問題；憲政常態進行時，內閣既然掌握國會多數，逕於國會中變更預算即可，實不致發生內閣拒絕執行預算之現象。在我國憲法，則有覆議制度與不信任案倒閣制度之併存。行政與立法齟齬，國會可以選擇倒閣，也可選擇不倒閣，並無必須倒閣之憲法義務。況若行政院違法違憲，國會提出不信任案不僅不是唯一之制衡手段，恐怕亦非最恰當之制衡手段。實則違憲違法屬於法律問題，與政策問題宜有區隔，不容將解決政策爭議之不信任投票機制存在，援為主張行政院並

不違憲違法之理由，混淆了憲法機制功能，也誤解了憲法的真意。

又或謂行政院因總統選舉而改組，繼任之行政院院長可以為變更、改革，不必受前任院長副署法定預算效力之拘束者，則亦須為根本之澄清。憲法規定之副署，係基於行政院院長之職位而為者，並非基於行政院院長之人選，亦非基於行政院院長之政黨黨籍歸屬，更與總統選舉之後有無政黨輪替執政之情形無關。跨年度預算，應拘束做為憲政機關之行政院，不因行政院人事改易而失其效力。容許行政院因人事改易而不受法定預算之既定效力拘束，不僅傷害行政院做為憲政機關之機關公信力，抑且行政院人事變動若可做為不受跨年度法定預算拘束之理由，長此以往，如果行政院人事變動頻繁，憲政上恐乏可以跨越年度存在之長期政策。實則所謂行政院無權拒絕執行法定預算者，係指在本院未行使立法權主動改變既定法定預算背後存在之立法政策之前，行政院必須履踐其副署預算加以執行之承諾之意。

丁、覆議制度的法理

我國憲法增修條文第三條第二項第二款（原憲法第五十七條）規定，行政院依覆議制度之規定，向

立法院負責。此項制度，沿襲自美國憲法。美國開國元勳漢彌爾頓（Alexander Hamilton）於聯邦主義文集（The Federalist Papers）第六十九篇中指出，英國國王對於國會兩院立法享有絕對否決權（absolute negative），美國總統則只有限制的否決權（qualified negative）而已（註十四），亦即總統不能當然享有拒絕執行國會立法之權，而只能循覆議程序，請國會重為考慮，遇有總統覆議，國會尚可以特別多數維持原案，否定（override）總統的覆議（veto）。行政權拒絕執行國會法案既為有限的權力，自不容於國會立法生效後或是覆議失敗後，復可逕行決定不予執行。我國憲法規定「行政院依左列規定，對立法院負責」字樣冠於覆議制度之前，復規定「行政院對於立法院議決之……預算案……如認為有窒礙難行時」，得移請立法院覆議。「負責」與「窒礙難行」自為對應之詞，亦即「負責」也者，「負責執行」立法院通過之預算案之意，若無「窒礙難行」之處，自應負責執行；若認窒礙難行，覆議之後立法院仍維持原議時，亦應負責執行。行政院既有執行法定預算之「責」，焉可只以預算是立法院的授權為由而拒絕執行？苟為如此解釋，憲法規定覆議制度又有何意義？解釋憲法之結果，若竟使得整體覆議制度皆告歸零，寧不荒謬？又預算案苟可如此解

釋，法律案何獨不能？憲法第七十條之規定只在防止立法者浪費國家資源，絕無根本改變覆議制度之意思。貴院釋字第三九一號解釋未為如此解釋，也不容他人任意擴張、曲解　貴院之解釋，以致要無形中給予行政院早年由英國國王享有、現已不再復見之絕對否決權，根本破壞我國憲政制度中立法與行政兩院之間依賴覆議制度所建立的節制平衡關係。

憲法增修條文第三條第一項第二款既明文規定預算案係屬行政院認為有窒礙難行時可以覆議之事項，又明文規定覆議時如經立法院維持原案，「行政院院長應即接受該決議」，行政院既應接受，又何能片面決定不予執行？本案中行政院拒絕執行法定預算，顯然違背憲法設定覆議制度拘束行政院之規定。

二、行政院無權自行變更重要政策

行政院無權決定不再執行立法院通過的預算，非謂行政院連循正當之憲法程序尋求變更或廢案法定預算及其背後之重要政策，亦不可以。然則本案中不僅發生行政院並無憲法依據自行廢棄法定預算之問題，行政院且未循任何正當程序尋求核四興建政策之變更或廢棄，即逕行宣布停建核四，此種漠視重

要政策變更之憲法程序之舉措，亦屬違憲。

憲法第六十三條規定，立法院有議決預算案及國家其他重要事項之權。此所謂「其他重要事項之權」，貴院前大法官林紀東教授以為係指關於立法院職權行使有密切關係而非他院所得單獨決定之其他重要事項而言（註十五）。本案涉及核四電廠之預算執行以及關係預算執行之核電能源政策之變更，一方面與本院之預算權有關，一方面則屬於重要事項，自有憲法第六十三條之適用，而應由本院就此等預算相關之重要事項，加以議決。

憲法增修條文第三條第二項第一款規定，「行政院有向立法院提出施政方針及施政報告之責」，蓋所以就行政院需向立法院提出由立法院議決之事項，向本院報告行政院之施政計畫，俾於本院循相關議事程序為政策之決定後，由行政院據以執行。行政院施政經緯萬端，其中但屬重要之政策，均應向本院報告，可無疑義。就核四預算案言之，民國八十五年間，本院先是依據當時尚未停止適用之憲法第五十七條第二款之規定，認定核四建廠為重要政策，而以決議移請行政院變更核四建廠之政策，當時亦經行政院同樣認為核四建廠為重要政策而依憲法司條司款見定多書之[illegible]

核四應繼續興建。茲者行政院復有意重新檢討核四興建之政策，此既為立法、行政兩院均已確認之重要政策，其政策之變更與預算之不再執行，當然係屬憲法第六十三條規定應由本院議決之重要事項，行政院自有依據憲法增修條文第三條第二項第一款向本院報告之責任與義務，不得由行政院單獨決定。

學者或有主張本院立法權僅及於抽象法律之制定（釋三九一號解釋參照），不能及於個案之裁決，核四建廠涉及執照之核發或撤銷，性質上為行政處分，不能交由立法院決定之見解者（註十六）。此固非無見，然則核四預算之停止執行，可能涉及經濟政策、能源政策、環境政策、電力政策、公共工程、國際貿易諸多層面之考量，絕非只限於建廠執照之撤銷一端而已。本院所應為之重要事項決議，並不以核四電廠執照之撤銷為標的，此正如系爭行政院院會決議停止興建核四，只為一項職務命令，尚與撤銷台電公司興建核四廠執照之行政處分有間，本院就行政院院會決定之重要政策事項依憲法第六十三條行使議決權，自無逾越本院職權之處。而行政院既未就核四政策之變更依憲法向本院提出施政報告，且未經本院議決即做成相關之決定，則屬行政逾越權限之舉，應屬違憲無疑。事實上民國八

十五年本院以決議移請行政院變更核四政策時，行政院亦循覆議途徑為政策爭執，並未認為本院之決議為個案之決定，亦未主張本院逾越立法權限，自不容復為翻異之詞。

又本案若由經濟部做為逕為撤銷執照之行政處分，是否合法合憲，亦可受質疑；蓋此為行政機關逕命撤銷特定公司原為有效之執照，若乏法律上之正當根據或理由者，即屬違反法律保留原則之行政處分，惟此已非本案討論之範圍，茲不贅述。

抑有進者，行政院單獨為變更政策之決定後，勢必發生對台電公司之鉅額賠償問題、台電公司之契約責任問題、公用徵收土地還原問題、既有設施拆除問題，均可能涉及龐大之經費支出以及國有、公用財產之處分，亦不可能避免另為鉅額預算之編列，送交本院審議之程序。行政院變更政策若不須本院同意，善後賠償之預算則需本院通過，先斬後奏，憲法之根據何在？行政院未經本院同意單獨變更重要決策，違憲之處，自屬灼然。

此致

司法院

中華民國 八十九 年 十二 月 日

關係院：立法院

代表人：高育仁委員

營志宏委員

周錫瑋委員

代理人：李念祖律師

簽名蓋章

簽名蓋章

所附關係文件之名稱及件數：

註一：依法行政原則乃支配法治國家立法權與行政權關係之基本原則，亦為一切行政行為必須遵循之首要原則。依法行政向來區分為「法律優越」、「法律保留」兩項次原則；前者係指一切之行政活動，均不得與法律相牴觸，而後者則指憲法已將部分事項保留予立法機關，需由立法機關加以規定，於此種事項，行政機關若無法律明文之授權，即不得為行政行為。因此，所有之行政行為均不得違背法律，但是原則上僅有干涉行政，需受嚴格之法律保留之限制。至於給付行政事項，雖不受嚴格之法律保留限制，但行政機關所為各種授益處分尤其是經濟補助措施，只要有預算案上之依據或國會其他之授權表示，行政機關即可合法作成有關行為。吳庚，行政法之理論與實用，作者自版，增定五版，第七十九至八十五頁。顯見，行政機關至少必須依據預算或國會之授權，始能合法為行政行為。

註二：It is in our view extremely difficult to formulate a constitutional theory to justify a refusal by the President to comply with a Congressional directive to [illegible]

inherently an executive function, but the execution of any law is, by definition, an executive function, and it seems an anomalous proposition that because the Executive branch is bound to execute the laws, it is free to decline to execute them. Statement reprinted in Hearings on the Executive Impoundment of Appropriated Funds Before the Subcommittee on separation of Powers of the Senate Committee on the Judiciary, 92d Congress 1st Sess. 279 (1971). 轉引自 LAURENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW 732-733 (3rd ed.-volume one 2000).

註三：杉村章三郎，財政法，第八十四頁以下。轉引自林紀東，中華民國憲法逐條釋義第二冊，三民書局，民國六十六年二月再版，第四〇一至四〇三頁。

註四：貴院釋字第三九一號解釋蘇俊雄大法官、劉鐵錚大法官不同意見書參照。又　貴院釋字第三九一號解釋之後，於民國八十六年通過憲法增修條文第三條第二項第二款修正憲法第五十七條之規定，將本院議決行政院覆議案（包括預算案覆議）之通過門檻提高，又刪除覆議案不能通過時行政院院長應予辭職之規定，均顯見憲法有意增加本院所通過之預算對於行政院之強制力，亦可見財政民主主

義已由憲法進一步強化。

註五：LAURENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW 750-751 (3rd ed.-volume one 2000).

註六：德意志聯邦共和國基本法第八十二條第一款「一、依本基本法規定所制訂之法律，經副署後，應由聯邦總統繕成正本，並公布於聯邦公報（Bundesgesetzblatt）。命令由發佈機關簽署，除法律另有規定外，應公布於聯邦公報。」，第一百十條規定「一、聯邦之一切收支應編入預算案，聯邦企業及特別財產僅需列其收入或支出，預算案應收支平衡。二、預算案應為一會計年度或依年別分數會計年度，於第一會計年度開始前以預算法訂定之。預算案之某些部分，亦得規定係就年別而適用於不同時間。三、前項第一段之法律案，以及預算法及預算案之修正案，由聯邦議會送交聯邦參議院；參議院有權於六週內（修正案則於三週內）表示意見。四、預算法中僅能容納與聯邦收支及該法當時之有關規定。預算法得規定其條款於次一預算法公布時，依第一百十五條之授權於較晚之時，始告失效。」轉引自世界各國憲法大全第二冊，國民大會秘書處，八十五年五月，第七三九、七四〇及七五一頁。

註七：行政院長對於核能四廠預算案之副署。
註八：見李建良，論停建核四電廠的憲法爭議，月旦法學雜誌第六十七期，第三十七頁至第四十九頁。葉俊榮，論核四所引發的憲法爭議，月旦法學雜誌第六十七期，第五十頁至第五十七頁。及八十九年十月二十九日核四停止興建相關法律問題座談會會議記錄，月旦法學雜誌第六十七期，第八十三頁至第九十頁。
註九：To contend that the obligation imposed on the President to see the laws faithfully executed, implies a power to forbid their execution, is a novel construction of the constitution, and entirely inadmissible. LAURENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW 732 (3rd ed.-volume one 2000).
註十：Congressional Budget Impoundment and Control Act, Pub. L. No. 93-344 88 Stat.297, 31 U.S.C. §1301 et seq.
註十一：LAURENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW 734 (3rd ed.-volume one 2000).
註十二：City of New Haven, Conn. v. United States (809 F.2d 900, (D.C.Cir.1987)).

註十三：Line Item Veto Act Pub. L. No. 104-130 Stat. 1200, codified at 2 U.S.C. §691 et seq. (Supp. 1997).

註十四：ALEXANDER HAMILTON, JAMES MADISON and JOHN JAY, THE FEDERALIST PAPERS 348-349 (1982).

註十五：林紀東，前揭書，第三一〇頁。

註十六：葉俊榮，前揭文。

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By

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many types. When President Jefferson informed Congress that the funds it had appropriated for gunboats need not be spent since the Louisiana Purchase had averted the emergency contemplated by Congress, his action was taken in response to unforeseen events—and in fact proved temporary. President Nixon's impoundments in the early 1970's, on the other hand, were plainly designed to terminate congressionally created programs and policies which the President could not successfully veto but with which he disagreed.[5]

The federal courts have traditionally rejected the argument that the President possesses inherent power to impound funds and thus halt congressionally authorized expenditures. The Supreme Court issued its first major pronouncement on the constitutional basis of executive impoundment in *Kendall v. United States ex rel. Stokes.*[6] There, in order to resolve a contract dispute, Congress ordered the Postmaster General to pay a claimant whatever amount an outside arbitrator should decide was the appropriate settlement. Presented with a decision by the arbitrator in a case arising out of a claim for services rendered to the United States in carrying the mails, President Jackson's Postmaster General ignored the congressional mandate and paid, instead, a smaller amount that he deemed the proper settlement. The Supreme Court held that a writ of mandamus could issue directing the Postmaster General to comply with the congressional directive.[7] In reaching this conclusion, the Court held that the President, and thus those under his supervision, did not possess inherent authority, whether implied by the Faithful Execution Clause or otherwise, to impound funds that Congress had ordered to be spent: "To contend that the obligation imposed on the President to see the laws faithfully executed, implies a power to forbid their execution, is a novel construction of the constitution, and entirely inadmissible."[8]

Any other conclusion would have been hard to square with the care the Framers took to limit the scope and operation of the veto power, and quite impossible to reconcile with the fact that the Framers assured Congress the power to override any veto by a two-thirds vote in each House.[9] For presidential impoundments to halt a program would, of course, be tantamount to a veto that no majority in Congress could override.[10] To quote Chief Justice Rehnquist, speaking in his former capacity as Assistant Attorney General in 1969: "With respect to the suggestion that the President has a constitutional power to decline to

5. See Fisher, supra note 2, at 150–51, 169–70.

6. 37 U.S. (12 Pet.) 524 (1838).

7. The Court stressed how "purely ministerial," or mechanical, was the task involved. Id. at 613.

8. Id. at 611.

9. See § 4–13, infra.

10. See Note, "Protecting the Fisc: Executive Impoundment and Congressional Power," 82 Yale L.J. 1636, 1638 (1974); Warren J. Archer, Comment, "Presidential Impounding of Funds: The Judicial Response," 40 U. Chi. L. Rev. 328, 330 (1973); John H. Stassen, "Separation of Powers and the Uncommon Defense: The Case Against Impounding of Weapons System Appropriations," 57 Geo. L.J. 1159, 1183–84 (1969). See also Note, "Presidential Impoundment: Constitutional Theories and Political Realities," 61 Geo. L.J. 1295 (1973); Abner J. Mikva and Michael F. Hertz, "Impoundment of Funds—The Courts, the Congress and the President: A Constitutional Triangle," 69 Nw. L. Rev. 335 (1974).

spend appropriated funds, we must conclude that existence of such a broad power is supported by neither reason nor precedent. . . .' It is in our view extremely difficult to formulate a constitutional theory to justify a refusal by the President to comply with a Congressional directive to spend. It may be agreed that the spending of money is inherently an executive function, but the execution of any law is, by definition, an executive function, and it seems an anomalous proposition that because the Executive branch is bound to execute the laws, it is free to decline to execute them."[11]

On the other hand, to deny the President, either as Commander in Chief or as Chief Executive, any discretion whatever in the expenditure of funds would arguably "convert the [President] into a Chief Clerk,"[12] since intelligent management of vast resources according to a set recipe is simply inconceivable. It does not follow, however, that the President should enjoy a roving commission to pick and choose among congressional mandates, carrying out only those programs that seem, from the President's perspective, to be consistent with the national interest—whether the President purports to divine that interest from goals articulated by Congress in other statutes,[13] or from an assessment of how best to stay within congressionally mandated debt or budget ceilings.[14]

Over the years, Congress has taken a number of steps designed to undermine executive justifications for the impoundment of legislatively

11. Then-Assistant Attorney General Rehnquist added that he deemed *Kendall v. United States* "authority against the asserted Presidential power." The Rehnquist statement is reprinted in Hearings on the Executive Impoundment of Appropriated Funds Before the Subcomm. on Separation of Powers of the Senate Comm. on the Judiciary, 92d Cong. 1st Sess. 279 (1971).

12. Testimony of Deputy Attorney General Joseph Sneed in Joint Hearings on S. 373 before the Senate Comm. on Government Operations and the Senate Comm. on the Judiciary, 93d Cong. 1st Sess. 369 (1973); see also Louis Fisher, "Presidential Tax Discretion and Eighteenth Century Theory," 23 W. Pol. Q. 151 (1970); Louis Fisher, "The Efficiency Side of Separated Powers," 5 J. Am. Stud. 113 (1971).

13. See, e.g., State Highway Comm'n of Mo. v. Volpe, 347 F.Supp. 950 (W.D.Mo. 1972), aff'd, 479 F.2d 1099 (8th Cir.1973) (holding that anti-inflationary goals expressed in other statutes cannot justify executive defiance of specific spending legislation); cf. Local 2677 v. Phillips, 358 F.Supp. 60 (D.D.C.1973) (rejecting a claim of presidential discretion under the Constitution); Williams v. Phillips, 360 F.Supp. 1363, 1368–69 (D.D.C.1973) (same), aff'd, 482 F.2d 669 (D.C.Cir.1973) (per curiam). See Note, "Protecting the Fisc: Executive Impoundment and Congressional Power," supra note 10, at 1649–50. Of course, the language and purpose of a particular appropriations bill involved may permit the conclusion that impoundment is consistent with the legislative will. In some cases, the appropriations bill very clearly invests the Executive Branch with wide discretion regarding the spending level. In other cases, the use of mandatory language indicates that Congress has not sanctioned impoundment. Needless to say, the vast majority of cases fall somewhere between these two poles. In some cases the Supreme Court has indicated a willingness to study the legislative history of the appropriations statute and carefully dissect its language in order to determine whether impoundment is permissible. See, e.g., Train v. New York, 420 U.S. 35, 42–48 (1975) (rejecting the argument that Congress intended to grant wide discretion to the Executive to control amounts spent under the Federal Water Pollution Control Act Amendments of 1972). The key, however, is that nothing extrinsic to the statute and the policies *it* was designed to effect is relevant to the calculus. Thus, monies appropriated to clean up dirty rivers might be impounded by the President because there were no more dirty rivers; they could not, under the relevant statute, be impounded to stabilize the consumer price index.

14. See, e.g., Note, "Impoundment of Funds," 86 Harv. L. Rev. 1505, 1521–22 (1973) (concluding that surpassing the debt ceiling did not justify President Nixon's impoundments in the early 1970's because he had alternate means of staying within the congressionally prescribed limit).

林紀東著

中華民國憲法逐條釋義（第二册）

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註三

預算提出權之結果，或謂國會亦不應爲如是之修正，（按指預算之增額修正而言），然立法者不作如此解釋，如財政法規定：國會就國會、法院、或會計檢查院之提出預算額，爲增額修正時，應明記必要之財源（第十九條），以國會有增額預算權爲前提。國家公務員法，關於人事院，亦爲同一之規定……此點於憲法施行後，實際上屢成問題，結果依照麥克阿瑟草案以來之原則，預算之提出權，雖由內閣保留，然國會對於預算之修正權，則無任何限制，此項解釋，實際上殆已確立。惟對於預算之修正，有應注意之處。蓋歲出預算，僅在與爲其財源之歲入預算相符合之基礎上成立，國會如對於歲出預算，爲增額修正，則對於爲其財源之歲入預算，亦應修正……倘不伴以相當財源之增額修正，則在預算之性質上，不能謂爲適法之修正』（註四十三）(2)註解日本國憲法亦謂：『關於此點，雖有以國會無預算提案權爲理由，否認其修正權，不能就政府提出之原案，爲增加支出金額、或追加新款項之建議者，然由新憲法之精神——以國會爲處理財政之最高議決機關觀之，國會之增額修正權，應屬可能。惟當增額修正時，國會有以預備費之一部分，充其財源，或另籌財源之必要，實際上似甚困難（註四十六）。均認爲國會有增額之修正權。杉村章三郎氏，於此有較詳細之論述，其見解，於我國憲法有關預算規定之解釋上，亦有可供參考之處，爰爲迻譯於下：

『然預算提案權，屬於行政部門之原則，亦未必爲論理上之必然。如始終認定預算爲行政作用之一種，則由權力分立論之觀點，提案權當然屬於行政部門，惟於預算何以須經議會議決之問題，恐難解答。足見預算提案權之屬於行政部門，係因其最爲適任，係以合於目的爲其根據。此於預算龐大化技術化之今日，尤見其然。

惟在另一方面宜加考慮者，爲預算之政治的性格。預算，乃國家之收入支出計劃，以國民之負擔

為其基礎，為決定租稅及其他國民賦課限度之標準。其形成，與國民有最關心之利害關係，故應由國民之代表者，為徹底之審查，最終之決定。倘就賦課國民之租稅，及其他歸其負擔之費用支出，應由國民參與之原則，為全面之貫澈，則預算提議權屬於議會，不僅不與議會之任務矛盾，且在純理上，較屬於行政部門，更為合理。現雖由合於目的之必要，預算提案權屬於行政部門，幾成不動之原則，然議會對於行政部門作成之預算，加以限制；或以制定法律，需要經費之方式，仍可對行政部門之作成預算，加以影響。上述理論，認為議會對於預算，有全面之審議權或影響力，亦可稱為立法部門對預算潛在的優位性之發現。

『……不問預算之提案權，屬於立法部門或行政部門，對於預算之審議及議決權限，既屬於國會，國會自有加以全面的否決或削減之自由，其成為預算提案權之關聯問題者，為國會之增額修正權。增額修正，不僅指對於預算上特定費用之數額，為增額之議決，且包含增加新的特定費用、或金額與費用雙方之增加或追加。倘認為預算之提案權，澈底的屬於行政部門，則議會雖能否決預算，或為款項之廢除削減，然不能為款項之增加與金額之增加，因增額修正，不問在何種情形之下，均具有一部分提案之意義，前述美濃部博士之學說，恐即由此種考察而來。然議會既有否決全部預算之權限，謂其不能為某款項小額之增額修正，顯不合理，提案權之屬於行政部門，既無純理的根據，而由於由合目的的見地，則由立法部門，關於預算之潛在優位性言之，寧以承認國會具有某限度之增額修正權為合理，且適於實際。

『增額修正權問題，在現行憲法施行不久後，即成問題，昭和二十三年，會以兩院法規委員會委員長之名義，向議長建議，其內容謂：『國會對於預算之增減，或預算項目之追加或削減等，就內閣

所提出之預算，均有最終且完全之權限』。其理由謂：『在新憲法之下，國會以國權最高機關之地位，對於預算之增額修正等，具有最終且完全之權限，現行法律，尚欠明確，有就此點，速爲適當之措置，一掃疑義，以充分發揮國會機能之必要。

『右述建議之特色，在於以國會爲國權最高機關爲根據，認爲其有預算之增額修正權，至於增額修正權之內容，不僅爲金額之增加，且包括預算項目之追加削減，國會對於內閣所提出之預算，有最終且完全之權限等三點。其中國會對於內閣所提出之預算，具有最終且完全之權限一點，如爲國會對於預算，具有完全能力之意，則不無異論。因憲法將預算之提案權，專屬於內閣之旨趣，國會亦應遵守，故國會之增額修正權，亦非無限的，應由此點加以限制。

『綜合上述所得之結論，在現行憲法之下，承認國會之增額修正權限，當甚適當；惟由另一方面言，其權限並非萬能的，而具有一定之界限，亦屬無可否認。惟其界限應如何決定，爲一問題，地方自治法，明文承認地方議會有增額修正之權限，其界限爲『不侵犯首長之提出歲入歲出預算之權限』（第九十七條第三項），此規定之意旨，係以預算提案權專屬於首長爲基礎，如從根本上，使預算失其同一性之大修正，在所不許，即爲增額修正權一般限界之表現』（註四十七）（註四十八）。

日本學者，亦有由政治與技術之立場，認爲國會增額修正權之行使，宜有一定之限界者，如河野一之氏謂：制度上國會之預算增額修正，雖屬可能，惟如自由行使是否適當，則屬另一問題。立憲政治之運用，係以三權分立爲基礎，使其相互牽制，而爲合理之運用。預算爲政府所使用者，政府當就國民之負擔，十分加以考慮，倘有由國會爲積極之增額，乃至有因而增加預算總額之必要，在政治上必要與否，當依照情形，爲愼重之考慮』。又謂：『預算之修正，複雜之技術問題甚多，如由國會之

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force" any other previously enacted measure signed by the President into law that he would rather do without.[90]

The Line Item Veto Act was nothing less than an abdication of congressional power to repeal laws. Any attempt to hide this reality under the guise of a delegation to the President of power to execute the laws by engaging in interstitial rule-making[91] fatally confuses the *legislative* function of deciding what the law shall be with the *executive* function of implementing policy enacted by Congress. To say that the functions of making and executing law blur at the boundary that divides them is not to deny that there are clear cases at both extremes; repealing is a clear case of lawmaking. And "[t]he fundamental precept of the delegation doctrine is that the lawmaking function belongs to Congress and may not be conveyed to another branch or entity."[92] The President's cancellation power under the Act was not the power to "fill in the details" of a legislative scheme—however broadly one defines "details"—nor to adapt a legislative program to particular circumstances: It was the power simply *to undo* part of what Congress (with presidential approval) had just done. Instead of taking care that the law be faithfully executed, the President was to decide which parts of a law he had just signed should *never* be executed and, in fact, should no longer be "law" at all. To call this a delegation of the power to "execute" the law is to make a poor pun indeed on the word "execute": A law executed in this manner has simply been killed.

Viewed through the lens of political accountability, the Act attempted to hand off to the President the tough decisions about federal spending that Congress was unwilling or unable to make on its own—or that the Congress did not want to take the political heat for making. It is hard to imagine a statute much more subversive not just of the Constitution's allocation of powers, but of democratic accountability itself. The legislative veto invalidated in *Chadha* pales in comparison. Empowering the President unilaterally to repeal appropriations bills and selected tax measures line by line profoundly alters the Constitution's balance of power. Congress, which the Constitution deliberately made the master of

90. One part of the Line Item Veto Act may have also run afoul of the rule that Congress may not delegate lawmaking or law-applying power to a subset of its own members. See INS v. Chadha, 462 U.S. 919 (1983), discussed in § 2–6, supra. Although § 691(a)(3) authorized the President to cancel "*any* limited tax benefit" contained in a law presented to him, § 691f(c) limited the President's cancellation power to those tax measures expressly labeled "limited tax benefits" by Congress' Joint Committee on Taxation in any law to which Congress affixed a separate provision setting forth the Joint Committee's opinion identifying the "limited tax benefits," if any, contained in that law. Because § 691f(c) appears to have bound Congress to the Joint Tax Committee's decision, this delegation of power to the Committee to decide what constitutes a "limited tax benefit"—and thereby either to make or to implement law by determining which tax measures are subject to "cancellation" by the President—violates the same constitutional principles as the legislative veto device struck down in *Chadha*.

91. See Brief for Appellant United States in No. 96–1671, Raines v. Byrd, at 40–45.

92. Loving v. United States, 517 U.S. 748, 758 (1996) (dictum); see also *Field v. Clark*, 143 U.S. at 692 ("That Congress cannot delegate legislative power to the President is a principle universally recognized as vital to the integrity and maintenance of the system of government ordained by the Constitution."). See § 5–19, infra.

the public purse,[93] had—within the zone defined by the Line Item Veto Act—been demoted to the role of giving fiscal advice that the executive was largely free to disregard.

The Framers granted the President no such special veto over appropriation bills, despite their awareness that the growth of legislative power had been greatly enhanced by the insistence of colonial assemblies that their spending bills could not be amended once they had passed the lower houses.[94] To say that the political process remained as a check on presidential abuse of the newly granted spending repeal power is obviously no answer, for the Constitution decisively embodies the Framers' judgment that such political restraints are insufficient to safeguard the spending power and must be reenforced by the structural division of powers between the Congress and the President. Nor is it any answer to argue, as the Government did, that the Line Item Veto Act does not impermissibly alienate congressional lawmaking power to the President because "Congress retains the power to exempt particular appropriations bills (or individual items contained therein) from the coverage of the Act" in the future by the simple device of attaching to such future legislation a rider stating that the Line Item Veto Act does not apply to said appropriations bill.[95] The point is that Congress is not free to delegate, *even once*, the unilateral power to repeal a law or part of a law, and the constitutional violation of doing so is in no way diminished by the fact that Congress retains the ability to avoid transgressing again. Congress' power to enact (or repeal) laws is not some "perk" that Congress may choose to waive in particular circumstances, but a structural element of the separation of powers, and the "structural interests" protected by the Constitution "are not those of any one branch of Government but of the entire Republic."[96] As Justice Kennedy noted in concurrence: "Abdication of responsibility is not part of the constitutional design."[97]

Justice Kennedy's concurrence broadly reaffirmed the principle that the provisions of the Constitution separating and dividing powers were conceived by the Framers as the document's most important protectors

93. Art. I, § 9, cl. 7.

94. See Wolfson, supra note 40, at 841–44.

95. Brief for Appellant United States in No. 96–1671, Raines v. Byrd, at 36 n.23.

96. Freytag v. Commissioner of Internal Revenue, 501 U.S. 868, 880 (1991). In the opinion of the Court in *Raines*, Chief Justice Rehnquist treated the fact that Congress might in the future repeal the Line Item Veto Act, or exempt a given appropriations bill or provision from the Act, as confirming that the Court's denial of standing to Congressmen challenging the Act in their capacity as legislators did not "deprive[] Members of Congress of an adequate remedy," inasmuch as the mere passage of the Act in no way nullified their votes on future appropriations legislation. 117 S. Ct. at 2322. See notes 28–29, supra, and see the discussion of legislative standing in § 3–20, supra. But the Chief Justice was discussing only standing and the limited effects of denying it to this class of litigants—not the *merits* of the constitutional challenge to the Act's reallocation of lawmaking power. Therefore, nothing in the *Raines* opinion supports the radical principle advanced by the Solicitor General in that case that a branch of government is free to alienate its authority, or otherwise to rearrange the Constitution's distribution of powers, so long as it retains the future power to terminate, or not to repeat, such a constitutional violation. The Constitution is not some sort of suspended sentence that the Court may remit on Congress' promise of good behavior.

97. *Clinton v. City of New York*, 118 S. Ct. at 2109 (Kennedy, J., concurring).

新編

世界各國憲法大全

費用、利用聯邦鐵路設施之費用之徵收原則及關於鐵路之建設與經營等，所發布之命令，以及根據聯邦法律所發布之命令，而該法律需經聯邦參議院之同意，或該法律爲各邦受聯邦之委託而執行，或其執行屬各邦本身之職務者，應經聯邦參議院之同意。

三、聯邦參議院對於需經其同意之命令，有提案權。

四、邦政府基於聯邦法律之授權而得發布命令者，各邦亦得基於法律頒布邦法規。

第八十條之一

一、有關國防包括平民保護，僅得依本條之規定發布命令時，則除防衛情形外，僅得於聯邦議會確認已進入緊急情況，或其特別允許時，始得爲之。遇有第十二條之一第五項前段及第六項二段場合，緊急情況之確認及特別允許需要所投票數三分之二之多數。

二、基於第一項命令所爲之措施，如經聯邦議會要求，應予撤銷。

三、違反第一項所爲之命令，如係基於並依照國際機關經聯邦政府同意在條約之範圍內所爲之決定，亦得允許。依本項所採之措施，如經聯邦議會議員多數要求，應予撤銷。

第八十一條

一、遇有本基本法第六十八條場合，聯邦議會未被解散，如其不顧聯邦政府業經宣布某一法案爲緊急議案而拒絕通過，聯邦總統得以聯邦政府之請求，並經聯邦參議院之同意，宣布該議案爲立法緊急狀態（Gesetzgebungsnotstand）。某一法案如經聯邦總理連同第六十八條所定信任動議一併提出而爲聯邦議會拒絕者，亦同。

二、聯邦議會如於立法緊急狀態宣布後再度拒絕該法案或雖通過而其措辭爲聯邦政府宣布不能接受者，該法案如經聯邦參議院同意應視爲已成立。聯邦議會如於該議案重行提出後四週內不予通過，亦同。

三、聯邦總理任期內，凡經聯邦議會拒絕之任何其他法案，均得於立法緊急狀態最初宣布後六個月內，依本條第一、二兩項通過之。上項期間屆滿後，在同一聯邦總理任期內，不得再宣布立法緊急狀態。

四、本基本法不得以根據本條第二項所制定之法律予以修正或全部或局部廢止或停止。

第八十二條

一、依本基本法規定所制定之法律，經副署

後，應由聯邦總統繕成正本，並公布於聯邦公報（Bundesgesetzblatt）。命令由發布機關簽署，除法律另有規定外，應公布於聯邦公報。

二、法律與命令均應明定生效日期。如無此項規定，應於聯邦公報刊行之日終了後第十四日生效。

第八章　聯邦法律之執行與聯邦行政

第八十三條　除本基本法另有規定或許可外，各邦應以執行聯邦法律爲其本身職務。

第八十四條　一、各邦以執行聯邦法律爲其本身職務時，除經聯邦參議院同意之聯邦法律另有規定外，各邦應規定設立機關及行政程序。

二、聯邦政府經聯邦參議院之同意，得發布一般性行政規程（allgemeine Verwaltungsvorschriften）。

三、聯邦政府應監督各邦依現行法律執行聯邦法律。爲此聯邦政府得派駐委員於各邦最高機關；經各邦最高機關之同意，或各邦最高機關不予同意而經聯邦參議院之同意，並得派駐委員於各下級機關。

四、各邦執行聯邦法律，如聯邦政府認爲欠缺不足而未能克服時，聯邦參議院以聯邦政府或有關邦之請求應決定該邦是否違法。對聯邦參議院此項決定得上訴於聯邦憲法法院。

五、聯邦政府爲執行聯邦法律，得於特殊場合，經聯邦立法授權發布個別指令（Einzelweisungen），此項聯邦立法應經聯邦參議院之同意。除聯邦政府認爲情況緊急外，此等指令應對各邦最高機關發出。

第八十五條　一、聯邦法律如經聯邦委託各邦執行，設立機關應爲各邦之事項，但聯邦法律經聯邦參議院同意另有規定者，不在此限。

二、聯邦政府經聯邦參議院之同意，得發布一般性行政規程。聯邦政府得規定公務員及雇員之統一訓練。中級機關首長之任命，應經聯邦政府之同意。

三、各邦機關應服從聯邦最高主管機關之指令。除聯邦政府認爲緊急者外，此等指令應對各邦最高機關發出。各邦最高機關應確保指令之執行。

四、聯邦監督之範圍，應包括執行方法是否合法與是否適宜。聯邦政府爲此得要求提出報告與文件，並得派駐委員於各機關。

聯邦如由聯邦自設行政官署或由聯邦直屬之

第八十六條

最高金額、條件與時間。

㈡免除聯邦及各邦在德意志聯邦銀行保持無息存款（景氣平衡準備金）之義務。發布此等命令之授權僅得賦予聯邦政府。該等命令需要聯邦參議院之同意，惟如經聯邦議會請求應予取消；其細節由聯邦法律定之。

第一百十條　一、聯邦之一切收支應編入預算案，聯邦企業及特別財產僅須列其收入或支出，預算案應收支平衡。

二、預算案應爲一會計年度或依年別分數會計年度，於第一會計年度開始前以預算法訂定之。預算案之某些部分，亦得規定係就年別而適用於不同時間。

三、前項第一段之法律案，以及預算法及預算案之修正案，由聯邦議會送交聯邦參議院；參議院有權於六週內（修正案則於三週內）表示其意見。

四、預算法中僅能容納與聯邦收支及該法當時之有關規定。預算法得規定其條款於次一預算法公布時或依第一百十五條之授權於較晚之時始告失效。

第一百十一條　一、會計年度終了，如下年度預算案尚未以法律確定，聯邦政府在此項法律生效前，有權爲左列之必要支出：

㈠維持合法成立之機關並執行合法決定之措施。

㈡履行合法成立之聯邦債務。

㈢在上年度預算核定之經費範圍內，繼續營建工程、購置及其他工作，或爲此繼續給與補助。

二、如特別立法所定稅收、輸入及其他來源之收入或流動資金準備金，不敷本條第一項支出，聯邦政府得以信用借款方式籌募上年度預算最後總額四分之一之必要經費，以處理當前政務。

第一百十二條　超過預算或預算外之支出，應得聯邦財政部部長之同意。此項同意，惟有在不可預料且屬不可避免之必要情形下，始得給予。其細則由聯邦法律定之。

第一百十三條　一、法律如增加聯邦政府所提預算案中之支出或增列新支出或將來不免有新支出時，應得聯邦政府之同意。此於減少收入或將來不免減少收入之法律亦適用之。聯邦政府得請求聯邦議會決議廢止該等法律。在此情形，聯邦政府應於六週內向聯邦議會表示意見。

二、聯邦政府得於聯邦議會議決法律後四

總統府公報

中華民國八十三年六月十五日 （星期三）

總統令

總統令 中華民國八十三年六月十五日 八十三華總(一)義字第三三八五號

茲將中華民國八十四年度中央政府總預算，以歲入歲出項明比較分析表暨收支性質及餘絀項明分析表公布之。

總統 李登輝
行政院院長 連戰

註：中華民國八十四年度中央政府總預算，以歲入歲出項明比較分析表暨收支性質及餘絀項明分析表，見本期公報第二頁、第三頁。

總統令 中華民國八十三年六月七日

國防部常務次長海軍中將周述大另有任用，應予免職。

任命海軍中將蔡克恕為國防部常務次長。

總統 李登輝
行政院院長 連戰
國防部部長 孫震

總統令 中華民國八十三年六月七日

立法院外交及僑政委員會兼任第十三職等專門委員李恩秀已准退休，應予令免。

任命施炳煌為行政院主計處兼任第十二職等主任秘書，石素梅為兼任第十一職等副局長，陳中三為兼任第十一職等專門委員，郭國祿、成湘純為兼任第十一職等視察。

AMERICAN CONSTITUTIONAL LAW

Volume One

THIRD EDITION

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many types. When President Jefferson informed Congress that the funds it had appropriated for gunboats need not be spent since the Louisiana Purchase had averted the emergency contemplated by Congress, his action was taken in response to unforeseen events—and in fact proved temporary. President Nixon's impoundments in the early 1970's, on the other hand, were plainly designed to terminate congressionally created programs and policies which the President could not successfully veto but with which he disagreed.[5]

The federal courts have traditionally rejected the argument that the President possesses inherent power to impound funds and thus halt congressionally authorized expenditures. The Supreme Court issued its first major pronouncement on the constitutional basis of executive impoundment in *Kendall v. United States ex rel. Stokes*.[6] There, in order to resolve a contract dispute, Congress ordered the Postmaster General to pay a claimant whatever amount an outside arbitrator should decide was the appropriate settlement. Presented with a decision by the arbitrator in a case arising out of a claim for services rendered to the United States in carrying the mails, President Jackson's Postmaster General ignored the congressional mandate and paid, instead, a smaller amount that he deemed the proper settlement. The Supreme Court held that a writ of mandamus could issue directing the Postmaster General to comply with the congressional directive.[7] In reaching this conclusion, the Court held that the President, and thus those under his supervision, did not possess inherent authority, whether implied by the Faithful Execution Clause or otherwise, to impound funds that Congress had ordered to be spent: "To contend that the obligation imposed on the President to see the laws faithfully executed, implies a power to forbid their execution, is a novel construction of the constitution, and entirely inadmissible."[8]

Any other conclusion would have been hard to square with the care the Framers took to limit the scope and operation of the veto power, and quite impossible to reconcile with the fact that the Framers assured Congress the power to override any veto by a two-thirds vote in each House.[9] For presidential impoundments to halt a program would, of course, be tantamount to a veto that no majority in Congress could override.[10] To quote Chief Justice Rehnquist, speaking in his former capacity as Assistant Attorney General in 1969: "With respect to the suggestion that the President has a constitutional power to decline to

5. See Fisher, supra note 2, at 150–51, 169–70

6. 37 U.S. (12 Pet.) 524 (1838).

7. The Court stressed how "purely ministerial," or mechanical, was the task involved. Id. at 613.

8. Id. at 611

9. See § 4–13, infra.

10. See Note, "Protecting the Fisc: Executive Impoundment and Congressional Power," 82 Yale L.J. 1616, 1638 (1974); Warren J. Archer, Comment, "Presidential Impounding of Funds: The Judicial Response," 40 U. Chi. L. Rev. 328, 330 (1973); John H. Stassen, "Separation of Powers and the Uncommon Defense: The Case Against Impounding of Weapons System Appropriations," 57 Geo. L.J. 1159, 1183–84 (1969). See also Note, "Presidential Impoundment: Constitutional Theories and Political Realities," 61 Geo. L.J. 1295 (1973); Abner J. Mikva and Michael F. Hertz, "Impoundment of Funds—The Courts, the Congress and the President: A Constitutional Triangle," 69 Nw. L. Rev. 335 (1974).

AN ACT To establish a new congressional budget process; to establish Committees on the Budget in each House; to establish a Congressional Budget Office; to establish a procedure providing congressional control over the impoundment of funds by the executive branch; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLES; TABLE OF CONTENTS

SECTION 1. [2 U.S.C. 621 note] (a) SHORT TITLES.—This Act may be cited as the "Congressional Budget and Impoundment Control Act of 1974". Titles I through IX may be cited as the "Congressional Budget Act of 1974". Parts A and B of title X may be cited as the "Impoundment Control Act of 1974". Part C of title X may be cited as the "Line Item Veto Act of 1996". [1]

(b) TABLE OF CONTENTS.—

[1] This part was declared unconstitutional by the United States Supreme Court. Please see note on page 67

DECLARATION OF PURPOSES

SEC. 2. [2 U.S.C. 621] The Congress declares that it is essential—

(1) to assure effective congressional control over the budgetary process;

(2) to provide for the congressional determination each year of the appropriate level of Federal revenues and expenditures;

(3) to provide a system of impoundment control;

(4) to establish national budget priorities; and

(5) to provide for the furnishing of information by the executive branch in a manner that will assist the Congress in discharging its duties.

DEFINITIONS

SEC. 3. [2 U.S.C. 622] IN GENERAL.—For purposes of this Act—

(1) The terms "budget outlays" and "outlays" mean, with respect to any fiscal year, expenditures and net lending of funds under budget authority during such year.

(2) BUDGET AUTHORITY AND NEW BUDGET AUTHORITY.—

(A) IN GENERAL.—The term "budget authority" means the authority provided by Federal law to incur financial obligations, as follows:

(i) provisions of law that make funds available for obligation and expenditure (other than borrowing authority), including the authority to obligate and expend the proceeds of offsetting receipts and collections;

(ii) borrowing authority, which means authority granted to a Federal entity to borrow and obligate and expend the borrowed funds, including through the issuance of promissory notes or other monetary credits;

(iii) contract authority, which means the making of funds available for obligation but not for expenditure; and

(iv) offsetting receipts and collections as negative budget authority, and the reduction thereof as positive budget authority.

(B) LIMITATIONS ON BUDGET AUTHORITY.—With respect to the Federal Hospital Insurance Trust Fund, the Supplementary Medical Insurance Trust Fund, the Unemployment Trust Fund, and the railroad retirement account,

[1] This part was declared unconstitutional by the United States Supreme Court. Please see note on page 67.

any amount that is precluded from obligation in a fiscal year by a provision of law (such as a limitation or a benefit formula) shall not be budget authority in that year.

(C) NEW BUDGET AUTHORITY.—The term "new budget authority" means, with respect to a fiscal year—

(i) budget authority that first becomes available for obligation in that year, including budget authority that becomes available in that year as a result of a reappropriation; or

(ii) a change in any account in the availability of unobligated balances of budget authority carried over from a prior year, resulting from a provision of law first effective in that year;

and includes a change in the estimated level of new budget authority provided in indefinite amounts by existing law.

(3) The term "tax expenditures" means those revenue losses attributable to provisions of the Federal tax laws which allow a special exclusion, exemption, or deduction from gross income or which provide a special credit, a preferential rate of tax, or a deferral of tax liability, and the term "tax expenditures budget" means an enumeration of such tax expenditures.

(4) The term "concurrent resolution on the budget" means—

(A) a concurrent resolution setting forth the congressional budget for the United States Government for a fiscal year as provided in section 301; and

(B) any other concurrent resolution revising the congressional budget for the United States Government for a fiscal year as described in section 304.

(5) The term "appropriation Act" means an Act referred to in section 105 of title 1, United States Code.

(6) The term "deficit" means, with respect to a fiscal year, the amount by which outlays exceeds receipts during that year.

(7) The term "surplus" means, with respect to a fiscal year, the amount by which receipts exceeds outlays during that year.

(8) The term "government-sponsored enterprise" means a corporate entity created by a law of the United States that—

(A)(i) has a Federal charter authorized by law;

(ii) is privately owned, as evidenced by capital stock owned by private entities or individuals;

(iii) is under the direction of a board of directors, a majority of which is elected by private owners;

(iv) is a financial institution with power to—

(I) make loans or loan guarantees for limited purposes such as to provide credit for specific borrowers or one sector; and

(II) raise funds by borrowing (which does not carry the full faith and credit of the Federal Government) or to guarantee the debt of others in unlimited amounts; and

(B)(i) does not exercise powers that are reserved to the Government as sovereign (such as the power to tax or to regulate interstate commerce);

(ii) does not have the power to commit the Government financially (but it may be a recipient of a loan guarantee commitment made by the Government); and

(iii) has employees whose salaries and expenses are paid by the enterprise and are not Federal employees subject to title 5 of the United States Code.

(9) The term "entitlement authority" means—

(A) the authority to make payments (including loans and grants), the budget authority for which is not provided for in advance by appropriation Acts, to any person or government if, under the provisions of the law containing that authority, the United States is obligated to make such payments to persons or governments who meet the requirements established by that law; and

(B) the food stamp program.

(10) The term "credit authority" means authority to incur direct loan obligations or to incur primary loan guarantee commitments.

* * * * * * *

TITLE II—CONGRESSIONAL BUDGET OFFICE

ESTABLISHMENT OF OFFICE

SEC. 201. [2 U.S.C. 601] (a) IN GENERAL.—

(1) There is established an office of the Congress to be known as the Congressional Budget Office (hereinafter in this title referred to as the "Office"). The Office shall be headed by a Director; and there shall be a Deputy Director who shall perform such duties as may be assigned to him by the Director and, during the absence or incapacity of the Director or during a vacancy in that office, shall act as Director.

(2) The Director shall be appointed by the Speaker of the House of Representatives and the President pro tempore of the Senate after considering recommendations received from the Committees on the Budget of the House and the Senate, without regard to political affiliation and solely on the basis of his fitness to perform his duties. The Deputy Director shall be appointed by the Director.

(3) The term of office of the Director shall be 4 years and shall expire on January 3 of the year preceding each Presidential election. Any individual appointed as Director to fill a vacancy prior to the expiration of a term shall serve only for the unexpired portion of that term. An individual serving as Director at the expiration of a term may continue to serve until his successor is appointed. Any Deputy Director shall serve until the expiration of the term of office of the Director who appointed him (and until his successor is appointed), unless sooner removed by the Director.

(4) The Director may be removed by either House by resolution.

(5)(A) The Director shall receive compensation at an annual rate of pay that is equal to the lower of—

(i) the highest annual rate of compensation of any officer of the Senate; or

(ii) the highest annual rate of compensation of any officer of the House of Representatives.

(B) The Deputy Director shall receive compensation at an annual rate of pay that is $1,000 less than the annual rate of pay received by the Director, as determined under subparagraph (A).

(b) PERSONNEL.—The Director shall appoint and fix the compensation of such personnel as may be necessary to carry out the duties and functions of the Office. All personnel of the Office shall be appointed without regard to political affiliation and solely on the basis of their fitness to perform their duties. The Director may prescribe the duties and responsibilities of the personnel of the Office, and delegate to them authority to perform any of the duties, powers, and functions imposed on the Office or on the Director. For purposes of pay (other than pay of the Director and Deputy Director) and employment benefits, rights, and privileges, all personnel of the Office shall be treated as if they were employees of the House of Representatives.

(c) EXPERTS AND CONSULTANTS.—In carrying out the duties and functions of the Office, the Director may procure the temporary (not to exceed one year) or intermittent services of experts or consultants or organizations thereof by contract as independent contractors, or, in the case of individual experts or consultants, by employment at rates of pay not in excess of the daily equivalent of the highest rate of basic pay payable under the General Schedule of section 5332 of title 5, United States Code.

(d) RELATIONSHIP TO EXECUTIVE BRANCH.—The Director is authorized to secure information, data, estimates, and statistics directly from the various departments, agencies, and establishments of the executive branch of Government and the regulatory agencies and commissions of the Government. All such departments, agencies, establishments, and regulatory agencies and commissions shall furnish the Director any available material which he determines to be necessary in the performance of his duties and functions (other than material the disclosure of which would be a violation of law). The Director is also authorized, upon agreement with the head of any such department, agency, establishment, or regulatory agency or commission, to utilize its services, facilities, and personnel with or without reimbursement; and the head of each such department, agency, establishment, or regulatory agency or commission is authorized to provide the Office such services, facilities, and personnel.

(e) RELATIONSHIP TO OTHER AGENCIES OF CONGRESS.—In carrying out the duties and functions of the Office, and for the purpose of coordinating the operations of the Office with those of other congressional agencies with a view to utilizing most effectively the information, services, and capabilities of all such agencies in carrying out the various responsibilities assigned to each, the Director is authorized to obtain information, data, estimates, and statistics developed by the General Accounting Office, and the Library of Congress, and (upon agreement with them) to utilize their services, facilities, and personnel with or without reimbursement. The Comp-

troller General, and the Librarian of Congress are authorized to provide the Office with the information, data, estimates, and statistics, and the services, facilities, and personnel, referred to in the preceding sentence.

(f) REVENUE ESTIMATES.—For the purposes of revenue legislation which is income, estate and gift, excise, and payroll taxes (i.e., Social Security), considered or enacted in any session of Congress, the Congressional Budget Office shall use exclusively during that session of Congress revenue estimates provided to it by the Joint Committee on Taxation. During that session of Congress such revenue estimates shall be transmitted by the Congressional Budget Office to any committee of the House of Representatives or the Senate requesting such estimates, and shall be used by such Committees in determining such estimates. The Budget Committees of the Senate and House shall determine all estimates with respect to scoring points of order and with respect to the execution of the purposes of this Act.

(g) APPROPRIATIONS.—There are authorized to be appropriated to the Office for each fiscal year such sums as may be necessary to enable it to carry out its duties and functions. Until sums are first appropriated pursuant to the preceding sentence, but for a period not exceeding 12 months following the effective date of this subsection, the expenses of the Office shall be paid from the contingent fund of the Senate, in accordance with the paragraph relating to the contingent fund of the Senate under the heading "UNDER LEGISLATIVE" in the Act of October 1, 1888 (28 Stat. 546; 2 U.S.C. 68), and upon vouchers approved by the Director.

DUTIES AND FUNCTIONS

SEC. 202. [2 U.S.C. 602] (a) ASSISTANCE TO BUDGET COMMITTEES.—It shall be the primary duty and function of the Office to provide to the Committees on the Budget of both Houses information which will assist such committees in the discharge of all matters within their jurisdictions, including (1) information with respect to the budget, appropriation bills, and other bills authorizing or providing new budget authority or tax expenditures, (2) information with respect to revenues, receipts, estimated future revenues and receipts, and changing revenue conditions, and (3) such related information as such Committees may request.

(b) ASSISTANCE TO COMMITTEES ON APPROPRIATIONS, WAYS AND MEANS, AND FINANCE.—At the request of the Committee on Appropriations of either House, the Committee on Ways and Means of the House of Representatives, or the Committee on Finance of the Senate, the Office shall provide to such Committee any information which will assist it in the discharge of matters within its jurisdiction, including information described in clauses (1) and (2) of subsection (a) and such related information as the Committee may request.

(c) ASSISTANCE TO OTHER COMMITTEES AND MEMBERS.—

(1) At the request of any other committee of the House of Representatives or the Senate or any joint committee of the Congress, the Office shall provide to such committee or joint committee any information compiled in carrying out clauses (1) and (2) of subsection (a), and, to the extent practicable, such

additional information related to the foregoing as may be requested.

(2) At the request of any committee of the Senate or the House of Representatives, the Office shall, to the extent practicable, consult with and assist such committee in analyzing the budgetary or financial impact of any proposed legislation that may have—

(A) a significant budgetary impact on State, local, or tribal governments;

(B) a significant financial impact on the private sector; or

(C) a significant employment impact on the private sector.

(3) At the request of any Member of the House or Senate, the Office shall provide to such member any information compiled in carrying out clauses (1) and (2) of subsection (a), and, to the extent available, such additional information related to the foregoing as may be requested.

(d) ASSIGNMENT OF OFFICE PERSONNEL TO COMMITTEES AND JOINT COMMITTEES.—At the request of the Committee on the Budget of either House, personnel of the Office shall be assigned, on a temporary basis, to assist such committee. At the request of any other committee of either House or any joint committee of the Congress, personnel of the Office may be assigned, on a temporary basis, to assist such committee or joint committee with respect to matters directly related to the applicable provisions of subsection (b) or (c).

(e) REPORTS TO BUDGET COMMITTEES.—

(1) On or before February 15 of each year, the Director shall submit to the Committees on the Budget of the House of Representatives and the Senate, a report for the fiscal year commencing on October 1 of that year, with respect to fiscal policy, including (A) alternative levels of total revenues, total new budget authority, and total outlays (including related surpluses and deficits), (B) the levels of tax expenditures under existing law, taking into account projected economic factors and any changes in such levels based on proposals in the budget submitted by the President for such fiscal year, and (C) a statement of the levels of budget authority and outlays for each program assumed to be extended in the baseline, as provided in section 257(b)(2)(A) and for excise taxes assumed to be extended under section 257(b)(2)(C) of the Balanced Budget and Emergency Deficit Control Act of 1985. Such report shall also include a discussion of national budget priorities, including alternative ways of allocating new budget authority and budget outlays for such fiscal year among major programs or functional categories, taking into account how such alternative allocations will meet major national needs and affect balanced growth and development of the United States.

(2) The Director shall from time to time submit to the Committees on the Budget of the House of Representatives and the Senate such further reports (including reports revising the report required by paragraph (1)) as may be necessary or ap-

propriate to provide such Committees with information, data, and analyses for the performance of their duties and functions.

(3) On or before January 15 of each year, the Director, after consultation with the appropriate committees of the House of Representatives and Senate, shall submit to the Congress a report listing (A) all programs and activities funded during the fiscal year ending September 30 of that calendar year for which authorizations for appropriations have not been enacted for that fiscal year, and (B) all programs and activities for which authorizations for appropriations have been enacted for the fiscal year ending September 30 of that calendar year, but for which no authorizations for appropriations have been enacted for the fiscal year beginning October 1 of that calendar year.

(f) USE OF COMPUTERS AND OTHER TECHNIQUES.—The Director may equip the Office with up-to-date computer capability (upon approval of the Committee on House Oversight of the House of Representatives and the Committee on Rules and Administration of the Senate), obtain the services of experts and consultants in computer technology, and develop techniques for the evaluation of budgetary requirements.

(g) STUDIES.—

(1) CONTINUING STUDIES.—The Director of the Congressional Budget Office shall conduct continuing studies to enhance comparisons of budget outlays, credit authority, and tax expenditures.

(2) FEDERAL MANDATE STUDIES.—

(A) At the request of any Chairman or ranking member of the minority of a Committee of the Senate or the House of Representatives, the Director shall, to the extent practicable, conduct a study of a legislative proposal containing a Federal mandate.

(B) In conducting a study on intergovernmental mandates under subparagraph (A), the Director shall—

(i) solicit and consider information or comments from elected officials (including their designated representatives) of State, local, or tribal governments as may provide helpful information or comments;

(ii) consider establishing advisory panels of elected officials or their designated representatives, of State, local, or tribal governments if the Director determines that such advisory panels would be helpful in performing responsibilities of the Director under this section; and

(iii) if, and to the extent that the Director determines that accurate estimates are reasonably feasible, include estimates of—

(I) the future direct cost of the Federal mandate to the extent that such costs significantly differ from or extend beyond the 5-year period after the mandate is first effective; and

(II) any disproportionate budgetary effects of Federal mandates upon particular industries or sectors of the economy, States, regions, and urban

or rural or other types of communities, as appropriate.

(C) In conducting a study on private sector mandates under subparagraph (A), the Director shall provide estimates, if and to the extent that the Director determines that such estimates are reasonably feasible, of—

(i) future costs of Federal private sector mandates to the extent that such mandates differ significantly from or extend beyond the 5-year time period referred to in subparagraph (B)(iii)(I);

(ii) any disproportionate financial effects of Federal private sector mandates and of any Federal financial assistance in the bill or joint resolution upon any particular industries or sectors of the economy, States, regions, and urban or rural or other types of communities; and

(iii) the effect of Federal private sector mandates in the bill or joint resolution on the national economy, including the effect on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of United States goods and services.

PUBLIC ACCESS TO BUDGET DATA

SEC. 203. [2 U.S.C. 603] (a) RIGHT TO COPY.—Except as provided in subsections (c) and (d), the Director shall make all information, data, estimates, and statistics obtained under sections 201(d) and 201(e) available for public copying during normal business hours, subject to reasonable rules and regulations, and shall to the extent practicable, at the request of any person, furnish a copy of any such information, data, estimates, or statistics upon payment by such person of the cost of making and furnishing such copy.

(b) INDEX.—The Director shall develop and maintain filing, coding, and indexing systems that identify the information, data, estimates, and statistics to which subsection (a) applies and shall make such systems available for public use during normal business hours.

(c) EXCEPTIONS.—Subsection (a) shall not apply to information, data, estimates, and statistics—

(1) which are specifically exempted from disclosure by law; or

(2) which the Director determines will disclose—

(A) matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States;

(B) information relating to trade secrets or financial or commercial information pertaining specifically to a given person if the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person; or

(C) personnel or medical data or similar data the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

unless the portions containing such matters, information, or data have been excised.

(d) INFORMATION OBTAINED FOR COMMITTEES AND MEMBERS.—Subsection (a) shall apply to any information, data, estimates, and statistics obtained at the request of any committee, joint committee, or Member unless such committee, joint committee, or Member has instructed the Director not to make such information, data, estimates, or statistics available for public copying.

TITLE III—CONGRESSIONAL BUDGET PROCESS [1]

TIMETABLE

SEC. 300. [2 U.S.C. 631] The timetable with respect to the congressional budget process for any fiscal year is as follows:

On or before:	Action to be completed:
First Monday in February	President submits his budget.
February 15	Congressional Budget Office submits report to Budget Committees.
Not later than 6 weeks after President submits budget.	Committees submit views and estimates to Budget Committees.
April 1	Senate Budget Committee reports concurrent resolution on the budget.
April 15	Congress completes action on concurrent resolution on the budget.
May 15	Annual appropriation bills may be considered in the House.
June 10	House Appropriations Committee reports last annual appropriation bill.
June 15	Congress completes action on reconciliation legislation.
June 30	House completes action on annual appropriation bills.
October 1	Fiscal year begins.

ANNUAL ADOPTION OF CONCURRENT RESOLUTION ON THE BUDGET

SEC. 301. [2 U.S.C. 632] (a) [2] CONTENT OF CONCURRENT RESOLUTION ON THE BUDGET.—On or before April 15 of each year, the Congress shall complete action on a concurrent resolution on the budget for the fiscal year beginning on October 1 of such year. The concurrent resolution shall set forth appropriate levels for the fiscal year beginning on October 1 of such year and for at least each of the 4 ensuing fiscal years for the following—

(1) totals of new budget authority and outlays;

(2) total Federal revenues and the amount, if any, by which the aggregate level of Federal revenues should be increased or decreased by bills and resolutions to be reported by the appropriate committees;

(3) the surplus or deficit in the budget;

(4) new budget authority and outlays for each major functional category, based on allocations of the total levels set forth pursuant to paragraph (1);

[1] Most points of order under this title may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members duly chosen or sworn. See sec. 904(c) for details.

[2] See clause 10(b) of rule XVIII and rule XXII of the Rules of the House of Representatives.

(5) the public debt;

(6) For[1] purposes of Senate enforcement under this title, outlays of the old-age, survivors, and disability insurance program established under title II of the Social Security Act for the fiscal year of the resolution and for each of the 4 succeeding fiscal years; and

(7) For[1] purposes of Senate enforcement under this title, revenues of the old-age, survivors, and disability insurance program established under title II of the Social Security Act (and the related provisions of the Internal Revenue Code of 1986) for the fiscal year of the resolution and for each of the 4 succeeding fiscal years.

The concurrent resolution shall not include the outlays and revenue totals of the old age,[2] survivors, and disability insurance program established under title II of the Social Security Act or the related provisions of the Internal Revenue Code of 1986 in the surplus or deficit totals required by this subsection or in any other surplus or deficit totals required by this title.

(b) ADDITIONAL MATTERS IN CONCURRENT RESOLUTION.—The concurrent resolution on the budget may—

(1) set forth, if required by subsection (f), the calendar year in which, in the opinion of the Congress, the goals for reducing unemployment set forth in section 4(b) of the Employment Act of 1946 should be achieved;

(2) include reconciliation directives described in section 310;

(3) require a procedure under which all or certain bills or resolutions providing new budget authority or new entitlement authority for such fiscal year shall not be enrolled until the Congress has completed action on any reconciliation bill or reconciliation resolution or both required by such concurrent resolution to be reported in accordance with section 310(b);

(4) set forth such other matters, and require such other procedures, relating to the budget, as may be appropriate to carry out the purposes of this Act;

(5) include a heading entitled "Debt Increase as Measure of Deficit" in which the concurrent resolution shall set forth the amounts by which the debt subject to limit (in section 3101 of title 31 of the United States Code) has increased or would increase in each of the relevant fiscal years;

(6) include a heading entitled "Display of Federal Retirement Trust Fund Balances" in which the concurrent resolution shall set forth the balances of the Federal retirement trust funds;

(7) set forth procedures in the Senate whereby committee allocations, aggregates, and other levels can be revised for legislation if that legislation would not increase the deficit, or would not increase the deficit when taken with other legislation enacted after the adoption of the resolution, for the first fiscal year or the total period of fiscal years covered by the resolution;

[1] So in original. Probably should not be capitalized.
[2] So in original. Probably should be "old-age".

(8) set forth procedures to effectuate pay-as-you-go in the House of Representatives; and

(9) set forth direct loan obligation and primary loan guarantee commitment levels.

(c) CONSIDERATION OF PROCEDURES OR MATTERS WHICH HAVE THE EFFECT OF CHANGING ANY RULE OF THE HOUSE OF REPRESENTATIVES.—If the Committee on the Budget of the House of Representatives reports any concurrent resolution on the budget which includes any procedure or matter which has the effect of changing any rule of the House of Representatives, such concurrent resolution shall then be referred to the Committee on Rules with instructions to report it within five calendar days (not counting any day on which the House is not in session). The Committee on Rules shall have jurisdiction to report any concurrent resolution referred to it under this paragraph with an amendment or amendments changing or striking out any such procedure or matter.

(d)[1] VIEWS AND ESTIMATES OF OTHER COMMITTEES.—Within 6 weeks after the President submits a budget under section 1105(a) of title 31, United States Code, or at such time as may be requested by the Committee on the Budget, each committee of the House of Representatives having legislative jurisdiction shall submit to the Committee on the Budget of the House and each committee of the Senate having legislative jurisdiction shall submit to the Committee on the Budget of the Senate its views and estimates (as determined by the committee making such submission) with respect to all matters set forth in subsections (a) and (b) which relate to matters within the jurisdiction or functions of such committee. The Joint Economic Committee shall submit to the Committees on the Budget of both Houses its recommendations as to the fiscal policy appropriate to the goals of the Employment Act of 1946. Any other committee of the House of Representatives or the Senate may submit to the Committee on the Budget of its House, and any joint committee of the Congress may submit to the Committees on the Budget of both Houses, its views and estimates with respect to all matters set forth in subsections (a) and (b) which relate to matters within its jurisdiction or functions. Any Committee of the House of Representatives or the Senate that anticipates that the committee will consider any proposed legislation establishing, amending, or reauthorizing any Federal program likely to have a significant budgetary impact on any State, local, or tribal government, or likely to have a significant financial impact on the private sector, including any legislative proposal submitted by the executive branch likely to have such a budgetary or financial impact, shall include its views and estimates on that proposal to the Committee on the Budget of the applicable House.

(e) HEARINGS AND REPORT.—

(1) IN GENERAL.—In developing the concurrent resolution on the budget referred to in subsection (a) for each fiscal year, the Committee on the Budget of each House shall hold hearings and shall receive testimony from Members of Congress and such appropriate representatives of Federal departments and agencies, the general public, and national organizations as

[1] See clauses 4(f) and 11(c)(3) of rule X of the Rules of the House of Representatives.

the committee deems desirable. Each of the recommendations as to short-term and medium-term goal set forth in the report submitted by the members of the Joint Economic Committee under subsection (d) may be considered by the Committee on the Budget of each House as part of its consideration of such concurrent resolution, and its report may reflect its views thereon, including its views on how the estimates of revenues and levels of budget authority and outlays set forth in such concurrent resolution are designed to achieve any goals it is recommending.

(2) REQUIRED CONTENTS OF REPORT.—The report accompanying the resolution shall include—

(A) a comparison of the levels of total new budget authority, total outlays, total revenues, and the surplus or deficit for each fiscal year set forth in the resolution with those requested in the budget submitted by the President;

(B) with respect to each major functional category, an estimate of total new budget authority and total outlays, with the estimates divided between discretionary and mandatory amounts;

(C) the economic assumptions that underlie each of the matters set forth in the resolution and any alternative economic assumptions and objectives the committee considered;

(D) information, data, and comparisons indicating the manner in which, and the basis on which, the committee determined each of the matters set forth in the resolution;

(E) the estimated levels of tax expenditures (the tax expenditures budget) by major items and functional categories for the President's budget and in the resolution; and

(F) allocations described in section 302(a).

(3) ADDITIONAL CONTENTS OF REPORT.—The report accompanying the resolution may include—

(A) a statement of any significant changes in the proposed levels of Federal assistance to State and local governments;

(B) an allocation of the level of Federal revenues recommended in the resolution among the major sources of such revenues;

(C) information, data, and comparisons on the share of total Federal budget outlays and of gross domestic product devoted to investment in the budget submitted by the President and in the resolution;

(D) the assumed levels of budget authority and outlays for public buildings, with a division between amounts for construction and repair and for rental payments; and

(E) other matters, relating to the budget and to fiscal policy, that the committee deems appropriate.

(f) ACHIEVEMENT OF GOALS FOR REDUCING UNEMPLOYMENT.—

(1) If, pursuant to section 4(c) of the Employment Act of 1946, the President recommends in the Economic Report that the goals for reducing unemployment set forth in section 4(b) of such Act be achieved in a year after the close of the five-

year period prescribed by such subsection, the concurrent resolution on the budget for the fiscal year beginning after the date on which such Economic Report is received by the Congress may set forth the year in which, in the opinion of the Congress, such goals can be achieved.

(2) After the Congress has expressed its opinion pursuant to paragraph (1) as to the year in which the goals for reducing unemployment set forth in section 4(b) of the Employment Act of 1946 can be achieved, if, pursuant to section 4(e) of such Act, the President recommends in the Economic Report that such goals be achieved in a year which is different from the year in which the Congress has expressed its opinion that such goals should be achieved, either in its action pursuant to paragraph (1) or in its most recent action pursuant to this paragraph, the concurrent resolution on the budget for the fiscal year beginning after the date on which such Economic Report is received by the Congress may set forth the year in which, in the opinion of the Congress, such goals can be achieved.

(3) It shall be in order to amend the provision of such resolution setting forth such year only if the amendment thereto also proposes to alter the estimates, amounts, and levels (as described in subsection (a)) set forth in such resolution in germane fashion in order to be consistent with the economic goals (as described in sections 3(a)(2) and (4)(b) of the Employment Act of 1946) which such amendment proposes can be achieved by the year specified in such amendment.

(g) ECONOMIC ASSUMPTIONS.—

(1) It shall not be in order in the Senate to consider any concurrent resolution on the budget for a fiscal year, or any amendment thereto, or any conference report thereon, that sets forth amounts and levels that are determined on the basis of more than one set of economic and technical assumptions.

(2) The joint explanatory statement accompanying a conference report on a concurrent resolution on the budget shall set forth the common economic assumptions upon which such joint statement and conference report are based, or upon which any amendment contained in the joint explanatory statement to be proposed by the conferees in the case of technical disagreement, is based.

(3) Subject to periodic reestimation based on changed economic conditions or technical estimates, determinations under titles III and IV of the Congressional Budget Act of 1974 shall be based upon such common economic and technical assumptions.

(h) BUDGET COMMITTEES CONSULTATION WITH COMMITTEES.—The Committee on the Budget of the House of Representatives shall consult with the committees of its House having legislative jurisdiction during the preparation, consideration, and enforcement of the concurrent resolution on the budget with respect to all matters which relate to the jurisdiction or functions of such committees.

(i) SOCIAL SECURITY POINT OF ORDER.—It shall not be in order in the Senate to consider any concurrent resolution on the budget (or amendment, motion, or conference report on the resolution) that

would decrease the excess of social security revenues over social security outlays in any of the fiscal years covered by the concurrent resolution. No change in chapter 1 of the Internal Revenue Code of 1986 shall be treated as affecting the amount of social security revenues unless such provision changes the income tax treatment of social security benefits.

COMMITTEE ALLOCATIONS

SEC. 302. [2 U.S.C. 633] (a) COMMITTEE SPENDING ALLOCATIONS.—

(1) ALLOCATION AMONG COMMITTEES.—The joint explanatory statement accompanying a conference report on a concurrent resolution on the budget shall include an allocation, consistent with the resolution recommended in the conference report, of the levels for the first fiscal year of the resolution, for at least each of the ensuing 4 fiscal years, and a total for that period of fiscal years (except in the case of the Committee on Appropriations only for the fiscal year of that resolution) of—

(A) total new budget authority; and

(B) total outlays;

among each committee of the House of Representatives or the Senate that has jurisdiction over legislation providing or creating such amounts.

(2) NO DOUBLE COUNTING.—In the House of Representatives, any item allocated to one committee may not be allocated to another committee.

(3) FURTHER DIVISION OF AMOUNTS.—

(A) IN THE SENATE.—In the Senate, the amount allocated to the Committee on Appropriations shall be further divided among the categories specified in section 250(c)(4) of the Balanced Budget and Emergency Deficit Control Act of 1985 and shall not exceed the limits for each category set forth in section 251(c) of that Act.

(B) IN THE HOUSE.—In the House of Representatives, the amounts allocated to each committee for each fiscal year, other than the Committee on Appropriations, shall be further divided between amounts provided or required by law on the date of filing of that conference report and amounts not so provided or required. The amounts allocated to the Committee on Appropriations shall be further divided—

(i) between discretionary and mandatory amounts or programs, as appropriate; and

(ii) consistent with the categories specified in section 250(c)(4) of the Balanced Budget and Emergency Deficit Control Act of 1985.

(4) AMOUNTS NOT ALLOCATED.—In the House of Representatives or the Senate, if a committee receives no allocation of new budget authority or outlays, that committee shall be deemed to have received an allocation equal to zero for new budget authority or outlays.

(5) ADJUSTING ALLOCATION OF DISCRETIONARY SPENDING IN THE HOUSE OF REPRESENTATIVES.—(A) If a concurrent resolution on the budget is not adopted by April 15, the chairman of

the Committee on the Budget of the House of Representatives shall submit to the House, as soon as practicable, an allocation under paragraph (1) to the Committee on Appropriations consistent with the discretionary spending levels in the most recently agreed to concurrent resolution on the budget for the appropriate fiscal year covered by that resolution.

(B) As soon as practicable after an allocation under paragraph (1) is submitted under this section, the Committee on Appropriations shall make suballocations and report those suballocations to the House of Representatives.

(b) SUBALLOCATIONS BY APPROPRIATIONS COMMITTEES.—As soon as practicable after a concurrent resolution on the budget is agreed to, the Committee on Appropriations of each House (after consulting with the Committee on Appropriations of the other House) shall suballocate each amount allocated to it for the budget year under subsection (a) among its subcommittees. Each Committee on Appropriations shall promptly report to its House suballocations made or revised under this subsection. The Committee on Appropriations of the House of Representatives shall further divide among its subcommittees the divisions made under subsection (a)(3)(B) and promptly report those divisions to the House.

(c) POINT OF ORDER.—After the Committee on Appropriations has received an allocation pursuant to subsection (a) for a fiscal year, it shall not be in order in the House of Representatives or the Senate to consider any bill, joint resolution, amendment, motion, or conference report within the jurisdiction of that committee providing new budget authority for that fiscal year, until that committee makes the suballocations required by subsection (b).

(d) SUBSEQUENT CONCURRENT RESOLUTIONS.—In the case of a concurrent resolution on the budget referred to in section 304, the allocations under subsection (a) and the subdivisions under subsection (b) shall be required only to the extent necessary to take into account revisions made in the most recently agreed to concurrent resolution on the budget.

(e) ALTERATION OF ALLOCATIONS.—At any time after a committee reports the allocations required to be made under subsection (b), such committee may report to its House an alteration of such allocations. Any alteration of such allocations must be consistent with any actions already taken by its House on legislation within the committee's jurisdiction.

(f) LEGISLATION SUBJECT TO POINT OF ORDER.—

(1) IN THE HOUSE OF REPRESENTATIVES.—After the Congress has completed action on a concurrent resolution on the budget for a fiscal year, it shall not be in order in the House of Representatives to consider any bill, joint resolution, or amendment providing new budget authority for any fiscal year, or any conference report on any such bill or joint resolution, if—

(A) the enactment of such bill or resolution as reported;

(B) the adoption and enactment of such amendment; or

(C) the enactment of such bill or resolution in the form recommended in such conference report,

would cause the applicable allocation of new budget authority made under subsection (a) or (b) for the first fiscal year or the total of fiscal years to be exceeded.

(2) IN THE SENATE.—After a concurrent resolution on the budget is agreed to, it shall not be in order in the Senate to consider any bill, joint resolution, amendment, motion, or conference report that would cause—

(A) in the case of any committee except the Committee on Appropriations, the applicable allocation of new budget authority or outlays under subsection (a) for the first fiscal year or the total of fiscal years to be exceeded; or

(B) in the case of the Committee on Appropriations, the applicable suballocation of new budget authority or outlays under subsection (b) to be exceeded.

(g) PAY-AS-YOU-GO EXCEPTION IN THE HOUSE.—

(1) IN GENERAL.—(A) Subsection (f)(1) and, after April 15, section 303(a) shall not apply to any bill or joint resolution, as reported, amendment thereto, or conference report thereon if, for each fiscal year covered by the most recently agreed to concurrent resolution on the budget—

(i) the enactment of that bill or resolution as reported;

(ii) the adoption and enactment of that amendment; or

(iii) the enactment of that bill or resolution in the form recommended in that conference report,

would not increase the deficit, and, if the sum of any revenue increases provided in legislation already enacted during the current session (when added to revenue increases, if any, in excess of any outlay increase provided by the legislation proposed for consideration) is at least as great as the sum of the amount, if any, by which the aggregate level of Federal revenues should be increased as set forth in that concurrent resolution and the amount, if any, by which revenues are to be increased pursuant to pay-as-you-go procedures under section 301(b)(8), if included in that concurrent resolution.

(B) Section 311(a), as that section applies to revenues, shall not apply to any bill, joint resolution, amendment thereto, or conference report thereon if, for each fiscal year covered by the most recently agreed to concurrent resolution on the budget—

(i) the enactment of that bill or resolution as reported;

(ii) the adoption and enactment of that amendment; or

(iii) the enactment of that bill or resolution in the form recommended in that conference report,

would not increase the deficit, and, if the sum of any outlay reductions provided in legislation already enacted during the current session (when added to outlay reductions, if any, in excess of any revenue reduction provided by the legislation proposed for consideration) is at least as great as the sum of the amount, if any, by which the aggregate level of Federal outlays should be reduced as required by that concurrent resolution and the amount, if any, by which outlays are to be reduced pursuant to pay-as-you-go procedures under section 301(b)(8), if included in that concurrent resolution.

(2) REVISED ALLOCATIONS.—(A) As soon as practicable after Congress agrees to a bill or joint resolution that would have been subject to a point of order under subsection (f)(1) but for the exception provided in paragraph (1)(A) or would have been subject to a point of order under section 311(a) but for the exception provided in paragraph (1)(B), the chairman of the committee [1] on the Budget of the House of Representatives shall file with the House appropriately revised allocations under section 302(a) and revised functional levels and budget aggregates to reflect that bill.

(B) Such revised allocations, functional levels, and budget aggregates shall be considered for the purposes of this Act as allocations, functional levels, and budget aggregates contained in the most recently agreed to concurrent resolution on the budget.

CONCURRENT RESOLUTION ON THE BUDGET MUST BE ADOPTED BEFORE BUDGET-RELATED LEGISLATION IS CONSIDERED

SEC. 303. [2] [2 U.S.C. 634] (a) IN GENERAL.—Until the concurrent resolution on the budget for a fiscal year has been agreed to, it shall not be in order in the House of Representatives, with respect to the first fiscal year covered by that resolution, or the Senate, with respect to any fiscal year covered by that resolution, to consider any bill or joint resolution, amendment or motion thereto, or conference report thereon that—

(1) first provides new budget authority for that fiscal year;

(2) first provides an increase or decrease in revenues during that fiscal year;

(3) provides an increase or decrease in the public debt limit to become effective during that fiscal year;

(4) in the Senate only, first provides new entitlement authority for that fiscal year; or

(5) in the Senate only, first provides for an increase or decrease in outlays for that fiscal year.

(b) EXCEPTIONS IN THE HOUSE.— In the House of Representatives, subsection (a) does not apply—

(1)(A) to any bill or joint resolution, as reported, providing advance discretionary new budget authority that first becomes available for the first or second fiscal year after the budget year; or

(B) to any bill or joint resolution, as reported, first increasing or decreasing revenues in a fiscal year following the fiscal year to which the concurrent resolution applies;

(2) after May 15, to any general appropriation bill or amendment thereto; or

(3) to any bill or joint resolution unless it is reported by a committee.

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[1] So in law. Probably should read "Committee".

[2] In the House, the application of section 303 was modified for the 106th Congress by section 2(a)(3) of H. Res. 5 (106th Congress) on January 6, 1999, to clarify that, in the case of a reported bill or joint resolution considered pursuant to a special order, determinations under section 303 are for the text made in order as an original bill or joint resolution for the purpose of amendment or to the text on which the previous question is ordered directly to passage.

(c) APPLICATION TO APPROPRIATION MEASURES IN THE SENATE.—

(1) IN GENERAL.—Until the concurrent resolution on the budget for a fiscal year has been agreed to and an allocation has been made to the Committee on Appropriations of the Senate under section 302(a) for that year, it shall not be in order in the Senate to consider any appropriation bill or joint resolution, amendment or motion thereto, or conference report thereon for that year or any subsequent year.

(2) EXCEPTION.—Paragraph (1) does not apply to appropriations legislation making advance appropriations for the first or second fiscal year after the year the allocation referred to in that paragraph is made.

PERMISSIBLE REVISIONS OF CONCURRENT RESOLUTIONS ON THE BUDGET

SEC. 304.[1] [2 U.S.C. 635] At any time after the concurrent resolution on the budget for a fiscal year has been agreed to pursuant to section 301, and before the end of such fiscal year, the two Houses may adopt a concurrent resolution on the budget which revises or reaffirms the concurrent resolution on the budget for such fiscal year most recently agreed to.

PROVISIONS RELATING TO THE CONSIDERATION OF CONCURRENT RESOLUTIONS ON THE BUDGET

SEC. 305. [2 U.S.C. 636] (a)[2] PROCEDURE IN HOUSE OF REPRESENTATIVES AFTER REPORT OF COMMITTEE; DEBATE.—

(1) When a concurrent resolution on the budget has been reported by the Committee on the Budget of the House of Representatives and has been referred to the appropriate calendar of the House, it shall be in order on any day thereafter, subject to clause 2(l)(6) of rule XI[3] of the Rules of the House of Representatives, to move to proceed to the consideration of the concurrent resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) General debate on any concurrent resolution on the budget in the House of Representatives shall be limited to not more than 10 hours, which shall be divided equally between the majority and minority parties, plus such additional hours of debate as are consumed pursuant to paragraph (3). A motion further to limit debate is not debatable. A motion to recommit the concurrent resolution is not in order, and it is not in order to move to reconsider the vote by which the concurrent resolution is agreed to or disagreed to.

(3) Following the presentation of opening statements on the concurrent resolution on the budget for a fiscal year by the chairman and ranking minority member of the Committee on

[1] See rule XXIII of the Rules of the House of Representatives.
[2] See clause 10(a) of rule XVIII of the Rules of the House of Representatives.
[3] Recodified at the beginning of the 106th Congress as clause 4 of rule XIII.

the Budget of the House, there shall be a period of up to four hours for debate on economic goals and policies.

(4) Only if a concurrent resolution on the budget reported by the Committee on the Budget of the House sets forth the economic goals (as described in sections 3(a)(2) and (4)(b) of the Full Employment Act of 1946) which the estimates, amounts, and levels (as described in section 301(a)) set forth in such resolution are designed to achieve, shall it be in order to offer to such resolution an amendment relating to such goals, and such amendment shall be in order only if it also proposes to alter such estimates, amounts, and levels in germane fashion in order to be consistent with the goals proposed in such amendment.

(5)[1] Consideration of any concurrent resolution on the budget by the House of Representatives shall be in the Committee of the Whole, and the resolution shall be considered for amendment under the five-minute rule in accordance with the applicable provisions of rule XXIII[2] of the Rules of the House of Representatives. After the Committee rises and reports the resolution back to the House, the previous question shall be considered as ordered on the resolution and any amendments thereto to final passage without intervening motion; except that it shall be in order at any time prior to final passage (notwithstanding any other rule or provision of law) to adopt an amendment (or a series of amendments) changing any figure or figures in the resolution as so reported to the extent necessary to achieve mathematical consistency.

(6) Debate in the House of Representatives on the conference report on any concurrent resolution on the budget shall be limited to not more than 5 hours, which shall be divided equally between the majority and minority parties. A motion further to limit debate is not debatable. A motion to recommit the conference report is not in order, and it is not in order to move to reconsider the vote by which the conference report is agreed to or disagreed to.

(7) Appeals from decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to any concurrent resolution on the budget shall be decided without debate.

(b) PROCEDURE IN SENATE AFTER REPORT OF COMMITTEE; DEBATE; AMENDMENTS.—

(1) Debate in the Senate on any concurrent resolution on the budget, and all amendments thereto and debatable motions and appeals in connection therewith, shall be limited to not more than 50 hours, except that with respect to any concurrent resolution referred to in section 304(a)[3] all such debate shall be limited to not more than 15 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(2) Debate in the Senate on any amendment to a concurrent resolution on the budget shall be limited to 2 hours, to be

[1] See clause 10(c) of rule XVIII of the Rules of the House of Representatives.
[2] Recodified at the beginning of the 106th Congress as rule XVIII.
[3] So in law. Probably should read "section 304".

equally divided between, and controlled by, the mover and the manager of the concurrent resolution, and debate on any amendment to an amendment, debatable motion, or appeal shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the concurrent resolution, except that in the event the manager of the concurrent resolution is in favor of any such amendment, motion, or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. No amendment that is not germane to the provisions of such concurrent resolution shall be received. Such leaders, or either of them, may, from the time under their control on the passage of the concurrent resolution, allot additional time to any Senator during the consideration of any amendment, debatable motion, or appeal.

(3) Following the presentation of opening statements on the concurrent resolution on the budget for a fiscal year by the chairman and ranking minority member of the Committee on the Budget of the Senate, there shall be a period of up to four hours for debate on economic goals and policies.

(4) Subject to the other limitations of this Act, only if a concurrent resolution on the budget reported by the Committee on the Budget of the Senate sets forth the economic goals (as described in sections 3(a)(2) and 4(b) of the Employment Act of 1946) which the estimates, amounts, and levels (as described in section 301(a)) set forth in such resolution are designed to achieve, shall it be in order to offer to such resolution an amendment relating to such goals, and such amendment shall be in order only if it also proposes to alter such estimates, amounts, and levels in germane fashion in order to be consistent with the goals proposed in such amendment.

(5) A motion to further limit debate is not debatable. A motion to recommit (except a motion to recommit with instructions to report back within a specified number of days, not to exceed 3, not counting any day on which the Senate is not in session) is not in order. Debate on any such motion to recommit shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the concurrent resolution.

(6) Notwithstanding any other rule, an amendment or series of amendments to a concurrent resolution on the budget proposed in the Senate shall always be in order if such amendment or series of amendments proposes to change any figure or figures then contained in such concurrent resolution so as to make such concurrent resolution mathematically consistent or so as to maintain such consistency.

(c) ACTION ON CONFERENCE REPORTS IN THE SENATE.—

(1) A motion to proceed to the consideration of the conference report on any concurrent resolution on the budget (or a reconciliation bill or resolution) may be made even though a previous motion to the same effect has been disagreed to.

(2) During the consideration in the Senate of the conference report (or a message between Houses) on any concurrent resolution on the budget, and all amendments in disagreement, and all amendments thereto, and debatable motions and

appeals in connection therewith, debate shall be limited to 10 hours, to be equally divided between, and controlled by, the majority leader and minority leader or their designees. Debate on any debatable motion or appeal related to the conference report (or a message between Houses) shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the conference report (or a message between Houses).

(3) Should the conference report be defeated, debate on any request for a new conference and the appointment of conferrees shall be limited to 1 hour, to be equally divided between, and controlled by, the manager of the conference report and the minority leader or his designee, and should any motion be made to instruct the conferees before the conferees are named, debate on such motion shall be limited to one-half hour, to be equally divided between, and controlled by, the mover and the manager of the conference report. Debate on any amendment to any such instructions shall be limited to 20 minutes, to be equally divided between and controlled by the mover and the manager of the conference report. In all cases when the manager of the conference report is in favor of any motion, appeal, or amendment, the time in opposition shall be under the control of the minority leader or his designee.

(4) In any case in which there are amendments in disagreement, time on each amendment shall be limited to 30 minutes, to be equally divided between, and controlled by, the manager of the conference report and the minority leader or his designee. No amendment that is not germane to the provisions of such amendments shall be received.

(d) CONCURRENT RESOLUTION MUST BE CONSISTENT IN THE SENATE.—It shall not be in order in the Senate to vote on the question of agreeing to—

(1) a concurrent resolution on the budget unless the figures then contained in such resolution are mathematically consistent; or

(2) a conference report on a concurrent resolution on the budget unless the figures contained in such resolution, as recommended in such conference report, are mathematically consistent.

LEGISLATION DEALING WITH CONGRESSIONAL BUDGET MUST BE HANDLED BY BUDGET COMMITTEES

SEC. 306. [2 U.S.C. 637] No bill, resolution, amendment, motion, or conference report, dealing with any matter which is within the jurisdiction of the Committee on the Budget of either House shall be considered in that House unless it is a bill or resolution which has been reported by the Committee on the Budget of that House (or from the consideration of which such committee has been discharged) or unless it is an amendment to such a bill or resolution.

HOUSE COMMITTEE ACTION ON ALL APPROPRIATION BILLS TO BE COMPLETED BY JUNE 10

SEC. 307. [2 U.S.C. 638] On or before June 10 of each year, the Committee on Appropriations of the House of Representatives shall report annual appropriation bills providing new budget authority under the jurisdiction of all of its subcommittees for the fiscal year which begins on October 1 of that year.

REPORTS, SUMMARIES, AND PROJECTIONS OF CONGRESSIONAL BUDGET ACTIONS

SEC. 308. [2 U.S.C. 639] (a)[1] REPORTS ON LEGISLATION PROVIDING NEW BUDGET AUTHORITY OR PROVIDING AN INCREASE OR DECREASE IN REVENUES OR TAX EXPENDITURES.—

(1) Whenever a committee of either House reports to its House a bill or joint resolution, or committee amendment thereto, providing new budget authority (other than continuing appropriations) or providing an increase or decrease in revenues or tax expenditures for a fiscal year (or fiscal years), the report accompanying that bill or joint resolution shall contain a statement, or the committee shall make available such a statement in the case of an approved committee amendment which is not reported to its House, prepared after consultation with the Director of the Congressional Budget Office—

(A) comparing the levels in such measure to the appropriate allocations in the reports submitted under section 302(b) for the most recently agreed to concurrent resolution on the budget for such fiscal year (or fiscal years);

(B) containing a projection by the Congressional Budget Office of how such measure will affect the levels of such budget authority, budget outlays, revenues, or tax expenditures under existing law for such fiscal year (or fiscal years) and each of the four ensuing fiscal years, if timely submitted before such report is filed; and

(C) containing an estimate by the Congressional Budget Office of the level of new budget authority for assistance to State and local governments provided by such measure, if timely submitted before such report is filed.

(2) Whenever a conference report is filed in either House and such conference report or any amendment reported in disagreement or any amendment contained in the joint statement of managers to be proposed by the conferees in the case of technical disagreement on such bill or joint resolution provides new budget authority (other than continuing appropriations) or provides an increase or decrease in revenues for a fiscal year (or fiscal years), the statement of managers accompanying such conference report shall contain the information described in paragraph (1), if available on a timely basis. If such information is not available when the conference report is filed, the committee shall make such information available to Members as soon as practicable prior to the consideration of such conference report.

[1] See clause 3(c)(2) and (d)(2) of rule XIII of the Rules of the House of Representatives

(b) UP-TO-DATE TABULATIONS OF CONGRESSIONAL BUDGET ACTION.—

(1) The Director of the Congressional Budget Office shall issue to the committees of the House of Representatives and the Senate reports on at least a monthly basis detailing and tabulating the progress of congressional action on bills and joint resolutions providing new budget authority or providing an increase or decrease in revenues or tax expenditures for each fiscal year covered by a concurrent resolution on the budget. Such reports shall include but are not limited to an up-to-date tabulation comparing the appropriate aggregate and functional levels (including outlays) included in the most recently adopted concurrent resolution on the budget with the levels provided in bills and joint resolutions reported by committees or adopted by either House or by the Congress, and with the levels provided by law for the fiscal year preceding the first fiscal year covered by the appropriate concurrent resolution.

(2) The Committee on the Budget of each House shall make available to Members of its House summary budget scorekeeping reports. Such reports—

(A) shall be made available on at least a monthly basis, but in any case frequently enough to provide Members of each House an accurate representation of the current status of congressional consideration of the budget;

(B) shall include, but are not limited to summaries of tabulations provided under subsection (b)(1); and

(C) shall be based on information provided under subsection (b)(1) without substantive revision.

The chairman of the Committee on the Budget of the House of Representatives shall submit such reports to the Speaker.

(c) FIVE-YEAR PROJECTION OF CONGRESSIONAL BUDGET ACT.—As soon as practicable after the beginning of each fiscal year, the Director of the Congressional Budget Office shall issue a report projecting for the period of 5 fiscal years beginning with such fiscal year—

(1) total new budget authority and total budget outlays for each fiscal year in such period;

(2) revenues to be received and the major sources thereof, and the surplus or deficit, if any, for each fiscal year in such period;

(3) tax expenditures for each fiscal year in such period; and

(4) entitlement authority for each fiscal year in such period.

HOUSE APPROVAL OF REGULAR APPROPRIATION BILLS

SEC. 309. [2 U.S.C. 640] It shall not be in order in the House of Representatives to consider any resolution providing for an adjournment period of more than three calendar days during the month of July until the House of Representatives has approved annual appropriation bills providing new budget authority under the jurisdiction of all the subcommittees of the Committee on Appropriations for the fiscal year beginning on October 1 of such year.

For purposes of this section, the chairman of the Committee on Appropriations of the House of Representatives shall periodically advise the Speaker as to changes in jurisdiction among its various subcommittees.

RECONCILIATION

SEC. 310. [2 U.S.C. 641] (a) INCLUSION OF RECONCILIATION DIRECTIVES IN CONCURRENT RESOLUTIONS ON THE BUDGET.—A concurrent resolution on the budget for any fiscal year, to the extent necessary to effectuate the provisions and requirements of such resolution, shall—

(1) specify the total amount by which—

(A) new budget authority for such fiscal year;

(B) budget authority initially provided for prior fiscal years;

(C) new entitlement authority which is to become effective during such fiscal year; and

(D) credit authority for such fiscal year,

contained in laws, bills, and resolutions within the jurisdiction of a committee is to be changed and direct that committee to determine and recommend changes to accomplish a change of such total amount;

(2) specify the total amount by which revenues are to be changed and direct that the committees having jurisdiction to determine and recommend changes in the revenue laws, bills, and resolutions to accomplish a change of such total amount;

(3) specify the amounts by which the statutory limit on the public debt is to be changed and direct the committee having jurisdiction to recommend such change; or

(4) specify and direct any combination of the matters described in paragraphs (1), (2), and (3) (including a direction to achieve deficit reduction).

(b) LEGISLATIVE PROCEDURE.—If a concurrent resolution containing directives to one or more committees to determine and recommend changes in laws, bills, or resolutions is agreed to in accordance with subsection (a), and—

(1) only one committee of the House or the Senate is directed to determine and recommend changes, that committee shall promptly make such determination and recommendations and report to its House reconciliation legislation containing such recommendations; or

(2) more than one committee of the House or the Senate is directed to determine and recommend changes, each such committee so directed shall promptly make such determination and recommendations and submit such recommendations to the Committee on the Budget of its House, which upon receiving all such recommendations, shall report to its House reconciliation legislation carrying out all such recommendations without any substantive revision.

For purposes of this subsection, a reconciliation resolution is a concurrent resolution directing the Clerk of the House of Representatives or the Secretary of the Senate, as the case may be, to make specified changes in bills and resolutions which have not been enrolled.

(c) COMPLIANCE WITH RECONCILIATION DIRECTIONS.—(1) Any committee of the House of Representatives or the Senate that is directed, pursuant to a concurrent resolution on the budget, to determine and recommend changes of the type described in paragraphs (1) and (2) of subsection (a) with respect to laws within its jurisdiction, shall be deemed to have complied with such directions—

(A) if—

(i) the amount of the changes of the type described in paragraph (1) of such subsection recommended by such committee do not exceed or fall below the amount of the changes such committee was directed by such concurrent resolution to recommend under that paragraph by more than— [1]

(I) in the Senate, 20 percent of the total of the amounts of the changes such committee was directed to make under paragraphs (1) and (2) of such subsection; or

(II) in the House of Representatives, 20 percent of the sum of the absolute value of the changes the committee was directed to make under paragraph (1) and the absolute value of the changes the committee was directed to make under paragraph (2); and

(ii) the amount of the changes of the type described in paragraph (2) of such subsection recommended by such committee do not exceed or fall below the amount of the changes such committee was directed by such concurrent resolution to recommend under that paragraph by more than— [1]

(I) in the Senate, 20 percent of the total of the amounts of the changes such committee was directed to make under paragraphs (1) and (2) of such subsection; or

(II) in the House of Representatives, 20 percent of the sum of the absolute value of the changes the committee was directed to make under paragraph (1) and the absolute value of the changes the committee was directed to make under paragraph (2); and

(B) if the total amount of the changes recommended by such committee is not less than the total of the amounts of the changes such committee was directed to make under paragraphs (1) and (2) of such subsection.

(2)(A) Upon the reporting to the Committee on the Budget of the Senate of a recommendation that shall be deemed to have complied with such directions solely by virtue of this subsection, the chairman of that committee may file with the Senate appropriately revised allocations under section 302(a) and revised functional levels and aggregates to carry out this subsection.

(B) Upon the submission to the Senate of a conference report recommending a reconciliation bill or resolution in which a committee shall be deemed to have complied with such direc-

[1] A dash was inadvertently omitted as a result of the amendment made by section 10111 of Public Law 105–33 (111 Stat. 685).

tions solely by virtue of this subsection, the chairman of the Committee on the Budget of the Senate may file with the Senate appropriately revised allocations under section 302(a) and revised functional levels and aggregates to carry out this subsection.

(C) Allocations, functional levels, and aggregates revised pursuant to this paragraph shall be considered to be allocations, functional levels, and aggregates contained in the concurrent resolution on the budget pursuant to section 301.

(D) Upon the filing of revised allocations pursuant to this paragraph, the reporting committee shall report revised allocations pursuant to section 302(b) to carry out this subsection.

(d) LIMITATION ON AMENDMENTS TO RECONCILIATION BILLS AND RESOLUTIONS.—

(1) It shall not be in order in the House of Representatives to consider any amendment to a reconciliation bill or reconciliation resolution if such amendment would have the effect of increasing any specific budget outlays above the level of such outlays provided in the bill or resolution (for the fiscal years covered by the reconciliation instructions set forth in the most recently agreed to concurrent resolution on the budget), or would have the effect of reducing any specific Federal revenues below the level of such revenues provided in the bill or resolution (for such fiscal years), unless such amendment makes at least an equivalent reduction in other specific budget outlays, an equivalent increase in other specific Federal revenues, or an equivalent combination thereof (for such fiscal years), except that a motion to strike a provision providing new budget authority or new entitlement authority may be in order.

(2) It shall not be in order in the Senate to consider any amendment to a reconciliation bill or reconciliation resolution if such amendment would have the effect of decreasing any specific budget outlay reductions below the level of such outlay reductions provided (for the fiscal years covered) in the reconciliation instructions which relate to such bill or resolution set forth in a resolution providing for reconciliation, or would have the effect of reducing Federal revenue increases below the level of such revenue increases provided (for such fiscal years) in such instructions relating to such bill or resolution, unless such amendment makes a reduction in other specific budget outlays, an increase in other specific Federal revenues, or a combination thereof (for such fiscal years) at least equivalent to any increase in outlays or decrease in revenues provided by such amendment, except that a motion to strike a provision shall always be in order.

(3) Paragraphs (1) and (2) shall not apply if a declaration of war by the Congress is in effect.

(4) For purposes of this section, the levels of budget outlays and Federal revenues for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget of the House of Representatives or of the Senate, as the case may be.

(5) The Committee on Rules of the House of Representatives may make in order amendments to achieve changes speci-

fied by reconciliation directives contained in a concurrent resolution on the budget if a committee or committees of the House fail to submit recommended changes to its Committee on the Budget pursuant to its instruction.

(e) PROCEDURE IN THE SENATE.—

(1) Except as provided in paragraph (2), the provisions of section 305 for the consideration in the Senate of concurrent resolutions on the budget and conference reports thereon shall also apply to the consideration in the Senate of reconciliation bills reported under subsection (b) and conference reports thereon.

(2) Debate in the Senate on any reconciliation bill reported under subsection (b), and all amendments thereto and debatable motions and appeals in connection therewith, shall be limited to not more than 20 hours.

(f) COMPLETION OF RECONCILIATION PROCESS.—It shall not be in order in the House of Representatives to consider any resolution providing for an adjournment period of more than three calendar days during the month of July until the House of Representatives has completed action on the reconciliation legislation for the fiscal year beginning on October 1 of the calendar year to which the adjournment resolution pertains, if reconciliation legislation is required to be reported by the concurrent resolution on the budget for such fiscal year.

(g) LIMITATION ON CHANGES TO THE SOCIAL SECURITY ACT.—Notwithstanding any other provision of law, it shall not be in order in the Senate or the House of Representatives to consider any reconciliation bill or reconciliation resolution reported pursuant to a concurrent resolution on the budget agreed to under section 301 or 304, or a joint resolution pursuant to section 258C of the Balanced Budget and Emergency Deficit Control Act of 1985, or any amendment thereto or conference report thereon, that contains recommendations with respect to the old-age, survivors, and disability insurance program established under title II of the Social Security Act.

BUDGET-RELATED LEGISLATION MUST BE WITHIN APPROPRIATE LEVELS

SEC. 311. [2 U.S.C. 642] (a) ENFORCEMENT OF BUDGET AGGREGATES.—

(1) IN THE HOUSE OF REPRESENTATIVES.—Except as provided by subsection (c), after the Congress has completed action on a concurrent resolution on the budget for a fiscal year, it shall not be in order in the House of Representatives to consider any bill, joint resolution, amendment, motion, or conference report providing new budget authority or reducing revenues, if—

(A) the enactment of that bill or resolution as reported;

(B) the adoption and enactment of that amendment; or

(C) the enactment of that bill or resolution in the form recommended in that conference report;

would cause the level of total new budget authority or total outlays set forth in the applicable concurrent resolution on the

budget for the first fiscal year to be exceeded, or would cause revenues to be less than the level of total revenues set forth in that concurrent resolution for the first fiscal year or for the total of that first fiscal year and the ensuing fiscal years for which allocations are provided under section 302(a), except when a declaration of war by the Congress is in effect.

(2) IN THE SENATE.—After a concurrent resolution on the budget is agreed to, it shall not be in order in the Senate to consider any bill, joint resolution, amendment, motion, or conference report that—

(A) would cause the level of total new budget authority or total outlays set forth for the first fiscal year in the applicable resolution to be exceeded; or

(B) would cause revenues to be less than the level of total revenues set forth for that first fiscal year or for the total of that first fiscal year and the ensuing fiscal years in the applicable resolution for which allocations are provided under section 302(a).

(3) ENFORCEMENT OF SOCIAL SECURITY LEVELS IN THE SENATE.—After a concurrent resolution on the budget is agreed to, it shall not be in order in the Senate to consider any bill, joint resolution, amendment, motion, or conference report that would cause a decrease in social security surpluses or an increase in social security deficits relative to the levels set forth in the applicable resolution for the first fiscal year or for the total of that fiscal year and the ensuing fiscal years for which allocations are provided under section 302(a).

(b) SOCIAL SECURITY LEVELS.—

(1) IN GENERAL.—For purposes of subsection (a)(3), social security surpluses equal the excess of social security revenues over social security outlays in a fiscal year or years with such an excess and social security deficits equal the excess of social security outlays over social security revenues in a fiscal year or years with such an excess.

(2) TAX TREATMENT.—For purposes of subsection (a)(3), no provision of any legislation involving a change in chapter 1 of the Internal Revenue Code of 1986 shall be treated as affecting the amount of social security revenues or outlays unless that provision changes the income tax treatment of social security benefits.

(c) EXCEPTION IN THE HOUSE OF REPRESENTATIVES.—Subsection (a)(1) shall not apply in the House of Representatives to any bill, joint resolution, or amendment that provides new budget authority for a fiscal year or to any conference report on any such bill or resolution, if—

(1) the enactment of that bill or resolution as reported;

(2) the adoption and enactment of that amendment; or

(3) the enactment of that bill or resolution in the form recommended in that conference report;

would not cause the appropriate allocation of new budget authority made pursuant to section 302(a) for that fiscal year to be exceeded.

DETERMINATIONS AND POINTS OF ORDER

SEC. 312. [2 U.S.C. 643] (a) BUDGET COMMITTEE DETERMINATIONS.—For purposes of this title and title IV, the levels of new budget authority, outlays, direct spending, new entitlement authority, and revenues for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget of the House of Representatives or the Senate, as applicable.

(b) DISCRETIONARY SPENDING POINT OF ORDER IN THE SENATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, it shall not be in order in the Senate to consider any bill or resolution (or amendment, motion, or conference report on that bill or resolution) that would exceed any of the discretionary spending limits in section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985.

(2) EXCEPTIONS.—This subsection shall not apply if a declaration of war by the Congress is in effect or if a joint resolution pursuant to section 258 of the Balanced Budget and Emergency Deficit Control Act of 1985 has been enacted.

(c) MAXIMUM DEFICIT AMOUNT POINT OF ORDER IN THE SENATE.—It shall not be in order in the Senate to consider any concurrent resolution on the budget for a fiscal year, or to consider any amendment to that concurrent resolution, or to consider a conference report on that concurrent resolution, if—

(1) the level of total outlays for the first fiscal year set forth in that concurrent resolution or conference report exceeds; or

(2) the adoption of that amendment would result in a level of total outlays for that fiscal year that exceeds;

the recommended level of Federal revenues for that fiscal year, by an amount that is greater than the maximum deficit amount, if any, specified in the Balanced Budget and Emergency Deficit Control Act of 1985 for that fiscal year.

(d) TIMING OF POINTS OF ORDER IN THE SENATE.—A point of order under this Act may not be raised against a bill, resolution, amendment, motion, or conference report while an amendment or motion, the adoption of which would remedy the violation of this Act, is pending before the Senate.

(e) POINTS OF ORDER IN THE SENATE AGAINST AMENDMENTS BETWEEN THE HOUSES.—Each provision of this Act that establishes a point of order against an amendment also establishes a point of order in the Senate against an amendment between the Houses. If a point of order under this Act is raised in the Senate against an amendment between the Houses and the point of order is sustained, the effect shall be the same as if the Senate had disagreed to the amendment.

(f) EFFECT OF A POINT OF ORDER IN THE SENATE.—In the Senate, if a point of order under this Act against a bill or resolution is sustained, the Presiding Officer shall then recommit the bill or resolution to the committee of appropriate jurisdiction for further consideration.

EXTRANEOUS MATTER IN RECONCILIATION LEGISLATION

SEC. 313. [2 U.S.C. 644] (a) IN GENERAL.—When the Senate is considering a reconciliation bill or a reconciliation resolution pursuant to section 310 (whether that bill or resolution originated in the Senate or the House) or section 258C of the Balanced Budget and Emergency Deficit Control Act of 1985, upon a point of order being made by any Senator against material extraneous to the instructions to a committee which is contained in any title or provision of the bill or resolution or offered as an amendment to the bill or resolution, and the point of order is sustained by the Chair, any part of said title or provision that contains material extraneous to the instructions to said Committee as defined in subsection (b) shall be deemed stricken from the bill and may not be offered as an amendment from the floor.

(b) EXTRANEOUS PROVISIONS.—(1)(A) Except as provided in paragraph (2), a provision of a reconciliation bill or reconciliation resolution considered pursuant to section 310 shall be considered extraneous if such provision does not produce a change in outlays or revenue, including changes in outlays and revenues brought about by changes in the terms and conditions under which outlays are made or revenues are required to be collected (but a provision in which outlay decreases or revenue increases exactly offset outlay increases or revenue decreases shall not be considered extraneous by virtue of this subparagraph); (B) any provision producing an increase in outlays or decrease in revenues shall be considered extraneous if the net effect of provisions reported by the Committee reporting the title containing the provision is that the Committee fails to achieve its reconciliation instructions; (C) a provision that is not in the jurisdiction of the Committee with jurisdiction over said title or provision shall be considered extraneous; (D) a provision shall be considered extraneous if it produces changes in outlays or revenues which are merely incidental to the non-budgetary components of the provision; (E) a provision shall be considered to be extraneous if it increases, or would increase, net outlays, or if it decreases, or would decrease, revenues during a fiscal year after the fiscal years covered by such reconciliation bill or reconciliation resolution, and such increases or decreases are greater than outlay reductions or revenue increases resulting from other provisions in such title in such year; and (F) a provision shall be considered extraneous if it violates section 310(g).

(2) A Senate-originated provision shall not be considered extraneous under paragraph (1)(A) if the Chairman and Ranking Minority Member of the Committee on the Budget and the Chairman and Ranking Minority Member of the Committee which reported the provision certify that: (A) the provision mitigates direct effects clearly attributable to a provision changing outlays or revenue and both provisions together produce a net reduction in the deficit; (B) the provision will result in a substantial reduction in outlays or a substantial increase in revenues during fiscal years after the fiscal years covered by the reconciliation bill or reconciliation resolution; (C) a reduction of outlays or an increase in revenues is likely to occur as a result of the provision, in the event of new regulations authorized by the provision or likely to be proposed, court rulings

on pending litigation, or relationships between economic indices and stipulated statutory triggers pertaining to the provision, other than the regulations, court rulings or relationships currently projected by the Congressional Budget Office for scorekeeping purposes; or (D) such provision will be likely to produce a significant reduction in outlays or increase in revenues but, due to insufficient data, such reduction or increase cannot be reliably estimated.

(3) A provision reported by a committee shall not be considered extraneous under paragraph (1)(C) if (A) the provision is an integral part of a provision or title, which if introduced as a bill or resolution would be referred to such committee, and the provision sets forth the procedure to carry out or implement the substantive provisions that were reported and which fall within the jurisdiction of such committee; or (B) the provision states an exception to, or a special application of, the general provision or title of which it is a part and such general provision or title if introduced as a bill or resolution would be referred to such committee.

(c) EXTRANEOUS MATERIALS.—Upon the reporting or discharge of a reconciliation bill or resolution pursuant to section 310 in the Senate, and again upon the submission of a conference report on such a reconciliation bill or resolution, the Committee on the Budget of the Senate shall submit for the record a list of material considered to be extraneous under subsections (b)(1)(A), (b)(1)(B), and (b)(1)(E) of this section to the instructions of a committee as provided in this section. The inclusion or exclusion of a provision shall not constitute a determination of extraneousness by the Presiding Officer of the Senate.

(d) CONFERENCE REPORTS.—When the Senate is considering a conference report on, or an amendment between the Houses in relation to, a reconciliation bill or reconciliation resolution pursuant to section 310, upon—

(1) a point of order being made by any Senator against extraneous material meeting the definition of subsections (b)(1)(A), (b)(1)(B), (b)(1)(D), (b)(1)(E), or (b)(1)(F), and

(2) such point of order being sustained,

such material contained in such conference report or amendment shall be deemed stricken, and the Senate shall proceed, without intervening action or motion, to consider the question of whether the Senate shall recede from its amendment and concur with a further amendment, or concur in the House amendment with a further amendment, as the case may be, which further amendment shall consist of only that portion of the conference report or House amendment, as the case may be, not so stricken. Any such motion in the Senate shall be debatable for two hours. In any case in which such point of order is sustained against a conference report (or Senate amendment derived from such conference report by operation of this subsection), no further amendment shall be in order.

(e) GENERAL POINT OF ORDER.—Notwithstanding any other law or rule of the Senate, it shall be in order for a Senator to raise a single point of order that several provisions of a bill, resolution, amendment, motion, or conference report violate this section. The Presiding Officer may sustain the point of order as to some or all of the provisions against which the Senator raised the point of order. If the Presiding Officer so sustains the point of order as to

some of the provisions (including provisions of an amendment, motion, or conference report) against which the Senator raised the point of order, then only those provisions (including provisions of an amendment, motion, or conference report) against which the Presiding Officer sustains the point of order shall be deemed stricken pursuant to this section. Before the Presiding Officer rules on such a point of order, any Senator may move to waive such a point of order as it applies to some or all of the provisions against which the point of order was raised. Such a motion to waive is amendable in accordance with the rules and precedents of the Senate. After the Presiding Officer rules on such a point of order, any Senator may appeal the ruling of the Presiding Officer on such a point of order as it applies to some or all of the provisions on which the Presiding Officer ruled.

ADJUSTMENTS

SEC. 314. [2 U.S.C. 645] (a) ADJUSTMENTS.—

(1) IN GENERAL.—After the reporting of a bill or joint resolution, the offering of an amendment thereto, or the submission of a conference report thereon, the chairman of the Committee on the Budget of the House of Representatives or the Senate shall make the adjustments set forth in paragraph (2) for the amount of new budget authority in that measure (if that measure meets the requirements set forth in subsection (b)) and the outlays flowing from that budget authority.

(2) MATTERS TO BE ADJUSTED.—The adjustments referred to in paragraph (1) are to be made to—

(A) the discretionary spending limits, if any, set forth in the appropriate concurrent resolution on the budget;

(B) the allocations made pursuant to the appropriate concurrent resolution on the budget pursuant to section 302(a); and

(C) the budgetary aggregates as set forth in the appropriate concurrent resolution on the budget.

(b) AMOUNTS OF ADJUSTMENTS.—The adjustment referred to in subsection (a) shall be—

(1) an amount provided and designated as an emergency requirement pursuant to section 251(b)(2)(A) or 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985;

(2) an amount provided for continuing disability reviews subject to the limitations in section 251(b)(2)(C) of that Act;

(3) for any fiscal year through 2002, an amount provided that is the dollar equivalent of the Special Drawing Rights with respect to—

(A) an increase in the United States quota as part of the International Monetary Fund Eleventh General Review of Quotas (United States Quota); or

(B) any increase in the maximum amount available to the Secretary of the Treasury pursuant to section 17 of the Bretton Woods Agreements Act, as amended from time to time (New Arrangements to Borrow);

(4) an amount provided not to exceed $1,884,000,000 for the period of fiscal years 1998 through 2000 for arrearages for

international organizations, international peacekeeping, and multilateral development banks;

(5) an amount provided for an earned income tax credit compliance initiative but not to exceed—

(A) with respect to fiscal year 1998, $138,000,000 in new budget authority;

(B) with respect to fiscal year 1999, $143,000,000 in new budget authority;

(C) with respect to fiscal year 2000, $144,000,000 in new budget authority;

(D) with respect to fiscal year 2001, $145,000,000 in new budget authority; and

(E) with respect to fiscal year 2002, $146,000,000 in new budget authority; or

(6) in the case of an amount for adoption incentive payments (as defined in section 251(b)(2)(G) of the Balanced Budget and Emergency Deficit Control Act of 1985) for fiscal year 1999, 2000, 2001, 2002, or 2003 for the Department of Health and Human Services, an amount not to exceed $20,000,000.

(c) APPLICATION OF ADJUSTMENTS.—The adjustments made pursuant to subsection (a) for legislation shall—

(1) apply while that legislation is under consideration;

(2) take effect upon the enactment of that legislation; and

(3) be published in the Congressional Record as soon as practicable.

(d) REPORTING REVISED SUBALLOCATIONS.—Following any adjustment made under subsection (a), the Committees on Appropriations of the Senate and the House of Representatives may report appropriately revised suballocations under section 302(b) to carry out this section.

(e) DEFINITIONS FOR CDRS.—As used in subsection (b)(2)—

(1) the term "continuing disability reviews" shall have the same meaning as provided in section 251(b)(2)(C)(ii) of the Balanced Budget and Emergency Deficit Control Act of 1985; and

(2) the term "new budget authority" shall have the same meaning as the term "additional new budget authority" and the term "outlays" shall have the same meaning as "additional outlays" in that section.

EFFECT OF ADOPTION OF A SPECIAL ORDER OF BUSINESS IN THE HOUSE OF REPRESENTATIVES

SEC. 315. [2 U.S.C. 645a] For purposes of a reported bill or joint resolution considered in the House of Representatives pursuant to a special order of business, the term "as reported" in this title or title IV shall be considered to refer to the text made in order as an original bill or joint resolution for the purpose of amendment or to the text on which the previous question is ordered directly to passage, as the case may be.

TITLE IV—ADDITIONAL PROVISIONS TO IMPROVE FISCAL PROCEDURES

PART A—GENERAL PROVISIONS

BUDGET-RELATED LEGISLATION NOT SUBJECT TO APPROPRIATIONS

SEC. 401. [2 U.S.C. 651] (a) CONTROLS ON CERTAIN BUDGET-RELATED LEGISLATION NOT SUBJECT TO APPROPRIATIONS.—It shall not be in order in either the House of Representatives or the Senate to consider any bill or joint resolution (in the House of Representatives only, as reported), amendment, motion, or conference report that provides—

(1) new authority to enter into contracts under which the United States is obligated to make outlays;

(2) new authority to incur indebtedness (other than indebtedness incurred under chapter 31 of title 31 of the United States Code) for the repayment of which the United States is liable; or

(3) new credit authority;

unless that bill, joint resolution, amendment, motion, or conference report also provides that the new authority is to be effective for any fiscal year only to the extent or in the amounts provided in advance in appropriation Acts.

(b) LEGISLATION PROVIDING NEW ENTITLEMENT AUTHORITY.—

(1) POINT OF ORDER.—It shall not be in order in either the House of Representatives or the Senate to consider any bill or joint resolution (in the House of Representatives only, as reported), amendment, motion, or conference report that provides new entitlement authority that is to become effective during the current fiscal year. [1]

(2) If any committee of the House of Representatives or the Senate reports any bill or resolution which provides new entitlement authority which is to become effective during a fiscal year and the amount of new budget authority which will be required for such fiscal year if such bill or resolution is enacted as so reported exceeds the appropriate allocation of new budget authority reported under section 302(b)[2] in connection with the most recently agreed to concurrent resolution on the budget for such fiscal year, such bill or resolution shall then be referred to the Committee on Appropriations of the Senate or may then be referred to the Committee on Appropriations of the House, as the case may be, with instructions to report it, with the committee's recommendations, within 15 calendar days (not counting any day on which that House is not in session) beginning with the day following the day on which it is so referred. If the Committee on Appropriations of either House fails to report a bill or resolution referred to it under

[1] In the House, section 401(b) was clarified by section 2(a)(2) of H. Res. 5 (106th Congress) on January 6, 1999, to explain that pending the adoption by the Congress of a concurrent resolution on the budget for fiscal year 2000, a provision in a reported bill or joint resolution, or in an amendment thereto or a conference report thereon, that establishes a specified or minimum level of compensation to be funded by annual discretionary appropriations should not be considered as providing new entitlement authority within the meaning of the Congressional Budget Act of 1974.

[2] So in law. Probably should have been amended to read "section 302(a)".

this paragraph within such 15-day period, the committee shall automatically be discharged from further consideration of such bill or resolution and such bill or resolution shall be placed on the appropriate calendar.

(3) The Committee on Appropriations of each House shall have jurisdiction to report any bill or resolution referred to it under paragraph (2) with an amendment which limits the total amount of new spending authority provided in such bill or resolution.

(c) EXCEPTIONS.—

(1) Subsections (a) and (b) shall not apply to new spending authority if the budget authority for outlays which result from such new spending authority is derived—

(A) from a trust fund established by the Social Security Act (as in effect on the date of the enactment of this Act); or

(B) from any other trust fund, 90 percent or more of the receipts of which consist or will consist of amounts (transferred from the general fund of the Treasury) equivalent to amounts of taxes (related to the purposes for which such outlays are or will be made) received in the Treasury under specified provisions of the Internal Revenue Code of 1954.

(2) Subsections (a) and (b) shall not apply to new authority described in those subsections to the extent that—

(A) the outlays resulting therefrom are made by an organization which is (i) a mixed-ownership Government corporation (as defined in section 201 of the Government Corporation Control Act), or (ii) a wholly owned Government corporation (as defined in section 101 of such Act) which is specifically exempted by law from compliance with any or all of the provisions of that Act, as of the date of enactment of the Balanced Budget and Emergency Deficit Control Act of 1985; or

(B) the outlays resulting therefrom consist exclusively of the proceeds of gifts or bequests made to the United States for a specific purpose.

ANALYSIS BY CONGRESSIONAL BUDGET OFFICE

SEC. 402.[1] [2 U.S.C. 653] The Director of the Congressional Budget Office shall, to the extent practicable, prepare for each bill or resolution of a public character reported by any committee of the House of Representatives or the Senate (except the Committee on Appropriations of each House), and submit to such committee—

(1) an estimate of the costs which would be incurred in carrying out such bill or resolution in the fiscal year in which it is to become effective and in each of the 4 fiscal years following such fiscal year, together with the basis for each such estimate;

(2) a comparison of the estimates of costs described in paragraph (1), with any available estimates of costs made by such committee or by any Federal agency; and

[1] See clause 3(c)(3) of rule XIII of the Rules of the House of Representatives.

(3) a description of each method for establishing a Federal financial commitment contained in such bill or resolution.

The estimates, comparison, and description so submitted shall be included in the report accompanying such bill or resolution if timely submitted to such committee before such report is filed.

* * * * * * *

STUDY BY THE GENERAL ACCOUNTING OFFICE OF FORMS OF FEDERAL FINANCIAL COMMITMENT THAT ARE NOT REVIEWED ANNUALLY BY CONGRESS

SEC. 404. [2 U.S.C. 654] The General Accounting Office shall study those provisions of law which provide mandatory spending and report to the Congress its recommendations for the appropriate form of financing for activities or programs financed by such provisions not later than eighteen months after the effective date of this section. Such report shall be revised from time to time.

OFF-BUDGET AGENCIES, PROGRAMS, AND ACTIVITIES

SEC. 405. [2 U.S.C. 655] (a) Notwithstanding any other provision of law, budget authority, credit authority, and estimates of outlays and receipts for activities of the Federal budget which are off-budget immediately prior to the date of enactment of this section, not including activities of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds, shall be included in a budget submitted pursuant to section 1105 of title 31, United States Code, and in a concurrent resolution on the budget reported pursuant to section 301 or section 304 of this Act and shall be considered, for purposes of this Act, budget authority, outlays, and spending authority in accordance with definitions set forth in this Act.

(b) All receipts and disbursements of the Federal Financing Bank with respect to any obligations which are issued, sold, or guaranteed by a Federal agency shall be treated as a means of financing such agency for purposes of section 1105 of title 31, United States Code, and for purposes of this Act.

MEMBER USER GROUP

SEC. 406. [2 U.S.C. 656] The Speaker of the House of Representatives, after consulting with the Minority Leader of the House, may appoint a Member User Group for the purpose of reviewing budgetary scorekeeping rules and practices of the House and advising the Speaker from time to time on the effect and impact of such rules and practices.

PART B—FEDERAL MANDATES [1]

SEC. 421. [2 U.S.C. 658] DEFINITIONS.

For purposes of this part:

[1] This part was added to title IV of the Congressional Budget and Impoundment Control Act of 1974 by section 101(a)(2) of the Unfunded Mandates Reform Act of 1995 (P.L. 104–4; 109 Stat. 50).

(1) AGENCY.—The term "agency" has the same meaning as defined in section 551(1) of title 5, United States Code, but does not include independent regulatory agencies.

(2) AMOUNT.—The term "amount", with respect to an authorization of appropriations for Federal financial assistance, means the amount of budget authority for any Federal grant assistance program or any Federal program providing loan guarantees or direct loans.

(3) DIRECT COSTS.—The term "direct costs"—

(A)(i) in the case of a Federal intergovernmental mandate, means the aggregate estimated amounts that all State, local, and tribal governments would be required to spend or would be prohibited from raising in revenues in order to comply with the Federal intergovernmental mandate; or

(ii) in the case of a provision referred to in paragraph (5)(A)(ii), means the amount of Federal financial assistance eliminated or reduced;

(B) in the case of a Federal private sector mandate, means the aggregate estimated amounts that the private sector will be required to spend in order to comply with the Federal private sector mandate;

(C) shall be determined on the assumption that—

(i) State, local, and tribal governments, and the private sector will take all reasonable steps necessary to mitigate the costs resulting from the Federal mandate, and will comply with applicable standards of practice and conduct established by recognized professional or trade associations; and

(ii) reasonable steps to mitigate the costs shall not include increases in State, local, or tribal taxes or fees; and

(D) shall not include—

(i) estimated amounts that the State, local, and tribal governments (in the case of a Federal intergovernmental mandate) or the private sector (in the case of a Federal private sector mandate) would spend—

(I) to comply with or carry out all applicable Federal, State, local, and tribal laws and regulations in effect at the time of the adoption of the Federal mandate for the same activity as is affected by that Federal mandate; or

(II) to comply with or carry out State, local, and tribal governmental programs, or private-sector business or other activities in effect at the time of the adoption of the Federal mandate for the same activity as is affected by that mandate; or

(ii) expenditures to the extent that such expenditures will be offset by any direct savings to the State, local, and tribal governments, or by the private sector, as a result of—

(I) compliance with the Federal mandate; or

(II) other changes in Federal law or regulation that are enacted or adopted in the same bill or joint resolution or proposed or final Federal regulation and that govern the same activity as is affected by the Federal mandate.

(4) DIRECT SAVINGS.—The term "direct savings", when used with respect to the result of compliance with the Federal mandate—

(A) in the case of a Federal intergovernmental mandate, means the aggregate estimated reduction in costs to any State, local, or tribal government as a result of compliance with the Federal intergovernmental mandate; and

(B) in the case of a Federal private sector mandate, means the aggregate estimated reduction in costs to the private sector as a result of compliance with the Federal private sector mandate.

(5) FEDERAL INTERGOVERNMENTAL MANDATE.—The term "Federal intergovernmental mandate" means—

(A) any provision in legislation, statute, or regulation that—

(i) would impose an enforceable duty upon State, local, or tribal governments, except—

(I) a condition of Federal assistance; or

(II) a duty arising from participation in a voluntary Federal program, except as provided in subparagraph (B))[1]; or

(ii) would reduce or eliminate the amount of authorization of appropriations for—

(I) Federal financial assistance that would be provided to State, local, or tribal governments for the purpose of complying with any such previously imposed duty unless such duty is reduced or eliminated by a corresponding amount; or

(II) the control of borders by the Federal Government; or reimbursement to State, local, or tribal governments for the net cost associated with illegal, deportable, and excludable aliens, including court-mandated expenses related to emergency health care, education or criminal justice; when such a reduction or elimination would result in increased net costs to State, local, or tribal governments in providing education or emergency health care to, or incarceration of, illegal aliens; except that this subclause shall not be in effect with respect to a State, local, or tribal government, to the extent that such government has not fully cooperated in the efforts of the Federal Government to locate, apprehend, and deport illegal aliens;

(B) any provision in legislation, statute, or regulation that relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State,

[1] So in original. Second closing parenthesis probably should not appear

local, and tribal governments under entitlement authority, if the provision—

(i)(I) would increase the stringency of conditions of assistance to State, local, or tribal governments under the program; or

(II) would place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding to State, local, or tribal governments under the program; and

(ii) the State, local, or tribal governments that participate in the Federal program lack authority under that program to amend their financial or programmatic responsibilities to continue providing required services that are affected by the legislation, statute, or regulation.

(6) FEDERAL MANDATE.—The term "Federal mandate" means a Federal intergovernmental mandate or a Federal private sector mandate, as defined in paragraphs (5) and (7).

(7) FEDERAL PRIVATE SECTOR MANDATE.—The term "Federal private sector mandate" means any provision in legislation, statute, or regulation that—

(A) would impose an enforceable duty upon the private sector except—

(i) a condition of Federal assistance; or

(ii) a duty arising from participation in a voluntary Federal program; or

(B) would reduce or eliminate the amount of authorization of appropriations for Federal financial assistance that will be provided to the private sector for the purposes of ensuring compliance with such duty.

(8) LOCAL GOVERNMENT.—The term "local government" has the same meaning as defined in section 6501(6) of title 31, United States Code.

(9) PRIVATE SECTOR.—The term "private sector" means all persons or entities in the United States, including individuals, partnerships, associations, corporations, and educational and nonprofit institutions, but shall not include State, local, or tribal governments.

(10) REGULATION; RULE.—The term "regulation" or "rule" (except with respect to a rule of either House of the Congress) has the meaning of "rule" as defined in section 601(2) of title 5, United States Code.

(11) SMALL GOVERNMENT.—The term "small government" means any small governmental jurisdictions defined in section 601(5) of title 5, United States Code, and any tribal government.

(12) STATE.—The term "State" has the same meaning as defined in section 6501(9) of title 31, United States Code.

(13) TRIBAL GOVERNMENT.—The term "tribal government" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601 et seq.) which is recognized as eligible for the spe-

cial programs and services provided by the United States to Indians because of their special status as Indians.

SEC. 422. [2 U.S.C. 658a] EXCLUSIONS.

This part shall not apply to any provision in a bill, joint resolution, amendment, motion, or conference report before Congress that—

(1) enforces constitutional rights of individuals;

(2) establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability;

(3) requires compliance with accounting and auditing procedures with respect to grants or other money or property provided by the Federal Government;

(4) provides for emergency assistance or relief at the request of any State, local, or tribal government or any official of a State, local, or tribal government;

(5) is necessary for the national security or the ratification or implementation of international treaty obligations;

(6) the President designates as emergency legislation and that the Congress so designates in statute; or

(7) relates to the old-age, survivors, and disability insurance program under title II of the Social Security Act (including taxes imposed by sections 3101(a) and 3111(a) of the Internal Revenue Code of 1986 (relating to old-age, survivors, and disability insurance)).

SEC. 423. [2 U.S.C. 658b] DUTIES OF CONGRESSIONAL COMMITTEES.

(a) IN GENERAL.—When a committee of authorization of the Senate or the House of Representatives reports a bill or joint resolution of public character that includes any Federal mandate, the report of the committee accompanying the bill or joint resolution shall contain the information required by subsections (c) and (d).

(b) SUBMISSION OF BILLS TO THE DIRECTOR.—When a committee of authorization of the Senate or the House of Representatives orders reported a bill or joint resolution of a public character, the committee shall promptly provide the bill or joint resolution to the Director of the Congressional Budget Office and shall identify to the Director any Federal mandates contained in the bill or resolution.

(c) REPORTS ON FEDERAL MANDATES.—Each report described under subsection (a) shall contain—

(1) an identification and description of any Federal mandates in the bill or joint resolution, including the direct costs to State, local, and tribal governments, and to the private sector, required to comply with the Federal mandates;

(2) a qualitative, and if practicable, a quantitative assessment of costs and benefits anticipated from the Federal mandates (including the effects on health and safety and the protection of the natural environment); and

(3) a statement of the degree to which a Federal mandate affects both the public and private sectors and the extent to which Federal payment of public sector costs or the modification or termination of the Federal mandate as provided under section 425(a)(2) would affect the competitive balance between

State, local, or tribal governments and the private sector including a description of the actions, if any, taken by the committee to avoid any adverse impact on the private sector or the competitive balance between the public sector and the private sector.

(d) INTERGOVERNMENTAL MANDATES.—If any of the Federal mandates in the bill or joint resolution are Federal intergovernmental mandates, the report required under subsection (a) shall also contain—

(1)(A) a statement of the amount, if any, of increase or decrease in authorization of appropriations under existing Federal financial assistance programs, or of authorization of appropriations for new Federal financial assistance, provided by the bill or joint resolution and usable for activities of State, local, or tribal governments subject to the Federal intergovernmental mandates;

(B) a statement of whether the committee intends that the Federal intergovernmental mandates be partly or entirely unfunded, and if so, the reasons for that intention; and

(C) if funded in whole or in part, a statement of whether and how the committee has created a mechanism to allocate the funding in a manner that is reasonably consistent with the expected direct costs among and between the respective levels of State, local, and tribal government;

(2) any existing sources of Federal assistance in addition to those identified in paragraph (1) that may assist State, local, and tribal governments in meeting the direct costs of the Federal intergovernmental mandates; and

(3) if the bill or joint resolution would make the reduction specified in section 421(5)(B)(i)(II), a statement of how the committee specifically intends the States to implement the reduction and to what extent the legislation provides additional flexibility, if any, to offset the reduction.

(e) PREEMPTION CLARIFICATION AND INFORMATION.—When a committee of authorization of the Senate or the House of Representatives reports a bill or joint resolution of public character, the committee report accompanying the bill or joint resolution shall contain, if relevant to the bill or joint resolution, an explicit statement on the extent to which the bill or joint resolution is intended to preempt any State, local, or tribal law, and, if so, an explanation of the effect of such preemption.

(f) PUBLICATION OF STATEMENT FROM THE DIRECTOR.—

(1) IN GENERAL.—Upon receiving a statement from the Director under section 424, a committee of the Senate or the House of Representatives shall publish the statement in the committee report accompanying the bill or joint resolution to which the statement relates if the statement is available at the time the report is printed.

(2) OTHER PUBLICATION OF STATEMENT OF DIRECTOR.—If the statement is not published in the report, or if the bill or joint resolution to which the statement relates is expected to be considered by the Senate or the House of Representatives before the report is published, the committee shall cause the statement, or a summary thereof, to be published in the Con-

gressional Record in advance of floor consideration of the bill or joint resolution.

SEC. 424. [2 U.S.C. 658c] DUTIES OF THE DIRECTOR; STATEMENTS ON BILLS AND JOINT RESOLUTIONS OTHER THAN APPROPRIATIONS BILLS AND JOINT RESOLUTIONS.

(a) FEDERAL INTERGOVERNMENTAL MANDATES IN REPORTED BILLS AND RESOLUTIONS.—For each bill or joint resolution of a public character reported by any committee of authorization of the Senate or the House of Representatives, the Director of the Congressional Budget Office shall prepare and submit to the committee a statement as follows:

(1) CONTENTS.—If the Director estimates that the direct cost of all Federal intergovernmental mandates in the bill or joint resolution will equal or exceed $50,000,000 (adjusted annually for inflation) in the fiscal year in which any Federal intergovernmental mandate in the bill or joint resolution (or in any necessary implementing regulation) would first be effective or in any of the 4 fiscal years following such fiscal year, the Director shall so state, specify the estimate, and briefly explain the basis of the estimate.

(2) ESTIMATES.—Estimates required under paragraph (1) shall include estimates (and brief explanations of the basis of the estimates) of—

(A) the total amount of direct cost of complying with the Federal intergovernmental mandates in the bill or joint resolution;

(B) if the bill or resolution contains an authorization of appropriations under section 425(a)(2)(B), the amount of new budget authority for each fiscal year for a period not to exceed 10 years beyond the effective date necessary for the direct cost of the intergovernmental mandate; and

(C) the amount, if any, of increase in authorization of appropriations under existing Federal financial assistance programs, or of authorization of appropriations for new Federal financial assistance, provided by the bill or joint resolution and usable by State, local, or tribal governments for activities subject to the Federal intergovernmental mandates.

(3) ADDITIONAL FLEXIBILITY INFORMATION.—The Director shall include in the statement submitted under this subsection, in the case of legislation that makes changes as described in section 421(5)(B)(i)(II)—

(A) if no additional flexibility is provided in the legislation, a description of whether and how the States can offset the reduction under existing law; or

(B) if additional flexibility is provided in the legislation, whether the resulting savings would offset the reductions in that program assuming the States fully implement that additional flexibility.

(4) ESTIMATE NOT FEASIBLE.—If the Director determines that it is not feasible to make a reasonable estimate that would be required under paragraphs (1) and (2), the Director shall not make the estimate, but shall report in the statement that the reasonable estimate cannot be made and shall include the

reasons for that determination in the statement. If such determination is made by the Director, a point of order under this part shall lie only under section 425(a)(1) and as if the requirement of section 425(a)(1) had not been met.

(b) FEDERAL PRIVATE SECTOR MANDATES IN REPORTED BILLS AND JOINT RESOLUTIONS.—For each bill or joint resolution of a public character reported by any committee of authorization of the Senate or the House of Representatives, the Director of the Congressional Budget Office shall prepare and submit to the committee a statement as follows:

(1) CONTENTS.—If the Director estimates that the direct cost of all Federal private sector mandates in the bill or joint resolution will equal or exceed $100,000,000 (adjusted annually for inflation) in the fiscal year in which any Federal private sector mandate in the bill or joint resolution (or in any necessary implementing regulation) would first be effective or in any of the 4 fiscal years following such fiscal year, the Director shall so state, specify the estimate, and briefly explain the basis of the estimate.

(2) ESTIMATES.—Estimates required under paragraph (1) shall include estimates (and a brief explanation of the basis of the estimates) of—

(A) the total amount of direct costs of complying with the Federal private sector mandates in the bill or joint resolution; and

(B) the amount, if any, of increase in authorization of appropriations under existing Federal financial assistance programs, or of authorization of appropriations for new Federal financial assistance, provided by the bill or joint resolution usable by the private sector for the activities subject to the Federal private sector mandates.

(3) ESTIMATE NOT FEASIBLE.—If the Director determines that it is not feasible to make a reasonable estimate that would be required under paragraphs (1) and (2), the Director shall not make the estimate, but shall report in the statement that the reasonable estimate cannot be made and shall include the reasons for that determination in the statement.

(c) LEGISLATION FALLING BELOW THE DIRECT COSTS THRESHOLDS.—If the Director estimates that the direct costs of a Federal mandate will not equal or exceed the thresholds specified in subsections (a) and (b), the Director shall so state and shall briefly explain the basis of the estimate.

(d) AMENDED BILLS AND JOINT RESOLUTIONS; CONFERENCE REPORTS.—If a bill or joint resolution is passed in an amended form (including if passed by one House as an amendment in the nature of a substitute for the text of a bill or joint resolution from the other House) or is reported by a committee of conference in amended form, and the amended form contains a Federal mandate not previously considered by either House or which contains an increase in the direct cost of a previously considered Federal mandate, then the committee of conference shall ensure, to the greatest extent practicable, that the Director shall prepare a statement as provided in this subsection or a supplemental statement for the bill or joint resolution in that amended form.

SEC. 425. [2 U.S.C. 658d] LEGISLATION SUBJECT TO POINT OF ORDER [1]

(a) IN GENERAL.—It shall not be in order in the Senate or the House of Representatives to consider—

(1) any bill or joint resolution that is reported by a committee unless the committee has published a statement of the Director on the direct costs of Federal mandates in accordance with section 423(f) before such consideration, except this paragraph shall not apply to any supplemental statement prepared by the Director under section 424(d); and

(2) any bill, joint resolution, amendment, motion, or conference report that would increase the direct costs of Federal intergovernmental mandates by an amount that causes the thresholds specified in section 424(a)(1) to be exceeded, unless—

(A) the bill, joint resolution, amendment, motion, or conference report provides new budget authority or new entitlement authority in the House of Representatives or direct spending authority in the Senate for each fiscal year for such mandates included in the bill, joint resolution, amendment, motion, or conference report in an amount equal to or exceeding the direct costs of such mandate; or

(B) the bill, joint resolution, amendment, motion, or conference report includes an authorization for appropriations in an amount equal to or exceeding the direct costs of such mandate, and—

(i) identifies a specific dollar amount of the direct costs of such mandate for each year up to 10 years during which such mandate shall be in effect under the bill, joint resolution, amendment, motion or conference report, and such estimate is consistent with the estimate determined under subsection (e) for each fiscal year;

(ii) identifies any appropriation bill that is expected to provide for Federal funding of the direct cost referred to under clause (i); and

(iii)(I) provides that for any fiscal year the responsible Federal agency shall determine whether there are insufficient appropriations for that fiscal year to provide for the direct costs under clause (i) of such mandate, and shall (no later than 30 days after the beginning of the fiscal year) notify the appropriate authorizing committees of Congress of the determination and submit either—

(aa) a statement that the agency has determined, based on a re-estimate of the direct costs of such mandate, after consultation with State, local, and tribal governments, that the amount appropriated is sufficient to pay for the direct costs of such mandate; or

[1] Clause 11(a) of Rule XVIII of the Rules of the House of Representatives provides for the enforcement of this section. Such paragraph provides as follows:

(a) In the Committee of the Whole on the state of the Union, an amendment proposing only to strike an unfunded mandate from the portion of the bill then open to amendment, if otherwise in order, may be precluded from consideration only by specific terms of a special order of the House.

(bb) legislative recommendations for either implementing a less costly mandate or making such mandate ineffective for the fiscal year;

(II) provides for expedited procedures for the consideration of the statement or legislative recommendations referred to in subclause (I) by Congress no later than 30 days after the statement or recommendations are submitted to Congress; and

(III) provides that such mandate shall—

(aa) in the case of a statement referred to in subclause (I)(aa), cease to be effective 60 days after the statement is submitted unless Congress has approved the agency's determination by joint resolution during the 60-day period;

(bb) cease to be effective 60 days after the date the legislative recommendations of the responsible Federal agency are submitted to Congress under subclause (I)(bb) unless Congress provides otherwise by law; or

(cc) in the case that such mandate that has not yet taken effect, continue not to be effective unless Congress provides otherwise by law.

(b) RULE OF CONSTRUCTION.—The provisions of subsection (a)(2)(B)(iii) shall not be construed to prohibit or otherwise restrict a State, local, or tribal government from voluntarily electing to remain subject to the original Federal intergovernmental mandate, complying with the programmatic or financial responsibilities of the original Federal intergovernmental mandate and providing the funding necessary consistent with the costs of Federal agency assistance, monitoring, and enforcement.

(c) COMMITTEE ON APPROPRIATIONS.—

(1) APPLICATION.—The provisions of subsection (a)—

(A) shall not apply to any bill or resolution reported by the Committee on Appropriations of the Senate or the House of Representatives; except

(B) shall apply to—

(i) any legislative provision increasing direct costs of a Federal intergovernmental mandate contained in any bill or resolution reported by the Committee on Appropriations of the Senate or House of Representatives;

(ii) any legislative provision increasing direct costs of a Federal intergovernmental mandate contained in any amendment offered to a bill or resolution reported by the Committee on Appropriations of the Senate or House of Representatives;

(iii) any legislative provision increasing direct costs of a Federal intergovernmental mandate in a conference report accompanying a bill or resolution reported by the Committee on Appropriations of the Senate or House of Representatives; and

(iv) any legislative provision increasing direct costs of a Federal intergovernmental mandate contained in any amendments in disagreement between

the two Houses to any bill or resolution reported by the Committee on Appropriations of the Senate or House of Representatives.

(2) CERTAIN PROVISIONS STRICKEN IN SENATE.—Upon a point of order being made by any Senator against any provision listed in paragraph (1)(B), and the point of order being sustained by the Chair, such specific provision shall be deemed stricken from the bill, resolution, amendment, amendment in disagreement, or conference report and may not be offered as an amendment from the floor.

(d) DETERMINATIONS OF APPLICABILITY TO PENDING LEGISLATION.—For purposes of this section, in the Senate, the presiding officer of the Senate shall consult with the Committee on Governmental Affairs, to the extent practicable, on questions concerning the applicability of this part to a pending bill, joint resolution, amendment, motion, or conference report.

(e) DETERMINATIONS OF FEDERAL MANDATE LEVELS.—For purposes of this section, in the Senate, the levels of Federal mandates for a fiscal year shall be determined based on the estimates made by the Committee on the Budget.

SEC. 426. [2 U.S.C. 658e] PROVISIONS RELATING TO THE HOUSE OF REPRESENTATIVES.

(a) ENFORCEMENT IN THE HOUSE OF REPRESENTATIVES.—It shall not be in order in the House of Representatives to consider a rule or order that waives the application of section 425.

(b) DISPOSITION OF POINTS OF ORDER.—

(1) APPLICATION TO THE HOUSE OF REPRESENTATIVES.—This subsection shall apply only to the House of Representatives.

(2) THRESHOLD BURDEN.—In order to be cognizable by the Chair, a point of order under section 425 or subsection (a) of this section must specify the precise language on which it is premised.

(3) QUESTION OF CONSIDERATION.—As disposition of points of order under section 425 or subsection (a) of this section, the Chair shall put the question of consideration with respect to the proposition that is the subject of the points of order.

(4) DEBATE AND INTERVENING MOTIONS.—A question of consideration under this section shall be debatable for 10 minutes by each Member initiating a point of order and for 10 minutes by an opponent on each point of order, but shall otherwise be decided without intervening motion except one that the House adjourn or that the Committee of the Whole rise, as the case may be.

(5) EFFECT ON AMENDMENT IN ORDER AS ORIGINAL TEXT.—The disposition of the question of consideration under this subsection with respect to a bill or joint resolution shall be considered also to determine the question of consideration under this subsection with respect to an amendment made in order as original text.

SEC. 427. [2 U.S.C. 658f] REQUESTS TO THE CONGRESSIONAL BUDGET OFFICE FROM SENATORS.

At the written request of a Senator, the Director shall, to the extent practicable, prepare an estimate of the direct costs of a Fed-

eral intergovernmental mandate contained in an amendment of such Senator.

SEC. 428. [2 U.S.C. 658g] CLARIFICATION OF APPLICATION.

(a) IN GENERAL.—This part applies to any bill, joint resolution, amendment, motion, or conference report that reauthorizes appropriations, or that amends existing authorizations of appropriations, to carry out any statute, or that otherwise amends any statute, only if enactment of the bill, joint resolution, amendment, motion, or conference report—

(1) would result in a net reduction in or elimination of authorization of appropriations for Federal financial assistance that would be provided to State, local, or tribal governments for use for the purpose of complying with any Federal intergovernmental mandate, or to the private sector for use to comply with any Federal private sector mandate, and would not eliminate or reduce duties established by the Federal mandate by a corresponding amount; or

(2) would result in a net increase in the aggregate amount of direct costs of Federal intergovernmental mandates or Federal private sector mandates other than as described in paragraph (1).

(b) DIRECT COSTS.—

(1) IN GENERAL.—For purposes of this part, the direct cost of the Federal mandates in a bill, joint resolution, amendment, motion, or conference report that reauthorizes appropriations, or that amends existing authorizations of appropriations, to carry out a statute, or that otherwise amends any statute, means the net increase, resulting from enactment of the bill, joint resolution, amendment, motion, or conference report, in the amount described under paragraph (2)(A) over the amount described under paragraph (2)(B).

(2) AMOUNTS.—The amounts referred to under paragraph (1) are—

(A) the aggregate amount of direct costs of Federal mandates that would result under the statute if the bill, joint resolution, amendment, motion, or conference report is enacted; and

(B) the aggregate amount of direct costs of Federal mandates that would result under the statute if the bill, joint resolution, amendment, motion, or conference report were not enacted.

(3) EXTENSION OF AUTHORIZATION OF APPROPRIATIONS.—For purposes of this section, in the case of legislation to extend authorization of appropriations, the authorization level that would be provided by the extension shall be compared to the authorization level for the last year in which authorization of appropriations is already provided.

TITLE V—CREDIT REFORM

SEC. 500. SHORT TITLE.

This title may be cited as the "Federal Credit Reform Act of 1990".

SEC. 501. [2 U.S.C. 661] PURPOSES.

The purposes of this title are to—

(1) measure more accurately the costs of Federal credit programs;

(2) place the cost of credit programs on a budgetary basis equivalent to other Federal spending;

(3) encourage the delivery of benefits in the form most appropriate to the needs of beneficiaries; and

(4) improve the allocation of resources among credit programs and between credit and other spending programs.

SEC. 502. [2 U.S.C. 661a] DEFINITIONS.

For purposes of this title—

(1) The term "direct loan" means a disbursement of funds by the Government to a non-Federal borrower under a contract that requires the repayment of such funds with or without interest. The term includes the purchase of, or participation in, a loan made by another lender and financing arrangements that defer payment for more than 90 days, including the sale of a government asset on credit terms. The term does not include the acquisition of a federally guaranteed loan in satisfaction of default claims or the price support loans of the Commodity Credit Corporation.

(2) The term "direct loan obligation" means a binding agreement by a Federal agency to make a direct loan when specified conditions are fulfilled by the borrower.

(3) The term "loan guarantee" means any guarantee, insurance, or other pledge with respect to the payment of all or a part of the principal or interest on any debt obligation of a non-Federal borrower to a non-Federal lender, but does not include the insurance of deposits, shares, or other withdrawable accounts in financial institutions.

(4) The term "loan guarantee commitment" means a binding agreement by a Federal agency to make a loan guarantee when specified conditions are fulfilled by the borrower, the lender, or any other party to the guarantee agreement.

(5)(A) The term "cost" means the estimated long-term cost to the Government of a direct loan or loan guarantee or modification thereof, calculated on a net present value basis, excluding administrative costs and any incidental effects on governmental receipts or outlays.

(B) The cost of a direct loan shall be the net present value, at the time when the direct loan is disbursed, of the following estimated cash flows:

(i) loan disbursements;

(ii) repayments of principal; and

(iii) payments of interest and other payments by or to the Government over the life of the loan after adjusting for estimated defaults, prepayments, fees, penalties, and other recoveries;

including the effects of changes in loan terms resulting from the exercise by the borrower of an option included in the loan contract.

(C) The cost of a loan guarantee shall be the net present value, at the time when the guaranteed loan is disbursed, of the following estimated cash flows:

(i) payments by the Government to cover defaults and delinquencies, interest subsidies, or other payments; and

(ii) payments to the Government including origination and other fees, penalties and recoveries;

including the effects of changes in loan terms resulting from the exercise by the guaranteed lender of an option included in the loan guarantee contract, or by the borrower of an option included in the guaranteed loan contract.

(D) The cost of a modification is the difference between the current estimate of the net present value of the remaining cash flows under the terms of a direct loan or loan guarantee contract, and the current estimate of the net present value of the remaining cash flows under the terms of the contract, as modified.

(E) In estimating net present values, the discount rate shall be the average interest rate on marketable Treasury securities of similar maturity to the cash flows of the direct loan or loan guarantee for which the estimate is being made.

(F) When funds are obligated for a direct loan or loan guarantee, the estimated cost shall be based on the current assumptions, adjusted to incorporate the terms of the loan contract, for the fiscal year in which the funds are obligated.

(6) The term "credit program account" means the budget account into which an appropriation to cover the cost of a direct loan or loan guarantee program is made and from which such cost is disbursed to the financing account.

(7) The term "financing account" means the non-budget account or accounts associated with each credit program account which holds balances, receives the cost payment from the credit program account, and also includes all other cash flows to and from the Government resulting from direct loan obligations or loan guarantee commitments made on or after October 1, 1991.

(8) The term "liquidating account" means the budget account that includes all cash flows to and from the Government resulting from direct loan obligations or loan guarantee commitments made prior to October 1, 1991. These accounts shall be shown in the budget on a cash basis.

(9) The term "modification" means any Government action that alters the estimated cost of an outstanding direct loan (or direct loan obligation) or an outstanding loan guarantee (or loan guarantee commitment) from the current estimate of cash flows. This includes the sale of loan assets, with or without recourse, and the purchase of guaranteed loans. This also includes any action resulting from new legislation, or from the exercise of administrative discretion under existing law, that directly or indirectly alters the estimated cost of outstanding direct loans (or direct loan obligations) or loan guarantees (or loan guarantee commitments) such as a change in collection procedures.

(10) The term "current" has the same meaning as in section 250(c)(9) of the Balanced Budget and Emergency Deficit Control Act of 1985.

(11) The term "Director" means the Director of the Office of Management and Budget.

SEC. 503. [2 U.S.C. 661b] OMB AND CBO ANALYSIS, COORDINATION, AND REVIEW.

(a) IN GENERAL.—For the executive branch, the Director shall be responsible for coordinating the estimates required by this title. The Director shall consult with the agencies that administer direct loan or loan guarantee programs.

(b) DELEGATION.—The Director may delegate to agencies authority to make estimates of costs. The delegation of authority shall be based upon written guidelines, regulations, or criteria consistent with the definitions in this title.

(c) COORDINATION WITH THE CONGRESSIONAL BUDGET OFFICE.—In developing estimation guidelines, regulations, or criteria to be used by Federal agencies, the Director shall consult with the Director of the Congressional Budget Office.

(d) IMPROVING COST ESTIMATES.—The Director and the Director of the Congressional Budget Office shall coordinate the development of more accurate data on historical performance of direct loan and loan guarantee programs. They shall annually review the performance of outstanding direct loans and loan guarantees to improve estimates of costs. The Office of Management and Budget and the Congressional Budget Office shall have access to all agency data that may facilitate the development and improvement of estimates of costs.

(e) HISTORICAL CREDIT PROGRAM COSTS.—The Director shall review, to the extent possible, historical data and develop the best possible estimates of adjustments that would convert aggregate historical budget data to credit reform accounting.

(f) ADMINISTRATIVE COSTS.—The Director and the Director of the Congressional Budget Office shall each analyze and report to Congress on differences in long-term administrative costs for credit programs versus grant programs by January 31, 1992. Their reports shall recommend to Congress any changes, if necessary, in the treatment of administrative costs under credit reform accounting.

SEC. 504. [2 U.S.C. 661c] BUDGETARY TREATMENT.

(a) PRESIDENT'S BUDGET.—Beginning with fiscal year 1992, the President's budget shall reflect the costs of direct loan and loan guarantee programs. The budget shall also include the planned level of new direct loan obligations or loan guarantee commitments associated with each appropriations request.

(b) APPROPRIATIONS REQUIRED.—Notwithstanding any other provision of law, new direct loan obligations may be incurred and new loan guarantee commitments may be made for fiscal year 1992 and thereafter only to the extent that—

(1) new budget authority to cover their costs is provided in advance in an appropriations Act;

(2) a limitation on the use of funds otherwise available for the cost of a direct loan or loan guarantee program has been provided in advance in an appropriations Act; or

(3) authority is otherwise provided in appropriation Acts.

(c) EXEMPTION FOR MANDATORY PROGRAMS.—Subsections (b) and (e) shall not apply to a direct loan or loan guarantee program that—

(1) constitutes an entitlement (such as the guaranteed student loan program or the veterans' home loan guaranty program); or

(2) all existing credit programs of the Commodity Credit Corporation on the date of enactment of this title.

(d) BUDGET ACCOUNTING.—

(1) The authority to incur new direct loan obligations, make new loan guarantee commitments, or modify outstanding direct loans (or direct loan obligations) or loan guarantees (or loan guarantee commitments) shall constitute new budget authority in an amount equal to the cost of the direct loan or loan guarantee in the fiscal year in which definite authority becomes available or indefinite authority is used. Such budget authority shall constitute an obligation of the credit program account to pay to the financing account.

(2) The outlays resulting from new budget authority for the cost of direct loans or loan guarantees described in paragraph (1) shall be paid from the credit program account into the financing account and recorded in the fiscal year in which the direct loan or the guaranteed loan is disbursed or its costs altered.

(3) All collections and payments of the financing accounts shall be a means of financing.

(e) MODIFICATIONS.—An outstanding direct loan (or direct loan obligation) or loan guarantee (or loan guarantee commitment) shall not be modified in a manner that increases its costs unless budget authority for the additional cost has been provided in advance in an appropriations Act.

(f) REESTIMATES.—When the estimated cost for a group of direct loans or loan guarantees for a given credit program made in a single fiscal year is reestimated in a subsequent year, the difference between the reestimated cost and the previous cost estimate shall be displayed as a distinct and separately identified subaccount in the credit program account as a change in program costs and a change in net interest. There is hereby provided permanent indefinite authority for these reestimates.

(g) ADMINISTRATIVE EXPENSES.—All funding for an agency's administration of a direct loan or loan guarantee program shall be displayed as distinct and separately identified subaccounts within the same budget account as the program's cost.

SEC. 505. [2 U.S.C. 661d] AUTHORIZATIONS.

(a) AUTHORIZATION OF APPROPRIATIONS FOR COSTS.—There are authorized to be appropriated to each Federal agency authorized to make direct loan obligations or loan guarantee commitments, such sums as may be necessary to pay the cost associated with such direct loan obligations or loan guarantee commitments.

(b) AUTHORIZATION FOR FINANCING ACCOUNTS.—In order to implement the accounting required by this title, the President is authorized to establish such non-budgetary accounts as may be appropriate.

(c) TREASURY TRANSACTIONS WITH THE FINANCING ACCOUNTS.—The Secretary of the Treasury shall borrow from, receive from, lend to, or pay to the financing accounts such amounts as may be appropriate. The Secretary of the Treasury may prescribe forms and denominations, maturities, and terms and conditions for the transactions described above, except that the rate of interest charged by the Secretary on lending to financing accounts (including amounts treated as lending to financing accounts by the Federal Financing Bank (hereinafter in this subsection referred to as the "Bank") pursuant to section 406(b)[1]) and the rate of interest paid to financing accounts on uninvested balances in financing accounts shall be the same as the rate determined pursuant to section 502(5)(E). For guaranteed loans financed by the Bank and treated as direct loans by a Federal agency pursuant to section 406(b)[1], any fee or interest surcharge (the amount by which the interest rate charged exceeds the rate determined pursuant to section 502(5)(E)) that the Bank charges to a private borrower pursuant to section 6(c) of the Federal Financing Bank Act of 1973 shall be considered a cash flow to the Government for the purposes of determining the cost of the direct loan pursuant to section 502(5). All such amounts shall be credited to the appropriate financing account. The Bank is authorized to require reimbursement from a Federal agency to cover the administrative expenses of the Bank that are attributable to the direct loans financed for that agency. All such payments by an agency shall be considered administrative expenses subject to section 504(g). This subsection shall apply to transactions related to direct loan obligations or loan guarantee commitments made on or after October 1, 1991. The authorities described above shall not be construed to supersede or override the authority of the head of a Federal agency to administer and operate a direct loan or loan guarantee program. All of the transactions provided in this subsection shall be subject to the provisions of subchapter II of chapter 15 of title 31, United States Code. Cash balances of the financing accounts in excess of current requirements shall be maintained in a form of uninvested funds and the Secretary of the Treasury shall pay interest on these funds.

(d) AUTHORIZATION FOR LIQUIDATING ACCOUNTS.—(1) Amounts in liquidating accounts shall be available only for payments resulting from direct loan obligations or loan guarantee commitments made prior to October 1, 1991, for—

(A) interest payments and principal repayments to the Treasury or the Federal Financing Bank for amounts borrowed;

(B) disbursements of loans;

(C) default and other guarantee claim payments;

(D) interest supplement payments;

[1] So in law. Probably should read "section 405(b)".

(E) payments for the costs of foreclosing, managing, and selling collateral that are capitalized or routinely deducted from the proceeds of sales;

(F) payments to financing accounts when required for modifications;

(G) administrative expenses, if—

(i) amounts credited to the liquidating account would have been available for administrative expenses under a provision of law in effect prior to October 1, 1991; and

(ii) no direct loan obligation or loan guarantee commitment has been made, or any modification of a direct loan or loan guarantee has been made, since September 30, 1991; or

(H) such other payments as are necessary for the liquidation of such direct loan obligations and loan guarantee commitments.

(2) Amounts credited to liquidating accounts in any year shall be available only for payments required in that year. Any unobligated balances in liquidating accounts at the end of a fiscal year shall be transferred to miscellaneous receipts as soon as practicable after the end of the fiscal year.

(3) If funds in liquidating accounts are insufficient to satisfy obligations and commitments of such accounts, there is hereby provided permanent, indefinite authority to make any payments required to be made on such obligations and commitments.

(e) AUTHORIZATION OF APPROPRIATIONS FOR IMPLEMENTATION EXPENSES.—There are authorized to be appropriated to existing accounts such sums as may be necessary for salaries and expenses to carry out the responsibilities under this title.

(f) REINSURANCE.—Nothing in this title shall be construed as authorizing or requiring the purchase of insurance or reinsurance on a direct loan or loan guarantee from private insurers. If any such reinsurance for a direct loan or loan guarantee is authorized, the cost of such insurance and any recoveries to the Government shall be included in the calculation of the cost.

(g) ELIGIBILITY AND ASSISTANCE.—Nothing in this title shall be construed to change the authority or the responsibility of a Federal agency to determine the terms and conditions of eligibility for, or the amount of assistance provided by a direct loan or a loan guarantee.

SEC. 506. [2 U.S.C. 661e] TREATMENT OF DEPOSIT INSURANCE AND AGENCIES AND OTHER INSURANCE PROGRAMS.

(a) IN GENERAL.—This title shall not apply to the credit or insurance activities of the Federal Deposit Insurance Corporation, National Credit Union Administration, Resolution Trust Corporation, Pension Benefit Guaranty Corporation, National Flood Insurance, National Insurance Development Fund, Crop Insurance, or Tennessee Valley Authority.

(b) STUDY.—The Director and the Director of the Congressional Budget Office shall each study whether the accounting for Federal deposit insurance programs should be on a cash basis on the same basis as loan guarantees, or on a different basis. Each Director shall report findings and recommendations to the President and the Congress on or before May 31, 1991.

(c) ACCESS TO DATA.—For the purposes of subsection (b), the Office of Management and Budget and the Congressional Budget Office shall have access to all agency data that may facilitate these studies.

SEC. 507. [2 U.S.C. 661f] EFFECT ON OTHER LAWS.

(a) EFFECT ON OTHER LAWS.—This title shall supersede, modify, or repeal any provision of law enacted prior to the date of enactment of this title to the extent such provision is inconsistent with this title. Nothing in this title shall be construed to establish a credit limitation on any Federal loan or loan guarantee program.

(b) CREDITING OF COLLECTIONS.—Collections resulting from direct loans obligated or loan guarantees committed prior to October 1, 1991, shall be credited to the liquidating accounts of Federal agencies. Amounts so credited shall be available, to the same extent that they were available prior to the date of enactment of this title, to liquidate obligations arising from such direct loans obligated or loan guarantees committed prior to October 1, 1991, including repayment of any obligations held by the Secretary of the Treasury or the Federal Financing Bank. The unobligated balances of such accounts that are in excess of current needs shall be transferred to the general fund of the Treasury. Such transfers shall be made from time to time but, at least once each year.

[Title VI repealed by § 10118(a) of Public Law 105–33 (111 Stat. 695)]

TITLE VII—PROGRAM REVIEW AND EVALUATION

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CONTINUING STUDY OF ADDITIONAL BUDGET REFORM PROPOSALS

SEC. 703. [2 U.S.C. 623] (a) The Committees on the Budget of the House of Representatives and the Senate shall study on a continuing basis proposals designed to improve and facilitate methods of congressional budgetmaking. The proposals to be studied shall include, but are not limited to, proposals for—

(1) improving the information base required for determining the effectiveness of new programs by such means as pilot testing, survey research, and other experimental and analytical techniques;

(2) improving analytical and systematic evaluation of the effectiveness of existing programs;

(3) establishing maximum and minimum time limitations for program authorization; and

(4) developing techniques of human resource accounting and other means of providing noneconomic as well as economic evaluation measures.

(b) The Committee on the Budget of each House shall, from time to time, report to its House the results of the study carried on by it under subsection (a), together with its recommendations.

(c) Nothing in this section shall preclude studies to improve the budgetary process by any other committee of the House of Representatives or the Senate or any joint committee of the Congress.

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TITLE IX—MISCELLANEOUS PROVISIONS; EFFECTIVE DATES

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EXERCISE OF RULEMAKING POWERS

SEC. 904. [2 U.S.C. 621 note] (a) The provisions of this title and of titles I, III, IV, and V and the provisions of sections 701, 703, and 1017 are enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

(b) Any provision of title III or IV may be waived or suspended in the Senate by a majority vote of the Members voting, a quorum being present, or by the unanimous consent of the Senate.

(c) WAIVERS.—

(1) PERMANENT.—Sections 305(b)(2), 305(c)(4), 306, 310(d)(2), 313, 904(c), and 904(d) of this Act may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn.

(2) TEMPORARY.—Sections 301(i), 302(c), 302(f), 310(g), 311(a), 312(b), and 312(c) of this Act and sections 258(a)(4)(C), 258A(b)(3)(C)(I)[1], 258B(f)(1), 258B(h)(1), 258(h)(3)[2], 258C(a)(5), and 258C(b)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985 may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn.

(d) APPEALS.—

(1) PROCEDURE.—Appeals in the Senate from the decisions of the Chair relating to any provision of title III or IV or section 1017 shall, except as otherwise provided therein, be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the resolution, concurrent resolution, reconciliation bill, or rescission bill, as the case may be.

(2) PERMANENT.—An affirmative vote of three-fifths of the Members, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under sections 305(b)(2), 305(c)(4), 306, 310(d)(2), 313, 904(c), and 904(d) of this Act.

(3) TEMPORARY.—An affirmative vote of three-fifths of the Members, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under sections 301(i), 302(c), 302(f), 310(g), 311(a), 312(b), and 312(c) of this Act and sections 258(a)(4)(C),

[1] So in law. Probably should read "258A(b)(3)(C)(i)".
[2] So in law. Probably should read "258B(h)(3)"

258A(b)(3)(C)(I)[1], 258B(f)(1), 258B(h)(1), 258(h)(3)[2], 258C(a)(5), and 258C(b)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985.

(e) EXPIRATION OF CERTAIN SUPERMAJORITY VOTING REQUIREMENTS.—Subsections (c)(2) and (d)(3) shall expire on September 30, 2002.

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TITLE X—IMPOUNDMENT CONTROL

PART A—GENERAL PROVISIONS

DISCLAIMER

SEC. 1001. [2 U.S.C. 681] Nothing contained in this Act, or in any amendments made by this Act, shall be construed as—

(1) asserting or conceding the constitutional powers or limitations of either the Congress or the President;

(2) ratifying or approving any impoundment heretofore or hereafter executed or approved by the President or any other Federal officer or employee, except insofar as pursuant to statutory authorization then in effect;

(3) affecting in any way the claims or defenses of any party to litigation concerning any impoundment; or

(4) superseding any provision of law which requires the obligation of budget authority or the making of outlays thereunder.

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PART B—CONGRESSIONAL CONSIDERATION OF PROPOSED RESCISSIONS, RESERVATIONS, AND DEFERRALS OF BUDGET AUTHORITY

DEFINITIONS

SEC. 1011. [2 U.S.C. 682] For purposes of this part—

(1) "deferral of budget authority" includes—

(A) withholding or delaying the obligations or expenditure of budget authority (whether by establishing reserves or otherwise) provided for projects or activities; or

(B) any other type of Executive action or inaction which effectively precludes the obligation or expenditure of budget authority, including authority to obligate by contract in advance of appropriations as specifically authorized by law;

(2) "Comptroller General" means the Comptroller General of the United States;

(3) "rescission bill" means a bill or joint resolution which only recinds in whole or in part, budget authority proposed to be rescinded in a special message transmitted by the President under section 1012, and upon which the Congress completes action before the end of the first period of 45 calendar days of continuous session of the Congress after the date on which the President's message is received by the Congress;

(4) "impoundment resolution" means a resolution of the House of Representatives or the Senate which only expresses

its disapproval of a proposed deferral of budget authority set forth in a special message transmitted by the President under section 1013; and

(5) continuity of a session of the Congress shall be considered as broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in the computation of the 45-day period referred to in paragraph (3) of this section and in section 1012, and the 25-day periods referred to in sections 1016 and 1017(b)(1). If a special message is transmitted under section 1012 during any Congress and the last session of such Congress adjourns sine die before the expiration of 45 calendar days of continuous session (or a special message is so transmitted after the last session of the Congress adjourns sine die), the message shall be deemed to have been retransmitted on the first day of the succeeding Congress and the 45-day period referred to in paragraph (3) of this section and section 1012 (with respect to such message) shall commence on the day after such first day.

RESCISSION OF BUDGET AUTHORITY

SEC. 1012. [2 U.S.C. 683] (a) TRANSMITTAL OF SPECIAL MESSAGE.—Whenever the President determines that all or part of any budget authority will not be required to carry out the full objectives or scope of programs for which it is provided or that such budget authority should be rescinded for fiscal policy or other reasons (including the determination of authorized projects or activities for which budget authority has been provided), or whenever all or part of budget authority provided for only one fiscal year is to be reserved from obligation for such fiscal year, the President shall transmit to both Houses of Congress a special message specifying—

(1) the amount of budget authority which he proposes to be rescinded or which is to be so reserved;

(2) any account, department, or establishment of the Government to which such budget authority is available for obligation, and the specific project or governmental functions involved;

(3) the reasons why the budget authority should be rescinded or is to be so reserved;

(4) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect of the proposed rescission or of the reservation; and

(5) all facts, circumstances, and considerations relating to or bearing upon the proposed rescission or the reservation and the decision to effect the proposed rescission or the reservation, and to the maximum extent practicable, the estimated effect of the proposed rescission or the reservation upon the objects, purposes, and programs for which the budget authority is provided.

(b) REQUIREMENT TO MAKE AVAILABLE FOR OBLIGATION.—Any amount of budget authority proposed to be rescinded or that is to be reserved as set forth in such special message shall be made available for obligation unless, within the prescribed 45-day period,

the Congress has completed action on a rescission bill rescinding all or part of the amount proposed to be rescinded or that is to be reserved. Funds made available for obligation under this procedure may not be proposed for rescission again.

PROPOSED DEFERRALS OF BUDGET AUTHORITY

SEC. 1013. [2 U.S.C. 684] (a) TRANSMITTAL OF SPECIAL MESSAGE.—Whenever the President, the Director of the Office of Management and Budget, the head of any department or agency of the United States, or any officer or employee of the United States proposes to defer any budget authority provided for a specific purpose or project, the President shall transmit to the House of Representatives and the Senate a special message specifying—

(1) the amount of the budget authority proposed to be deferred;

(2) any account, department, or establishment of the Government to which such budget authority is available for obligation, and the specific project or governmental functions involved;

(3) the period of time during which the budget authority is proposed to be deferred;

(4) the reasons for the proposed deferral, including any legal authority invoked to justify the proposed deferral;

(5) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect of the proposed deferral; and

(6) all facts, circumstances, and considerations relating to or bearing upon the proposed deferral and the decision to effect the proposed deferral, including an analysis of such facts, circumstances, and considerations in terms of their application to any legal authority, including specific elements of legal authority, invoked to justify such proposed deferral, and to the maximum extent practicable, the estimated effect of the proposed deferral upon the objects, purposes, and programs for which the budget authority is provided.

A special message may include one or more proposed deferrals of budget authority. A deferral may not be proposed for any period of time extending beyond the end of the fiscal year in which the special message proposing the deferral is transmitted to the House and the Senate.

(b) CONSISTENCY WITH LEGISLATIVE POLICY.—Deferrals shall be permissible only—

(1) to provide for contingencies;

(2) to achieve savings made possible by or through changes in requirements or greater efficiency of operations; or

(3) as specifically provided by law.

No officer or employee of the United States may defer any budget authority for any other purpose.

(c) EXCEPTION.—The provisions of this section do not apply to any budget authority proposed to be rescinded or that is to be reserved as set forth in a special message required to be transmitted under section 1012.

TRANSMISSION OF MESSAGES; PUBLICATION

SEC. 1014. [2 U.S.C. 685] (a) DELIVERY TO HOUSE AND SENATE.—Each special message transmitted under section 1012 or 1013 shall be transmitted to the House of Representatives and the Senate on the same day, and shall be delivered to the Clerk of the House of Representatives if the House is not in session, and to the Secretary of the Senate if the Senate is not in session. Each special message so transmitted shall be referred to the appropriate committee of the House of Representatives and the Senate. Each such message shall be printed as a document of each House.

(b) DELIVERY TO COMPTROLLER GENERAL.—A copy of each special message transmitted under section 1012 or 1013 shall be transmitted to the Comptroller General on the same day it is transmitted to the House of Representatives and the Senate. In order to assist the Congress in the exercise of its functions under sections 1012 and 1013, the Comptroller General shall review each such message and inform the House of Representatives and the Senate as promptly as practicable with respect to——

(1) in the case of a special message transmitted under section 1012, the facts surrounding the proposed rescission or the reservation of budget authority (including the probable effects thereof); and

(2) in the case of a special message transmitted under section 1013, (A) the facts surrounding each proposed deferral of budget authority (including the probable effects thereof) and (B) whether or not (or to what extent), in his judgment, such proposed deferral is in accordance with existing statutory authority.

(c) TRANSMISSION OF SUPPLEMENTARY MESSAGES.—If any information contained in a special message transmitted under section 1012 or 1013 is subsequently revised, the President shall transmit to both Houses of Congress and the Comptroller General a supplementary message stating and explaining such revision. Any such supplementary message shall be delivered, referred, and printed as provided in subsection (a). The Comptroller General shall promptly notify the House of Representatives and the Senate of any change in the information submitted by him under subsection (b) which may be necessitated by such revision.

(d) PRINTING IN FEDERAL REGISTER.—Any special message transmitted under section 1012 or 1013, and any supplementary message transmitted under subsection (c), shall be printed in the first issue of the Federal Register published after such transmittal.

(e) CUMULATIVE REPORTS OF PROPOSED RESCISSIONS, RESERVATIONS, AND DEFERRALS OF BUDGET AUTHORITY.—

(1) The President shall submit a report to the House of Representatives and the Senate, not later than the 10th day of each month during a fiscal year, listing all budget authority for that fiscal year with respect to which, as of the first day of such month—

(A) he has transmitted a special message under section 1012 with respect to a proposed rescission or a reservation; and

(B) he has transmitted a special message under section 1013 proposing a deferral.

Such report shall also contain, with respect to each such proposed rescission or deferral, or each such reservation, the information required to be submitted in the special message with respect thereto under section 1012 or 1013.

(2) Each report submitted under paragraph (1) shall be printed in the first issue of the Federal Register published after its submission.

REPORTS BY COMPTROLLER GENERAL

SEC. 1015. [2 U.S.C. 686] (a) FAILURE TO TRANSMIT SPECIAL MESSAGE.—If the Comptroller General finds that the President, the Director of the Office of Management and Budget, the head of any department or agency of the United States, or any other officer or employee of the United States—

(1) is to establish a reserve or proposes to defer budget authority with respect to which the President is required to transmit a special message under section 1012 or 1013; or

(2) has ordered, permitted, or approved the establishment of such a reserve or a deferral of budget authority;

and that the President has failed to transmit a special message with respect to such reserve or deferral, the Comptroller General shall make a report on such reserve or deferral and any available information concerning it to both Houses of Congress. The provisions of this part shall apply with respect to such reserve or deferral in the same manner and with the same effect as if such report of the Comptroller General were a special message transmitted by the President under section 1012 or 1013, and, for purposes of this part, such report shall be considered a special message transmitted under section 1012 or 1013.

(b) INCORRECT CLASSIFICATION OF SPECIAL MESSAGE.—If the President has transmitted a special message to both Houses of Congress in accordance with section 1012 or 1013, and the Comptroller General believes that the President so transmitted the special message in accordance with one of those sections when the special message should have been transmitted in accordance with the other of those sections, the Comptroller General shall make a report to both Houses of the Congress setting forth his reasons.

SUITS BY COMPTROLLER GENERAL

SEC. 1016. [2 U.S.C. 687] If, under this title, budget authority is required to be made available for obligation and such budget authority is not made available for obligation, the Comptroller General is hereby expressly empowered, through attorneys of his own selection, to bring a civil action in the United States District Court for the District of Columbia to require such budget authority to be made available for obligation, and such court is hereby expressly empowered to enter in such civil action, against any department, agency, officer, or employee of the United States, any decree, judgment, or order, which may be necessary or appropriate to make such budget authority available for obligation. No civil action shall be brought by the Comptroller General under this section until the

expiration of 25 calendar days of continuous session of the Congress following the date on which an explanatory statement by the Comptroller General of the circumstances giving rise to the action contemplated has been filed with the Speaker of the House of Representatives and the President of the Senate.

PROCEDURE IN HOUSE AND SENATE

SEC. 1017. [2 U.S.C. 688] (a) REFERRAL.—Any rescission bill introduced with respect to a special message or impoundment resolution introduced with respect to a proposed deferral of budget authority shall be referred to the appropriate committee of the House of Representatives or the Senate, as the case may be.

(b) DISCHARGE OF COMMITTEE.—

(1) If the committee to which a rescission bill or impoundment resolution has been referred has not reported it at the end of 25 calendar days of continuous session of the Congress after its introduction, it is in order to move either to discharge the committee from further consideration of the bill or resolution or to discharge the committee from further consideration of any other rescission bill with respect to the same special message or impoundment resolution with respect to the same proposed deferral, as the case may be, which has been referred to the committee.

(2) A motion to discharge may be made only by an individual favoring the bill or resolution, may be made only if supported by one-fifth of the Members of the House involved (a quorum being present), and is highly privileged in the House and privileged in the Senate (except that it may not be made after the committee has reported a bill or resolution with respect to the same special message or the same proposed deferral, as the case may be); and debate thereon shall be limited to not more than 1 hour, the time to be divided in the House equally between those favoring and those opposing the bill or resolution, and to be divided in the Senate equally between, and controlled by, the majority leader and the minority leader or their designees. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(c) FLOOR CONSIDERATION IN THE HOUSE.—

(1) When the committee of the House of Representatives has reported, or has been discharged from further consideration of a rescission bill or impoundment resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the bill or resolution. The motion shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate on a rescission bill or impoundment resolution shall be limited to not more than 2 hours, which shall be divided equally between those favoring and those opposing the bill or resolution. A motion further to limit debate shall not be debatable. In the case of an impoundment resolution, no

amendment to, or motion to recommit, the resolution shall be in order. It shall not be in order to move to reconsider the vote by which a rescission bill or impoundment resolution is agreed to or disagreed to.

(3) Motions to postpone, made with respect to the consideration of a rescission bill or impoundment resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(4) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to any rescission bill or impoundment resolution shall be decided without debate.

(5) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of any rescission bill or impoundment resolution and amendments thereto (or any conference report thereon) shall be governed by the Rules of the House of Representatives applicable to other bills and resolutions, amendments, and conference reports in similar circumstances.

(d) FLOOR CONSIDERATION IN THE SENATE.—

(1) Debate in the Senate on any rescission bill or impoundment resolution, and all amendments thereto (in the case of a rescission bill) and debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(2) Debate in the Senate on any amendment to a rescission bill shall be limited to 2 hours, to be equally divided between, and controlled by, the mover and the manager of the bill. Debate on any amendment to an amendment, to such a bill, and debate on any debatable motion or appeal in connection with such a bill or an impoundment resolution shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the bill or resolution, except that in the event the manager of the bill or resolution is in favor in any such amendment, motion, or appeal, the time in opposition thereto, shall be controlled by the minority leader or his designee. No amendment that is not germane to the provisions of a rescission bill shall be received. Such leaders, or either of them, may, from the time under their control on the passage of a rescission bill or impoundment resolution, allot additional time to any Senator during the consideration of any amendment, debatable motion, or appeal.

(3) A motion to further limit debate is not debatable. In the case of a rescission bill, a motion to recommit (except a motion to recommit with instructions to report back within a specified number of days, not to exceed 3, not counting any day on which the Senate is not in session) is not in order. Debate on any such motion to recommit shall be limited to one hour, to be equally divided between, and controlled by, the mover and the manager of the concurrent resolution. In the case of an impoundment resolution, no amendment or motion to recommit is in order.

(4) The conference report on any rescission bill shall be in order in the Senate at any time after the third day (excluding Saturdays, Sundays, and legal holidays) following the day on which such a conference report is reported and is available to Members of the Senate. A motion to proceed to the consideration of the conference report may be made even though a previous motion to the same effect has been disagreed to.

(5) During the consideration in the Senate of the conference report on any rescission bill, debate shall be limited to 2 hours, to be equally divided between, and controlled by, the majority leader and minority leader or their designees. Debate on any debatable motion or appeal related to the conference report shall be limited to 30 minutes, to be equally divided between, and controlled by, the mover and the manager of the conference report.

(6) Should the conference report be defeated, debate on any request for a new conference and the appointment of conferees shall be limited to one hour, to be equally divided, between, and controlled by, the manager of the conference report and the minority leader or his designee, and should any motion be made to instruct the conferees before the conferees are named, debate on such motion shall be limited to 30 minutes, to be equally divided between, and controlled by, the mover and the manager of the conference report. Debate on any amendment to any such instructions shall be limited to 20 minutes, to be equally divided between, and controlled by the mover and the manager of the conference report. In all cases when the manager of the conference report is in favor of any motion, appeal, or amendment, the time in opposition shall be under the control of the minority leader or his designee.

(7) In any case in which there are amendments in disagreement, time on each amendment shall be limited to 30 minutes, to be equally divided between, and controlled by, the manager of the conference report and the minority leader or his designee. No amendment that is not germane to the provisions of such amendments shall be received.

NOTE:

Constitutionality of Line Item Veto

The United States Supreme Court, in Clinton v. City of New York, U.S. Dist. Col. 1998, 118 S.Ct. 2091, 141 L.Ed.2d 393, found that the Line Item Veto Act of 1996, Pub.L. 104–130, April 9, 1996, 110 Stat. 1200, which is part C of title X the Congressional Budget Act of 1974, was unconstitutional as a violation of the Presentment Clause of the United States Constitution (Art. I, § 7, cl. 2).

PART C—LINE ITEM VETO

LINE ITEM VETO AUTHORITY

SEC. 1021. [2 U.S.C. 691] (a) IN GENERAL.—Notwithstanding the provisions of parts A and B, and subject to the provisions of this part, the President may, with respect to any bill or joint reso-

lution that has been signed into law pursuant to Article I, section 7, of the Constitution of the United States, cancel in whole—

(1) any dollar amount of discretionary budget authority;

(2) any item of new direct spending; or

(3) any limited tax benefit;

if the President—

(A) determines that such cancellation will—

(i) reduce the Federal budget deficit;

(ii) not impair any essential Government functions; and

(iii) not harm the national interest; and

(B) notifies the Congress of such cancellation by transmitting a special message, in accordance with section 1022, within five calendar days (excluding Sundays) after the enactment of the law providing the dollar amount of discretionary budget authority, item of new direct spending, or limited tax benefit that was canceled.

(b) IDENTIFICATION OF CANCELLATIONS.—In identifying dollar amounts of discretionary budget authority, items of new direct spending, and limited tax benefits for cancellation, the President shall—

(1) consider the legislative history, construction, and purposes of the law which contains such dollar amounts, items, or benefits;

(2) consider any specific sources of information referenced in such law or, in the absence of specific sources of information, the best available information; and

(3) use the definitions contained in section 1026 in applying this part to the specific provisions of such law.

(c) EXCEPTION FOR DISAPPROVAL BILLS.—The authority granted by subsection (a) shall not apply to any dollar amount of discretionary budget authority, item of new direct spending, or limited tax benefit contained in any law that is a disapproval bill as defined in section 1026.

SPECIAL MESSAGES

SEC. 1022. [2 U.S.C. 691a] (a) IN GENERAL.—For each law from which a cancellation has been made under this part, the President shall transmit a single special message to the Congress.

(b) CONTENTS.—

(1) The special message shall specify—

(A) the dollar amount of discretionary budget authority, item of new direct spending, or limited tax benefit which has been canceled, and provide a corresponding reference number for each cancellation;

(B) the determinations required under section 1021(a), together with any supporting material;

(C) the reasons for the cancellation;

(D) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect of the cancellation;

(E) all facts, circumstances and considerations relating to or bearing upon the cancellation, and to the maximum extent practicable, the estimated effect of the cancellation

upon the objects, purposes and programs for which the canceled authority was provided; and

(F) include the adjustments that will be made pursuant to section 1024 to the discretionary spending limits under section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 and an evaluation of the effects of those adjustments upon the sequestration procedures of section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985.

(2) In the case of a cancellation of any dollar amount of discretionary budget authority or item of new direct spending, the special message shall also include, if applicable—

(A) any account, department, or establishment of the Government for which such budget authority was to have been available for obligation and the specific project or governmental functions involved;

(B) the specific States and congressional districts, if any, affected by the cancellation; and

(C) the total number of cancellations imposed during the current session of Congress on States and congressional districts identified in subparagraph (B).

(c) TRANSMISSION OF SPECIAL MESSAGES TO HOUSE AND SENATE.—

(1) The President shall transmit to the Congress each special message under this part within five calendar days (excluding Sundays) after enactment of the law to which the cancellation applies. Each special message shall be transmitted to the House of Representatives and the Senate on the same calendar day. Such special message shall be delivered to the Clerk of the House of Representatives if the House is not in session, and to the Secretary of the Senate if the Senate is not in session.

(2) Any special message transmitted under this part shall be printed in the first issue of the Federal Register published after such transmittal.

CANCELLATION EFFECTIVE UNLESS DISAPPROVED

SEC. 1023. [2 U.S.C. 691b] (a) IN GENERAL.—The cancellation of any dollar amount of discretionary budget authority, item of new direct spending, or limited tax benefit shall take effect upon receipt in the House of Representatives and the Senate of the special message notifying the Congress of the cancellation. If a disapproval bill for such special message is enacted into law, then all cancellations disapproved in that law shall be null and void and any such dollar amount of discretionary budget authority, item of new direct spending, or limited tax benefit shall be effective as of the original date provided in the law to which the cancellation applied.

(b) COMMENSURATE REDUCTIONS IN DISCRETIONARY BUDGET AUTHORITY.—Upon the cancellation of a dollar amount of discretionary budget authority under subsection (a), the total appropriation for each relevant account of which that dollar amount is a part shall be simultaneously reduced by the dollar amount of that cancellation.

DEFICIT REDUCTION

SEC. 1024. [2 U.S.C. 691c] (a) IN GENERAL.—

(1) DISCRETIONARY BUDGET AUTHORITY.—OMB shall, for each dollar amount of discretionary budget authority and for each item of new direct spending canceled from an appropriation law under section 1021(a)—

(A) reflect the reduction that results from such cancellation in the estimates required by section 251(a)(7) of the Balanced Budget and Emergency Deficit Control Act of 1985 in accordance with that Act, including an estimate of the reduction of the budget authority and the reduction in outlays flowing from such reduction of budget authority for each outyear; and

(B) include a reduction to the discretionary spending limits for budget authority and outlays in accordance with the Balanced Budget and Emergency Deficit Control Act of 1985 for each applicable fiscal year set forth in section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 by amounts equal to the amounts for each fiscal year estimated pursuant to subparagraph (A).

(2) DIRECT SPENDING AND LIMITED TAX BENEFITS.—(A) OMB shall, for each item of new direct spending or limited tax benefit canceled from a law under section 1021(a), estimate the deficit decrease caused by the cancellation of such item or benefit in that law and include such estimate as a separate entry in the report prepared pursuant to section 252(d) of the Balanced Budget and Emergency Deficit Control Act of 1985.

(B) OMB shall not include any change in the deficit resulting from a cancellation of any item of new direct spending or limited tax benefit, or the enactment of a disapproval bill for any such cancellation, under this part in the estimates and reports required by sections 252(b) and 254 of the Balanced Budget and Emergency Deficit Control Act of 1985.

(b) ADJUSTMENTS TO SPENDING LIMITS.—After ten calendar days (excluding Sundays) after the expiration of the time period in section 1025(b)(1) for expedited congressional consideration of a disapproval bill for a special message containing a cancellation of discretionary budget authority, OMB shall make the reduction included in subsection (a)(1)(B) as part of the next sequester report required by section 254 of the Balanced Budget and Emergency Deficit Control Act of 1985.

(c) EXCEPTION.—Subsection (b) shall not apply to a cancellation if a disapproval bill or other law that disapproves that cancellation is enacted into law prior to 10 calendar days (excluding Sundays) after the expiration of the time period set forth in section 1025(b)(1).

(d) CONGRESSIONAL BUDGET OFFICE ESTIMATES.—As soon as practicable after the President makes a cancellation from a law under section 1021(a), the Director of the Congressional Budget Office shall provide the Committees on the Budget of the House of Representatives and the Senate with an estimate of the reduction of the budget authority and the reduction in outlays flowing from such reduction of budget authority for each outyear.

EXPEDITED CONGRESSIONAL CONSIDERATION OF DISAPPROVAL BILLS

SEC. 1025. [2 U.S.C. 691d] (a) RECEIPT AND REFERRAL OF SPECIAL MESSAGE.—Each special message transmitted under this part shall be referred to the Committee on the Budget and the appropriate committee or committees of the Senate and the Committee on the Budget and the appropriate committee or committees of the House of Representatives. Each such message shall be printed as a document of the House of Representatives.

(b) TIME PERIOD FOR EXPEDITED PROCEDURES.—

(1) There shall be a congressional review period of 30 calendar days of session, beginning on the first calendar day of session after the date on which the special message is received in the House of Representatives and the Senate, during which the procedures contained in this section shall apply to both Houses of Congress.

(2) In the House of Representatives the procedures set forth in this section shall not apply after the end of the period described in paragraph (1).

(3) If Congress adjourns at the end of a Congress prior to the expiration of the period described in paragraph (1) and a disapproval bill was then pending in either House of Congress or a committee thereof (including a conference committee of the two Houses of Congress), or was pending before the President, a disapproval bill for the same special message may be introduced within the first five calendar days of session of the next Congress and shall be treated as a disapproval bill under this part, and the time period described in paragraph (1) shall commence on the day of introduction of that disapproval bill.

(c) INTRODUCTION OF DISAPPROVAL BILLS.—(1) In order for a disapproval bill to be considered under the procedures set forth in this section, the bill must meet the definition of a disapproval bill and must be introduced no later than the fifth calendar day of session following the beginning of the period described in subsection (b)(1).

(2) In the case of a disapproval bill introduced in the House of Representatives, such bill shall include in the first blank space referred to in section 1026(6)(C) a list of the reference numbers for all cancellations made by the President in the special message to which such disapproval bill relates.

(d) CONSIDERATION IN THE HOUSE OF REPRESENTATIVES.—(1) Any committee of the House of Representatives to which a disapproval bill is referred shall report it without amendment, and with or without recommendation, not later than the seventh calendar day of session after the date of its introduction. If any committee fails to report the bill within that period, it is in order to move that the House discharge the committee from further consideration of the bill, except that such a motion may not be made after the committee has reported a disapproval bill with respect to the same special message. A motion to discharge may be made only by a Member favoring the bill (but only at a time or place designated by the Speaker in the legislative schedule of the day after the calendar day on which the Member offering the motion announces to the House his intention to do so and the form of the motion). The

motion is highly privileged. Debate thereon shall be limited to not more than one hour, the time to be divided in the House equally between a proponent and an opponent. The previous question shall be considered as ordered on the motion to its adoption without intervening motion. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order.

(2) After a disapproval bill is reported or a committee has been discharged from further consideration, it is in order to move that the House resolve into the Committee of the Whole House on the State of the Union for consideration of the bill. If reported and the report has been available for at least one calendar day, all points of order against the bill and against consideration of the bill are waived. If discharged, all points of order against the bill and against consideration of the bill are waived. The motion is highly privileged. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. During consideration of the bill in the Committee of the Whole, the first reading of the bill shall be dispensed with. General debate shall proceed, shall be confined to the bill, and shall not exceed one hour equally divided and controlled by a proponent and an opponent of the bill. The bill shall be considered as read for amendment under the five-minute rule. Only one motion to rise shall be in order, except if offered by the manager. No amendment to the bill is in order, except any Member if supported by 49 other Members (a quorum being present) may offer an amendment striking the reference number or numbers of a cancellation or cancellations from the bill. Consideration of the bill for amendment shall not exceed one hour excluding time for recorded votes and quorum calls. No amendment shall be subject to further amendment, except pro forma amendments for the purposes of debate only. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion. A motion to reconsider the vote on passage of the bill shall not be in order.

(3) Appeals from decisions of the Chair regarding application of the rules of the House of Representatives to the procedure relating to a disapproval bill shall be decided without debate.

(4) It shall not be in order to consider under this subsection more than one disapproval bill for the same special message except for consideration of a similar Senate bill (unless the House has already rejected a disapproval bill for the same special message) or more than one motion to discharge described in paragraph (1) with respect to a disapproval bill for that special message.

(e) CONSIDERATION IN THE SENATE.—

(1) REFERRAL AND REPORTING.—Any disapproval bill introduced in the Senate shall be referred to the appropriate committee or committees. A committee to which a disapproval bill has been referred shall report the bill not later than the seventh day of session following the date of introduction of that bill. If any committee fails to report the bill within that period, that committee shall be automatically discharged from further

consideration of the bill and the bill shall be placed on the Calendar.

(2) DISAPPROVAL BILL FROM HOUSE.—When the Senate receives from the House of Representatives a disapproval bill, such bill shall not be referred to committee and shall be placed on the Calendar.

(3) CONSIDERATION OF SINGLE DISAPPROVAL BILL.—After the Senate has proceeded to the consideration of a disapproval bill for a special message, then no other disapproval bill originating in that same House relating to that same message shall be subject to the procedures set forth in this subsection.

(4) AMENDMENTS.—

(A) AMENDMENTS IN ORDER.—The only amendments in order to a disapproval bill are—

(i) an amendment that strikes the reference number of a cancellation from the disapproval bill; and

(ii) an amendment that only inserts the reference number of a cancellation included in the special message to which the disapproval bill relates that is not already contained in such bill.

(B) WAIVER OR APPEAL.—An affirmative vote of three-fifths of the Senators, duly chosen and sworn, shall be required in the Senate—

(i) to waive or suspend this paragraph; or

(ii) to sustain an appeal of the ruling of the Chair on a point of order raised under this paragraph.

(5) MOTION NONDEBATABLE.—A motion to proceed to consideration of a disapproval bill under this subsection shall not be debatable. It shall not be in order to move to reconsider the vote by which the motion to proceed was adopted or rejected, although subsequent motions to proceed may be made under this paragraph.

(6) LIMIT ON CONSIDERATION.—(A) After no more than 10 hours of consideration of a disapproval bill, the Senate shall proceed, without intervening action or debate (except as permitted under paragraph (9)), to vote on the final disposition thereof to the exclusion of all amendments not then pending and to the exclusion of all motions, except a motion to reconsider or to table.

(B) A single motion to extend the time for consideration under subparagraph (A) for no more than an additional five hours is in order prior to the expiration of such time and shall be decided without debate.

(C) The time for debate on the disapproval bill shall be equally divided between the Majority Leader and the Minority Leader or their designees.

(7) DEBATE ON AMENDMENTS.—Debate on any amendment to a disapproval bill shall be limited to one hour, equally divided and controlled by the Senator proposing the amendment and the majority manager, unless the majority manager is in favor of the amendment, in which case the minority manager shall be in control of the time in opposition.

(8) NO MOTION TO RECOMMIT.—A motion to recommit a disapproval bill shall not be in order.

(9) DISPOSITION OF SENATE DISAPPROVAL BILL.—If the Senate has read for the third time a disapproval bill that originated in the Senate, then it shall be in order at any time thereafter to move to proceed to the consideration of a disapproval bill for the same special message received from the House of Representatives and placed on the Calendar pursuant to paragraph (2), strike all after the enacting clause, substitute the text of the Senate disapproval bill, agree to the Senate amendment, and vote on final disposition of the House disapproval bill, all without any intervening action or debate.

(10) CONSIDERATION OF HOUSE MESSAGE.—Consideration in the Senate of all motions, amendments, or appeals necessary to dispose of a message from the House of Representatives on a disapproval bill shall be limited to not more than four hours. Debate on each motion or amendment shall be limited to 30 minutes. Debate on any appeal or point of order that is submitted in connection with the disposition of the House message shall be limited to 20 minutes. Any time for debate shall be equally divided and controlled by the proponent and the majority manager, unless the majority manager is a proponent of the motion, amendment, appeal, or point of order, in which case the minority manager shall be in control of the time in opposition.

(f) CONSIDERATION IN CONFERENCE.—

(1) CONVENING OF CONFERENCE.—In the case of disagreement between the two Houses of Congress with respect to a disapproval bill passed by both Houses, conferees should be promptly appointed and a conference promptly convened, if necessary.

(2) HOUSE CONSIDERATION.—(A) Notwithstanding any other rule of the House of Representatives, it shall be in order to consider the report of a committee of conference relating to a disapproval bill provided such report has been available for one calendar day (excluding Saturdays, Sundays, or legal holidays, unless the House is in session on such a day) and the accompanying statement shall have been filed in the House.

(B) Debate in the House of Representatives on the conference report and any amendments in disagreement on any disapproval bill shall each be limited to not more than one hour equally divided and controlled by a proponent and an opponent. A motion to further limit debate is not debatable. A motion to recommit the conference report is not in order, and it is not in order to move to reconsider the vote by which the conference report is agreed to or disagreed to.

(3) SENATE CONSIDERATION.—Consideration in the Senate of the conference report and any amendments in disagreement on a disapproval bill shall be limited to not more than four hours equally divided and controlled by the Majority Leader and the Minority Leader or their designees. A motion to recommit the conference report is not in order.

(4) LIMITS ON SCOPE.—(A) When a disagreement to an amendment in the nature of a substitute has been referred to a conference, the conferees shall report those cancellations that were included in both the bill and the amendment, and may

report a cancellation included in either the bill or the amendment, but shall not include any other matter.

(B) When a disagreement on an amendment or amendments of one House to the disapproval bill of the other House has been referred to a committee of conference, the conferees shall report those cancellations upon which both Houses agree and may report any or all of those cancellations upon which there is disagreement, but shall not include any other matter.

DEFINITIONS

SEC. 1026. [2 U.S.C. 691e] As used in this part:

(1) APPROPRIATION LAW.—The term "appropriation law" means an Act referred to in section 105 of title 1, United States Code, including any general or special appropriation Act, or any Act making supplemental, deficiency, or continuing appropriations, that has been signed into law pursuant to Article I, section 7, of the Constitution of the United States.

(2) CALENDAR DAY.—The term "calendar day" means a standard 24-hour period beginning at midnight.

(3) CALENDAR DAYS OF SESSION.—The term "calendar days of session" shall mean only those days on which both Houses of Congress are in session.

(4) CANCEL.—The term "cancel" or "cancellation" means—

(A) with respect to any dollar amount of discretionary budget authority, to rescind;

(B) with respect to any item of new direct spending—

(i) that is budget authority provided by law (other than an appropriation law), to prevent such budget authority from having legal force or effect;

(ii) that is entitlement authority, to prevent the specific legal obligation of the United States from having legal force or effect; or

(iii) through the food stamp program, to prevent the specific provision of law that results in an increase in budget authority or outlays for that program from having legal force or effect; and

(C) with respect to a limited tax benefit, to prevent the specific provision of law that provides such benefit from having legal force or effect.

(5) DIRECT SPENDING.—The term "direct spending" means—

(A) budget authority provided by law (other than an appropriation law);

(B) entitlement authority; and

(C) the food stamp program.

(6) DISAPPROVAL BILL.—The term "disapproval bill" means a bill or joint resolution which only disapproves one or more cancellations of dollar amounts of discretionary budget authority, items of new direct spending, or limited tax benefits in a special message transmitted by the President under this part and—

(A) the title of which is as follows: "A bill disapproving the cancellations transmitted by the President on ", the blank space being filled in with the date of

transmission of the relevant special message and the public law number to which the message relates;

(B) which does not have a preamble; and

(C) which provides only the following after the enacting clause: "That Congress disapproves of cancellations ", the blank space being filled in with a list by reference number of one or more cancellations contained in the President's special message, "as transmitted by the President in a special message on ", the blank space being filled in with the appropriate date, "regarding ", the blank space being filled in with the public law number to which the special message relates.

(7) DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY.—(A) Except as provided in subparagraph (B), the term "dollar amount of discretionary budget authority" means the entire dollar amount of budget authority—

(i) specified in an appropriation law, or the entire dollar amount of budget authority required to be allocated by a specific proviso in an appropriation law for which a specific dollar figure was not included;

(ii) represented separately in any table, chart, or explanatory text included in the statement of managers or the governing committee report accompanying such law;

(iii) required to be allocated for a specific program, project, or activity in a law (other than an appropriation law) that mandates the expenditure of budget authority from accounts, programs, projects, or activities for which budget authority is provided in an appropriation law;

(iv) represented by the product of the estimated procurement cost and the total quantity of items specified in an appropriation law or included in the statement of managers or the governing committee report accompanying such law; or

(v) represented by the product of the estimated procurement cost and the total quantity of items required to be provided in a law (other than an appropriation law) that mandates the expenditure of budget authority from accounts, programs, projects, or activities for which budget authority is provided in an appropriation law.

(B) The term "dollar amount of discretionary budget authority" does not include—

(i) direct spending;

(ii) budget authority in an appropriation law which funds direct spending provided for in other law;

(iii) any existing budget authority rescinded or canceled in an appropriation law; or

(iv) any restriction, condition, or limitation in an appropriation law or the accompanying statement of managers or committee reports on the expenditure of budget authority for an account, program, project, or activity, or on activities involving such expenditure.

(8) ITEM OF NEW DIRECT SPENDING.—The term "item of new direct spending" means any specific provision of law that is estimated to result in an increase in budget authority or out-

lays for direct spending relative to the most recent levels calculated pursuant to section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985.

(9) LIMITED TAX BENEFIT.—(A) The term "limited tax benefit" means—

(i) any revenue-losing provision which provides a Federal tax deduction, credit, exclusion, or preference to 100 or fewer beneficiaries under the Internal Revenue Code of 1986 in any fiscal year for which the provision is in effect; and

(ii) any Federal tax provision which provides temporary or permanent transitional relief for 10 or fewer beneficiaries in any fiscal year from a change to the Internal Revenue Code of 1986.

(B) A provision shall not be treated as described in subparagraph (A)(i) if the effect of that provision is that—

(i) all persons in the same industry or engaged in the same type of activity receive the same treatment;

(ii) all persons owning the same type of property, or issuing the same type of investment, receive the same treatment; or

(iii) any difference in the treatment of persons is based solely on—

(I) in the case of businesses and associations, the size or form of the business or association involved;

(II) in the case of individuals, general demographic conditions, such as income, marital status, number of dependents, or tax return filing status;

(III) the amount involved; or

(IV) a generally-available election under the Internal Revenue Code of 1986.

(C) A provision shall not be treated as described in subparagraph (A)(ii) if—

(i) it provides for the retention of prior law with respect to all binding contracts or other legally enforceable obligations in existence on a date contemporaneous with congressional action specifying such date; or

(ii) it is a technical correction to previously enacted legislation that is estimated to have no revenue effect.

(D) For purposes of subparagraph (A)—

(i) all businesses and associations which are related within the meaning of sections 707(b) and 1563(a) of the Internal Revenue Code of 1986 shall be treated as a single beneficiary;

(ii) all qualified plans of an employer shall be treated as a single beneficiary;

(iii) all holders of the same bond issue shall be treated as a single beneficiary; and

(iv) if a corporation, partnership, association, trust or estate is the beneficiary of a provision, the shareholders of the corporation, the partners of the partnership, the members of the association, or the beneficiaries of the trust or estate shall not also be treated as beneficiaries of such provision.

(E) For purposes of this paragraph, the term "revenue-losing provision" means any provision which results in a reduction in Federal tax revenues for any one of the two following periods—

(i) the first fiscal year for which the provision is effective; or

(ii) the period of the 5 fiscal years beginning with the first fiscal year for which the provision is effective.

(F) The terms used in this paragraph shall have the same meaning as those terms have generally in the Internal Revenue Code of 1986, unless otherwise expressly provided.

(10) OMB.—The term "OMB" means the Director of the Office of Management and Budget.

IDENTIFICATION OF LIMITED TAX BENEFITS

SEC. 1027. [2 U.S.C. 691f] (a) STATEMENT BY JOINT TAX COMMITTEE.—The Joint Committee on Taxation shall review any revenue or reconciliation bill or joint resolution which includes any amendment to the Internal Revenue Code of 1986 that is being prepared for filing by a committee of conference of the two Houses, and shall identify whether such bill or joint resolution contains any limited tax benefits. The Joint Committee on Taxation shall provide to the committee of conference a statement identifying any such limited tax benefits or declaring that the bill or joint resolution does not contain any limited tax benefits. Any such statement shall be made available to any Member of Congress by the Joint Committee on Taxation immediately upon request.

(b) STATEMENT INCLUDED IN LEGISLATION.—(1) Notwithstanding any other rule of the House of Representatives or any rule or precedent of the Senate, any revenue or reconciliation bill or joint resolution which includes any amendment to the Internal Revenue Code of 1986 reported by a committee of conference of the two Houses may include, as a separate section of such bill or joint resolution, the information contained in the statement of the Joint Committee on Taxation, but only in the manner set forth in paragraph (2).

(2) The separate section permitted under paragraph (1) shall read as follows: "Section 1021(a)(3) of the Congressional Budget and Impoundment Control Act of 1974 shall apply to .", with the blank spaces being filled in with—

(A) in any case in which the Joint Committee on Taxation identifies limited tax benefits in the statement required under subsection (a), the word "only" in the first blank space and a list of all of the specific provisions of the bill or joint resolution identified by the Joint Committee on Taxation in such statement in the second blank space; or

(B) in any case in which the Joint Committee on Taxation declares that there are no limited tax benefits in the statement required under subsection (a), the word "not" in the first blank space and the phrase "any provision of this Act" in the second blank space.

(c) PRESIDENT'S AUTHORITY.—If any revenue or reconciliation bill or joint resolution is signed into law pursuant to Article I, section 7, of the Constitution of the United States—

(1) with a separate section described in subsection (b)(2), then the President may use the authority granted in section 1021(a)(3) only to cancel any limited tax benefit in that law, if any, identified in such separate section; or

(2) without a separate section described in subsection (b)(2), then the President may use the authority granted in section 1021(a)(3) to cancel any limited tax benefit in that law that meets the definition in section 1026.

(d) CONGRESSIONAL IDENTIFICATIONS OF LIMITED TAX BENEFITS.—There shall be no judicial review of the congressional identification under subsections (a) and (b) of a limited tax benefit in a conference report.

AMERICAN CONSTITUTIONAL LAW

Volume One

THIRD EDITION

By

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appropriated funds. The Impoundment Control Act of 1974[15] effected broad reforms in the process whereby legislative appropriations decisions are made. One portion of the Act dealt with impoundment and prescribed two different procedures through which Congress might frustrate executive impoundment attempts: First, if the President wished to *terminate* programs or cut total spending, approval of an appropriations recision had to be obtained from both the House of Representatives and the Senate within 45 days;[16] second, if a presidential impoundment were designed simply to *delay* the expenditure of appropriated funds, the President could act unilaterally, but Congress subsequently could compel the release of the funds if either the House of Representatives or the Senate passed a resolution calling for their expenditure.[17]

Congress also repealed that portion of the Anti–Deficiency Act which had authorized federal administrators "to effect savings whenever savings are made possible . . . through . . . developments subsequent to the date on which such appropriation was made available."[18] It had been argued by some that this language justified executive impoundment for reasons unrelated to the legislative purposes of the specific appropriations withheld.[19]

Unfortunately, the Impoundment Act contained the seeds of its own destruction. Unilateral presidential impoundment of appropriated funds was allowed by the Act only because Congress reserved to each of its houses the power to veto the impoundment by resolution. The Supreme Court's invalidation of such legislative veto devices in *INS v. Chadha*[20] meant that the Act could survive only if the courts could fairly conclude

15. Pub. L. No. 93–344, 88 Stat. 297, 31 U.S.C. § 1301 et seq. The Act was signed by President Nixon on July 12, 1974, during the impeachment proceedings pending against him.

16. Cf. § 5(b) of the War Powers Resolution of 1973, discussed in § 4–6, supra.

17. See § 2–6, supra, on the constitutional infirmity of statutes delegating such power to the House, the Senate, or both. The Act also required the President to report all impoundment actions, required the Comptroller General to inform Congress of any unreported impoundments, and empowered him to bring civil enforcement suits. For a thoughtful critique of these anti-impoundment provisions, by a scholar sympathetic to more effective congressional control, see Fisher, supra note 2, at 198–201. Fisher observes that ambiguities in the provisions, coupled with their mistaken assumption that Congress could deal meaningfully with reports about literally dozens of impoundment-related actions in a brief period, created a situation in which "the number of policy impoundments under President Ford had actually increased," id. at 200, over the number under President Nixon. "[T]he Act was interpreted by the Ford Administration to allow more than a hundred policy impoundments a year, generally directed against congressional initiatives. The sheer volume of the requests, together with the fact that they were prejudicial to programs added or augmented by Congress, undermined the prospect for careful congressional review and deliberation." Id. at 201.

18. 31 U.S.C. § 665(1). Moreover, to guard against the possibility that a statute will be construed as *permitting* rather than *mandating* spending, Congress has also incorporated, within at least some spending legislation, language which makes explicit the denial of impoundment authority. See, e.g., Pub. L. No. 93–269 (1974) ("Nothing in this section shall be construed to approve of the withholding from expenditure or the delay in expenditure of any funds appropriated to carry out any applicable program . . . ").

19. The better reading, however, would have limited the scope of the provision to changes directly related to the policies the act served. See Note, "Protecting the Fisc: Executive Impoundment and Congressional Power," supra note 10, at 1650.

20. 462 U.S. 919 (1983), discussed in § 2–6, supra

CITY OF NEW HAVEN, CONNECTICUT v. UNITED STATES OF AMERICA, APPELLANT; NATIONAL LEAGUE OF CITIES, et al. v. SAMUEL R. PIERCE, JR., SECRETARY OF H.U.D. et al., APPELLANTS; CITY OF CHICAGO, a municipal corporation, et al. v. U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, et al., APPELLANTS

Nos. 86-5319, 86-5320, 86-5321

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

258 U.S. App. D.C. 59; 809 F.2d 900; 1987 U.S. App. LEXIS 1150

November 12, 1986, Argued
January 20, 1987, Decided

SUBSEQUENT HISTORY: As Amended, January 20, 1987.

PRIOR HISTORY:

[1]** Appeals from the United States District Court for the District of Columbia, Civil Action Nos. 86-00455, 86-00460 and 86-00967.

CORE TERMS: deferral, impoundment, legislative veto, programmatic, congressional intent, presidential, regulation, appropriation, rescission, guidelines, defer, severability, expenditure, entirety, veto, legislative history, budget, statutory authority, fee waiver, remainder, impound, budgetary, routine, moot, severability clause, implementing, inseverable, enacting, operable, injunctive relief

COUNSEL: Douglas Letter, Attorney, Department of Justice, with whom Richard K. Willard, Assistant Attorney General, Department of Justice, Joseph E. diGenova, United States Attorney, James M. Spears, Deputy Assistant Attorney General and Robert E. Kopp, Attorney, Department of Justice were on the brief for Appellants in Nos. 86-5319, 86-5320 and 86-5321.

Neil Proto, with whom Edward R. Venit was on the brief for Appellee, City of New Haven in No. 86-5319.

David C. Vladeck, with whom Alan B. Morrison, Eric R. Glitzenstein, Cynthia Pols, Joel D. Stein, Craig J. Hanson and Amy L. Beckett were on the joint brief for Appellees, National League of Cities, et al. in Nos. 86-5320 and 86-5321.

JUDGES: Edwards and Bork, Circuit Judges, and Swygert, * Senior Circuit Judge, United States Court of Appeals for the Seventh Circuit.

* Sitting by designation pursuant to 28 U.S.C. ?294(d) (1982).

OPINIONBY: EDWARDS

OPINION: [*901] EDWARDS, Circuit Judge:

In this case, we are called upon to decide the extent of the President's *statutory* authority to [**2] delay (or "defer") the expenditure of funds appropriated by Congress. Under section 1013 of the Impoundment Control Act of 1974 ("ICA" or the "Act"), 2 U.S.C. ?684 (1982), the President must indicate his intention to defer a congressional appropriation by sending a "special message" to Congress. In that message, the President is required to justify the deferral and specify its amount, its intended length and its probable fiscal consequences. Under the Act, if either House of Congress passes an "impoundment resolution" disapproving the "proposed" deferral, the President is required to make the funds available for obligation. If neither House acts, the deferral takes effect automatically, although it may not last beyond the end of the fiscal year. n1

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n1 While the statute by its terms only permits the President to "propose[]" the deferral of funds, the effect of the statute is to permit the President to implement a deferral of up to one year until such time as Congress acts to disapprove the deferral.

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The majority of proposed deferrals are routine "programmatic" deferrals, by which the

Executive Branch attempts to meet the inevitable contingencies that arise in administering congressionally-funded [**3] agencies and programs. Occasionally, however, the President will seek to implement "policy" deferrals, which are intended to advance the broader fiscal policy objectives of the Administration. The critical distinction between "programmatic" and "policy" deferrals is that the former are ordinarily intended to *advance* congressional budgetary policies by ensuring that congressional programs are administered efficiently, while the latter are ordinarily intended to *negate* the will of Congress by substituting the fiscal policies of the Executive Branch for those established by the enactment of budget legislation. n2

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n2 As a hypothetical example, one might consider a congressional appropriation of $10,000,000 to construct a new highway between Washington, D.C. and New York. If inclement weather threatened completion of the construction project, the President might seek to defer the expenditure of the appropriated funds for "programmatic" reasons. However, if the President believed that the project was inflationary, he might attempt to delay the expenditure of the funds for "policy" reasons.

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In the instant case, the President invoked section 1013 as authority for implementing [**4] four separate policy deferrals. In particular, the President deferred the expenditure [*902] of funds earmarked for four housing assistance programs to be administered by the Department of Housing and Urban Development ("HUD"). The appellees -- various cities, mayors, community groups, members of Congress, associations of mayors and municipalities and disappointed expectant recipients of benefits under the four programs -- brought these consolidated actions challenging the authority of the President to implement policy deferrals pursuant to section 1013. n3 That challenge was based on the inclusion in the statute of a legislative veto provision of the type held unconstitutional by the Supreme Court in *Immigration and Naturalization Service v. Chadha*, 462 U.S. 919, 77 L. Ed. 2d 317, 103 S. Ct. 2764 (1983). According to the appellees, the unconstitutional legislative veto provision contained in section 1013 rendered the *entire* section invalid, leaving the President without statutory authority on which to base the deferrals in question. The appellees requested a declaratory judgment that section 1013 was void in its entirety and an injunction obligating the nominal defendants (the United States, the Secretary of HUD and [**5] the Director of the Office of Management and Budget) to release

the funds appropriated by Congress for the four HUD programs.

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n3 As will be seen shortly, the President need not rely on section 1013 as authority for making routine programmatic deferrals without prior congressional approval. Although the President must *report* programmatic deferrals to Congress under the procedures outlined in section 1013, the President has separate statutory authority under the Anti-Deficiency Act to implement such deferrals. *See* note 18 *infra*. Thus, while the appellees seek to void section 1013 in its entirety, they in effect challenge only the authority of the President to implement *policy* deferrals without prior congressional approval.

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After carefully analyzing the intent of Congress in enacting section 1013, the District Court held that the section's unconstitutional legislative veto provision was inseverable from the remainder of the section. *City of New Haven v. United States*, 634 F. Supp. 1449 (D.D.C. 1986). Accordingly, it declared section 1013 void in its entirety and ordered the defendants-appellants to make the deferred funds available for obligation. *Id.* at 1460. [**6] Shortly thereafter, however, the President signed into law legislation overturning the challenged deferrals. n4 Pursuant to this legislation, the funds deferred by the President have been made available for obligation.

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n4 Urgent Supplemental Appropriations Act, 1986, Pub. L. No. 99-349, 100 Stat. 710.

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For much the same reasons offered by the District Court in its thorough and able opinion, we hold that the unconstitutional legislative veto provision in section 1013 is inseverable from the remainder of that section. We therefore affirm the District Court's declaratory judgment striking down section 1013 in its entirety. We hold, however, that the request for injunctive relief is now moot.

I. BACKGROUND

In November of 1985, President Reagan signed HUD's fiscal year 1986 appropriations bill. n5 Included in that bill were appropriations for four programs administered by HUD: the Community Development Block Grant Program, under which HUD makes grants to state and local governments for community development projects; n6 the Section 8 Housing Assistance Payments Program, under which HUD provides subsidies (through public housing agencies) to low-income families to enable them to obtain [**7] low-cost housing; n7 the Section 312 program, under which HUD lends money (typically to cities or local public agencies) to be used to rehabilitate residential property in low-income neighborhoods; n8 and the Section 202 program, under which HUD lends money to rehabilitate low-cost rental units for the [*903] handicapped and the elderly. n9 In February of 1986, the President sent impoundment notices to Congress pursuant to section 1013 announcing his intention to defer the expenditure of funds for these four programs. One of the reasons provided by the President for the deferrals was to bring 1986 spending levels into line with the Administration's 1987 proposed budget. *See* 51 Fed. Reg. 5953-58 (1986). Previously, the President had failed in his efforts to convince Congress to drastically reduce these expenditures in its 1986 budget. Thus, it is not disputed that the deferrals were made for "policy" reasons.

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n5 Act approved Nov. 25, 1985, Pub. L. No. 99-160, 99 Stat. 909.

n6 42 U.S.C. ?5303 (1982 & Supp. I 1983).

n7 42 U.S.C. ?1437f (1982 & Supp. II 1984).

n8 42 U.S.C. ?1452b (1982 & Supp. III 1985).

n9 12 U.S.C. ?1701q (1982 & Supp. II 1984).

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Because the President [**8] relied solely on section 1013 as authority for the deferrals, the District Court was faced squarely with the question whether the unconstitutional legislative veto provision in section 1013 is severable from the remainder of that section. This question, the District Court recognized, was purely one of congressional intent. Specifically, the court was required to consider what Congress

would have done had it known at the time it passed section 1013 that the legislative veto provision was unconstitutional. Would Congress nonetheless have conferred deferral authority on the President, even though it could not exercise control over that authority by means of a legislative veto? Or would Congress have refused to confer deferral authority on the President, preferring "no statute[] at all" n10 to a statute that permitted the President to defer funds without the check of a legislative veto?

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n10 *See* Alaska Airlines, Inc. v. Donovan, 247 U.S. App. D.C. 132, 766 F.2d 1550, 1560 (D.C. Cir. 1985) (quoting *Gulf Oil Corp. v. Dyke*, 734 F.2d 797, 804 (Temp. Emer. Ct. App.), *cert. denied*, 469 U.S. 852, 83 L. Ed. 2d 108, 105 S. Ct. 173 (1984)), *cert. granted*, 475 U.S. 1044, 106 S. Ct. 1259, 89 L. Ed. 2d 569 (1986).

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After thoroughly examining the statutory language, [**9] the legislative history and the historical political context surrounding passage of the Act, the District Court had little difficulty concluding that Congress would have preferred no statute at all to a statute that conferred unchecked deferral authority on the President. Beginning with the title of the statute itself, and continuing with an analysis of the statute's legislative history, the court found that the "*raison d'etre*" of the entire legislative effort was to wrest *control* over the budgetary process from what Congress perceived as a usurping Executive:

> Control -- how to regain and retain it -- was studied and debated at length, on the floor and in committee, over a period of years by a Congress virtually united in its quest for a way to reassert its fiscal prerogative. A clearer case of congressional intent -- obsession would be more accurate -- is hard to imagine.

634 F. Supp. at 1454.

In the course of its analysis, the District Court cited numerous statements by individual legislators illustrating Congress' anger at frequent presidential impoundments and its preoccupation with *limiting* the President's authority to override duly enacted budget

legislation. [**10] *Id.* at 1455-58. The court also noted that these same sentiments were expressed in the Conference Committee Report. *Id.* at 1455 (citing S. CONF. REP. NO. 924, 93d Cong., 2d Sess. 49, 76-78, *reprinted in* 1974 U.S. CODE CONG. & ADMIN. NEWS 3462, 3591, 3616-18). In contrast, the trial court was unable to find a single legislative expression of support for the proposition "that the President be allowed to defer budget authority *without* the check afforded by *at least* a one-House veto." *Id.* at 1457 n.9 (emphasis in opinion). This overwhelming evidence of congressional intent, the court concluded, conclusively demonstrated that Congress -- had it known that it could not disapprove unwanted impoundments by means of a legislative veto -- would never have enacted a statute that *conceded* impoundment authority to the President. Indeed, it could be said with "conviction" that Congress

> would have preferred no statute to one without the one-House veto provision, for with no statute at all, the President would be remitted to such pre-ICA authority as he might have had for particular [*904] deferrals which, in Congress' view (and that of most of the courts having passed upon it) [**11] was not much.

Id. at 1459.

Having found that the legislative veto provision in section 1013 was inseverable from the remainder of the section, and that the President had therefore relied on an invalid statute in making the policy deferrals in question, the court imposed two remedies. First, it ordered the appellants to make the improperly deferred funds available for obligation. Second, it declared section 1013 void in its entirety. Subsequent to this decision, however, Congress duplicated the District Court's injunctive relief by enacting legislation (signed by the President) disapproving the deferrals and ordering that the funds be made available for obligation. n11 It is in this posture that we review the appellants' appeal from the District Court's Memorandum and Order.

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n11 Urgent Supplemental Appropriations Act, 1986, Pub. L. No. 99-349, 100 Stat. 710.

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II. ANALYSIS

A. *Mootness*

The threshold question presented by this appeal is whether the appellees' challenge to the President's exercise of deferral authority under section 1013 was mooted by the recent legislation overturning the HUD deferrals. This question, we find, is governed by our recent decision in *Better* [**12] *Government Association v. Department of State*, 250 U.S. App. D.C. 424, 780 F.2d 86, 90-92 (D.C. Cir. 1986). In that case, the appellants challenged a set of agency guidelines and an accompanying agency regulation used in determining when an individual or organization requesting information under the Freedom of Information Act ("FOIA") would be entitled to a waiver of search and copying fees. The appellants, who had incurred administrative denials of FOIA fee waiver requests pursuant to the guidelines and regulation, challenged both the facial validity of the guidelines and regulation and the specific determinations to deny their fee waiver requests. After the appellants filed their complaints, however, the agencies that had originally denied the fee waiver requests reversed their position and granted the requests. We were therefore confronted with the question whether the appellants' challenge to the guidelines and regulation was moot.

We held that the appellants' challenge to the guidelines and regulation *as applied to their specific fee waiver requests* was indeed moot, reasoning that we could not enjoin the appellee agencies to do something they had already done. *Id.* at 91. However, we held that [**13] the appellants' challenge to the facial validity of the guidelines and regulation presented a live controversy. *Id.* In so holding, we observed that the appellants' original complaints challenged *both* the specific fee waiver denials *and* the legality of the standards utilized by the agencies in denying their requests. This second claim was not moot, we reasoned, because the appellants were frequent FOIA requesters and because the government had not disavowed reliance on the challenged guidelines and regulation. Indeed, we found that the government "clearly intend[ed] to apply [the] purportedly objectionable standards to FOIA fee waiver requests in the future." *Id.* Thus, the appellants' claim for declaratory relief alleged a continuing injury attributable to the agencies' guidelines and regulation.

In the instant case, the appellees' original complaints similarly challenged both the particular deferrals implemented by the President and the facial validity of the statute under which the President acted. And, as in *Better Government*, the Executive Branch

has not disavowed reliance on the challenged statute. Indeed, the appellants frankly concede in their reply brief that they foresee continued reliance by the Executive Branch [**14] on the Act as authority for implementing policy deferrals, and that the appellees are likely to be affected by such deferrals in the future. n12 Thus, although the appellees' claim for injunctive relief is [*905] clearly moot, n13 we must still decide whether the appellees are entitled to declaratory relief on their claim that section 1013 of the Act is facially invalid. n14 It is to this issue that we now turn.

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n12 *See* Reply Brief for the Defendants-Appellants at 21.

n13 Because the appellees' claim for injunctive relief is clearly moot, we do not decide various issues raised by the parties relating to the specific deferrals involved.

n14 *Cf.* *Super Tire Eng'g Co. v. McCorkle*, 416 U.S. 115, 40 L. Ed. 2d 1, 94 S. Ct. 1694 (1974) (proper to consider claim for declaratory relief where need for injunctive relief has been obviated but challenged government practice continues).

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B. *Severability of the Unconstitutional Legislative Veto Provision in Section 1013*

The appellants concede, as they must, that the legislative veto provision in section 1013 is unconstitutional under the Supreme Court's decision in *Immigration and Naturalization Service v. Chadha*, 462 U.S. 919, 77 L. Ed. 2d 317, 103 S. Ct. 2764 (1983). The sole question for [**15] decision is whether that unconstitutional provision is severable from the remainder of section 1013, which ostensibly authorizes the President to defer congressional appropriations for a period not exceeding one fiscal year.

Recently, in *Alaska Airlines, Inc. v. Donovan*, 247 U.S. App. D.C. 132, 766 F.2d 1550 (D.C. Cir. 1985), *cert. granted*, 475 U.S. 1044, 106 S. Ct. 1259, 89 L. Ed. 2d 569 (1986), this circuit had occasion to consider the test for determining when an invalid statutory provision will be found severable from the otherwise valid portions of the statute. In that case, we read the Supreme Court's decision in *Chadha* as establishing a presumption in favor of severability if what remained after severance of the unconstitutional provision would be "fully operable as law." *Id.* at 1560. n15 That

presumption could be overcome, however, by strong evidence indicating that Congress would not have enacted the statute had it known it could not include the unconstitutional provision. *Id.* n16 In this respect, we recognized that the question of severability was ultimately one of congressional intent. While a court was to presume severability, and attempt to "save as much of the statute as [it could]," the ultimate inquiry **[**16]** was whether "Congress would have preferred [the] statute[], after severance of the legislative veto provision[], to no statute[] at all." *Id.* (quoting *Gulf Oil Corp. v. Dyke*, 734 F.2d 797, 804 (Temp. Emer. Ct. App.), *cert. denied*, 469 U.S. 852, 83 L. Ed. 2d 108, 105 S. Ct. 173 (1984)).

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n15 A statutory provision is also presumed severable if Congress has included a "severability clause" in the statute -- *i.e.*, a clause expressly stating Congress' intention that other portions of the statute shall remain in effect should a particular statutory provision be found unconstitutional. *See, e.g.*, *Chadha*, 462 U.S. at 932. Here, as in *Alaska Airlines*, Congress did *not* include a severability clause in the challenged statute. Although the presence of a severability clause is ordinarily given great weight, it is unclear from the case law what relevance attaches to the *absence* of a severability clause. *See* *Alaska Airlines*, 766 F.2d at 1559 n.7. In the instant case, however, we need not rely on the absence of a severability clause to support our holding of inseverability, because we find that more direct evidence of congressional intent conclusively establishes that Congress would not have intended section 1013 to survive excision of its legislative veto provision. **[**17]**

n16 The court again relied on *Chadha*, which held that the invalid portions of a statute are to be severed unless it is "evident" that Congress "would not have enacted those provisions which are within its power, independently of [those] which [are] not." 462 U.S. at 931-32 (quoting *Buckley v. Valeo*, 424 U.S. 1, 108, 46 L. Ed. 2d 659, 96 S. Ct. 612 (1976) (quoting *Champlin Ref. Co. v. Corporation Comm'n*, 286 U.S. 210, 234, 76 L. Ed. 1062, 52 S. Ct. 559 (1932)).

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In the instant case, we assume without deciding that section 1013 is "operable" in the absence of its legislative veto provision. However, even assuming the statute is operable, on the record in this case we must affirm the District Court's judgment on congressional intent, *i.e.*, that Congress would not have enacted section 1013 had it

known that the legislative veto provision was unconstitutional. Indeed, to the extent that section 1013 is "operable" absent the legislative veto provision, it operates in a manner wholly inconsistent with the intent of Congress in enacting deferral legislation. [*906] We therefore hold that the unconstitutional legislative veto provision in section 1013 is inseverable from that portion of the statute conferring deferral authority on the President. [**18]

1. Congressional Intent

We assume for purposes of our severability analysis that section 1013 is in a purely technical sense "operable" even without a legislative veto provision. As noted earlier, however, the ultimate inquiry in a severability case is not whether the statute may somehow continue to function after excision of the invalid portion, but rather whether it continues to function *in a manner consistent with congressional intent*. Phrased differently, the question is whether Congress would have intended the statute to operate even in the absence of the invalid provision, or whether it would have preferred no statute at all. In the instant case, the conclusion is inescapable that Congress would have preferred no statute at all to a statute that conferred unchecked deferral authority on the President.

As the District Court observed and catalogued, the ICA was passed at a time when Congress was united in its furor over presidential impoundments and intent on reasserting its control over the budgetary process. 634 F. Supp. at 1454-58. Although the Senate and House initially differed over the precise means for reasserting congressional prerogatives, n17 the legislation that [**19] eventually emerged from Congress contained several strong measures expressly designed to limit the President's ability to impound funds appropriated by Congress. For permanent impoundments (or "rescissions"), Congress adopted the Senate approach, which required prior legislative approval of proposed impoundments. *See* 2 U.S.C. ?683 (1982). For temporary impoundments (or "deferrals"), Congress adopted the House approach, which allowed impoundments to become effective without prior approval *if* neither House of Congress passed a resolution disapproving the impoundment. *See* 2 U.S.C. ?684 (1982). Importantly, Congress also amended the Anti-Deficiency Act to preclude the President from relying on that Act as authority for implementing policy impoundments. n18

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n17 The bill originally passed by the Senate would have required advance approval by Congress through concurrent revolutions if the impoundment was to last beyond 60 days. S. 373, 93d Cong., 1st Sess., 119 CONG. REC. 15,255-56 (1973). The bill passed by the House would have allowed impoundments to go into effect automatically if neither House of Congress vetoed the impoundment. H.R. 7130, 93d Cong., 1st Sess., 119 CONG. REC. 39,721-22 (1973). **[**20]**

n18 Before it was amended, the Anti-Deficiency Act authorized the President to "apportion[]" funds where justified by "other developments subsequent to the date on which such appropriation was made available." 31 U.S.C. ?665(c)(2) (1970). This open-ended language was amended to limit apportionments to three specified situations: "to provide for contingencies," "to achieve savings made possible by or through changes in requirements or greater efficiency of operations" or "as specifically provided by law." 31 U.S.C. ?1512(c)(1) (1982). The purpose of the amendment was to preclude the President from invoking the Act as authority for implementing "policy" impoundments, while preserving the President's authority to implement routine "programmatic" impoundments. *See, e.g.*, 120 CONG. REC. 7658 (1974) (statement of Sen. Muskie). President Nixon had attempted to use the Act as an instrument for shaping fiscal policy. *See generally* Note, *Addressing the Resurgence of Presidential Budgetmaking Initiative: A Proposal to Reform the Impoundment Control Act of 1974*, 63 TEX. L. REV. 693, 699-700 (1984).

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It is abundantly clear from both the statute and its legislative history that **[**21]** the overriding purpose of the deferral provision was to permit either House of Congress to veto any deferral proposed by the President -- particularly policy deferrals. The title of the statute itself -- "*Disapproval of proposed deferrals of budget authority*" -- makes it plain that Congress was preoccupied with assuring for itself a ready means of disapproving proposed deferrals. The House Report accompanying H.R. 7130 -- from which the deferral provision was drawn -- expressly states that the "basic purpose" of the bill was to provide each House an opportunity to veto an impoundment. H.R. REP. No. 658, 93d Cong., 1st **[*907]** Sess. 43, *reprinted in* 1974 U.S. CODE CONG. & ADMIN. NEWS 3462, 3488. The Conference Committee Report also emphasizes that the bill was designed to provide Congress with an effective system of impoundment control. S. CONF. REP. NO. 924, 93d Cong., 2d Sess. 49, 76-78, *reprinted in* 1974 U.S. CODE & CONG. ADMIN. NEWS 3462, 3591, 3616-18.

When the numerous statements of individual legislators urging the passage of legislation to control presidential impoundments are also considered, the evidence is incontrovertible that the "basic purpose" of section 1013 was [**22] to provide each House of Congress with a veto power over deferrals. Yet, the appellants would have us hold that Congress, had it foreseen *Chadha*, would nevertheless have gone ahead and enacted section 1013 *without* a legislative veto provision. As difficult (and precarious) as it may be at times to reconstruct what a particular Congress might have done had it been apprised of a particular set of facts, we refuse to entertain this remarkable proposition. As the District Court aptly noted, the "*raison d'etre*" of the entire legislative effort was to assert *control* over presidential impoundments. 634 F. Supp. at 1454. It is simply untenable to suggest that a Congress precluded from achieving this goal would have turned around and ceded to the President the very power it was determined to curtail.

In this respect, this case is the complete converse of *Alaska Airlines, Inc. v. Donovan*, 247 U.S. App. D.C. 132, 766 F.2d 1550 (D.C. Cir. 1985), *cert. granted*, 475 U.S. 1044, 106 S. Ct. 1259, 89 L. Ed. 2d 569 (1986), where we held that an unconstitutional legislative veto provision contained in section 43(f) of the Airline Deregulation Act of 1978, 49 U.S.C. ? [**231 1552(f) (1982), was severable from that portion of the statute authorizing the Secretary of Labor to issue regulations necessary to administer an employee protection program. Here, rather than adding the legislative veto provision as somewhat of an afterthought, as in *Alaska Airlines*, Congress focused almost exclusively on the means for asserting control over presidential impoundments. n19 The conclusion is thus inescapable that Congress would not have enacted section 1013 had it known that it could not exercise control over deferrals by means of a legislative veto.

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n19 It is true, as appellants assert, that the congressional debates also touched on the need for more effective notice to Congress of the President's intention to impound funds. *See, e.g.*, 120 CONG. REC. 20,481-82 (colloquy between Sen. Humphrey and Sen. Ervin). However, the District Court was correct in observing that the *central* issue debated at great length by Congress was "whether the President should be able to impound at all, or should be permitted to impound, but with various congressional circumscriptions of his power to do so." 634 F. Supp. at 1457-58. Our examination of the Act's legislative history also confirms the District Court's conclusion that Congress was not "very much concerned with, let alone determined to achieve, further detail

about future Presidential impoundments *absent a mechanism for exercising control over them*." *Id.* (emphasis added).

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The appellants argue vigorously that the opposite conclusion is compelled by the distinction drawn in the Act between rescissions and deferrals. As noted earlier, the original bill passed by the House would have permitted both rescissions and deferrals to go into effect automatically, subject of course to a legislative veto. *See* note 17 *supra*. The House Report explained that the Committee favored a legislative veto mechanism because

> in the normal process of apportionment, the executive branch necessarily withholds funds on hundreds of occasions during the course of a fiscal year. If Congress adopts a procedure requiring it to approve every necessary impoundment, its legislative process would be disrupted by the flood of approvals that would be required for the normal and orderly operation of the government. The negative mechanism provided in H.R. 7130 will permit Congress to focus on critical and important matters, and save it from submersion in a sea of trivial ones.

H.R. REP. NO. 658, 93d Cong., 1st Sess. 41, *reprinted in* 1974 U.S. CODE & CONG. ADMIN. NEWS 3462, 3486-87. In the final analysis, however, the House approach prevailed [*908] only for deferrals for rescissions, [**25] Congress adopted the Senate approach, which required prior congressional approval before a rescission could go into effect. According to the appellants, this distinction is critical, for it demonstrates that Congress' intent in enacting section 1013 was to render deferrals "presumptively valid." Brief of Defendants-Appellants at 31-33. Because Congress did not want to trouble itself by approving deferrals in advance, they argue, Congress would have authorized the President to implement deferrals even had it known that it could not maintain oversight over those deferrals by means of a legislative veto.

This argument completely misreads the above-quoted passage and is completely at odds with Congress' expressed intention to *control* rather than *authorize* presidential deferrals. First, the quoted passage plainly speaks to "trivial," everyday *programmatic*

deferrals. It is these "trivial" impoundments relating to the "normal and orderly operation of the government" that Congress expected to present little controversy. Congress most certainly did not mean to suggest that impoundments designed to negate congressional budgetary *policies* would be "presumptively valid." It is [**26] precisely this sort of impoundment that Congress was determined to forestall.

Second, the quoted passage proves only that Congress preferred a system in which it need not enact legislation approving deferrals *because it could easily disapprove them* by the relatively simple expedient of the one-House veto. Nowhere in the legislative history is there the slightest suggestion that the President be given statutory authority to defer funds without the possible check of at least a one-House veto. Indeed, the House Report completely refutes the notion that Congress would have granted the President statutory authority to implement deferrals, thereby forcing itself to reenact an appropriations bill each time it disapproved of a deferral:

> [The one-House veto] is suggested on the ground that the impoundment situation established by the bill involves a presumption *against* the President's refusing to carry out the terms of an already considered and enacted statute. To make Congress go through a procedure involving agreement between the two Houses on an already settled matter would be to require both, in effect, to reconfirm what they have already decided.

H.R. REP. N. 658. 93d Cong., [**27] 1st Sess. 42, *reprinted in* 1974 U.S. CODE CONG. & ADMIN. NEWS 3462, 3487 (emphasis added). Yet, a finding of severability would create a presumption in favor of deferrals and require Congress to legislate a second time in order to effectuate its budgetary policies. We cannot conceive of a result more contrary to congressional intent.

The appellants further argue that Congress' more permissive treatment of deferrals suggests that the congressional furor over "impoundments" was principally a dissatisfaction with rescissions. Brief of Defendants-Appellants at 37-39. Again, this contention has absolutely no basis in the legislative history. Although Congress certainly distinguished between rescissions and deferrals, it spoke in general terms of the need to control "impoundments," which it defined as "withholding or *delaying* the

expenditure or obligation of budget authority . . . and the termination of authorized projects or activities for which appropriations have been made." H.R. REP. NO. 658, 93d Cong., 1st Sess. 52, *reprinted in* U.S. CODE CONG & ADMIN. NEWS 3462, 3497 (emphasis added). n20 The appellants can point to nothing in the legislative history to suggest that members **[**28]** of Congress were disturbed with rescissions but tolerant of deferrals. Indeed, to the extent that Congress expressed any tolerance of deferrals at all, it was referring to routine programmatic deferrals, not policy deferrals. *Id.* at 42, 1974 U.S. CODE CONG. & ADMIN. NEWS at 3488 ("The Committee recognizes that a brief delay in expending or obligating funds may sometimes be legitimately necessary **[*909]** for purely administrative reasons."). n21

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n20 *Cf.* 120 CONG. REC. 19,674 (1974) (statement of Rep. Bolling) (analysis has shown that deferrals constitute the "lion's share" of impoundment actions).

n21 *Cf. id.* (suggesting that Congress will employ legislative veto only when it perceives that the President is attempting to alter Congress' budgetary policies, not when the proposed deferrals "are for routine financial purposes and involve neither questions of policy nor attempts to negate the will of Congress").

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We cannot emphasize enough in this context the critical distinction between programmatic and policy deferrals. As the appellants concede, *see* Brief of Defendants-Appellants at 33, our holding in this case will not impair the President's ability to implement routine **[**29]** programmatic deferrals. When Congress amended the Anti-Deficiency Act in the ICA, it did not disturb the President's authority to "impound" funds for purely administrative purposes. *See* note 18 *supra*. Thus, the President may still invoke the Anti-Deficiency Act as authority for implementing programmatic deferrals. By amending the Anti-Deficiency Act, however, Congress intended to foreclose the President from relying on that Act as separate statutory authority for *policy* deferrals. Congress intended to permit policy deferrals only under section 1013, and only if it could ensure itself a ready means of over-turning policy deferrals with which it disagreed. Had Congress known it could not employ such a mechanism, it most assuredly would not have nullified its own amendment to the Anti-Deficiency Act by creating new statutory authority for policy deferrals.

Finally, the appellants contend that if we invalidate section 1013 in its entirety, we must also strike down the ICA's other "deferral-related provision" -- *i.e.*, Congress's amendment to the Anti-Deficiency Act. Brief of Defendants-Appellants at 57. We find this argument to be wholly specious. As noted earlier, a court's **[**30]** duty in a severability case is to preserve as much of the statute as it can consistent with congressional intent. We are unable to preserve section 1013 absent its legislative veto provision because to do so would produce a result wholly contrary to that intended by Congress. The amendment to the Anti-Deficiency Act, in contrast, is fully consistent with the expressed intent of Congress to control presidential impoundments. Thus, there is absolutely no basis for overturning Congress' amendment to the Anti-Deficiency Act.

III. CONCLUSION

Section 1013 was designed specifically to provide Congress with a means for controlling presidential deferrals. As a consequence of the Supreme Court's decision in *Chadha*, however, that section has been transformed into a license to impound funds for policy reasons. This result is completely contrary to the will of Congress, which in amending the Anti-Deficiency Act sought to *remove* any colorable statutory basis for unchecked policy deferrals. We cannot imagine that Congress would have acted in complete contravention of its intended purposes by enacting section 1013 without a legislative veto provision. Accordingly, we hold that the unconstitutional **[**31]** legislative veto provision contained in section 1013 is inseverable from the remainder of the section, and we affirm the judgment of the District Court invalidating section 1013 in its entirety.

So ordered.

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LINE ITEM VETO ACT

[[Page 110 STAT. 1200]]

Public Law 104-130
104th Congress

An Act

To give the President line item veto authority with respect to appropriations, <<NOTE: Apr. 9, 1996 - [S. 4]>> new direct spending, and limited tax benefits.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, <<NOTE: Line Item Veto Act.>>

SECTION 1. <<NOTE: 2 USC 681 note.>> SHORT TITLE.

This Act may be cited as the ``Line Item Veto Act''.

SEC. 2. LINE ITEM VETO AUTHORITY.

(a) In General.--Title X of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 681 et seq.) is amended by adding at the end the following new part:

``Part C--Line Item Veto

``Sec. 1021. <<NOTE: 2 USC 691.>> (a) In General.--Notwithstanding the provisions of parts A and B, and subject to the provisions of this part, the President may, with respect to any bill or joint resolution

that has been signed into law pursuant to Article I, section 7, of the Constitution of the United States, cancel in whole--

``(1) any dollar amount of discretionary budget authority;

``(2) any item of new direct spending; or

``(3) any limited tax benefit;

if the President--

``(A) determines that such cancellation will--

``(i) reduce the Federal budget deficit;

``(ii) not impair any essential Government functions; and

``(iii) not harm the national interest; and

``(B) notifies the Congress of such cancellation by transmitting a special message, in accordance with section 1022, within five calendar days (excluding Sundays) after the enactment of the law providing the dollar amount of discretionary budget authority, item of new direct spending, or limited tax benefit that was canceled.

``(b) Identification of Cancellations.--In identifying dollar amounts of discretionary budget authority, items of new direct spending, and limited tax benefits for cancellation, the President shall--

``(1) consider the legislative history, construction, and purposes of the law which contains such dollar amounts, items, or benefits;

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``(2) consider any specific sources of information referenced in such law or, in the absence of specific sources of information, the best available information; and

``(3) use the definitions contained in section 1026 in applying this part to the specific provisions of such law.

``(c) Exception for Disapproval Bills.--The authority granted by subsection (a) shall not apply to any dollar amount of discretionary budget authority, item of new direct spending, or limited tax benefit contained in any law that is a disapproval bill as defined in section 1026.

``Sec. 1022 <<NOTE: Congress. 2 USC 691a.>> . (a) In General.--For each law from which a cancellation has been made under this part, the President shall transmit a single special message to the Congress.

``(b) Contents.--

``(1) The special message shall specify--

``(A) the dollar amount of discretionary budget authority, item of new direct spending, or limited tax benefit which has been canceled, and provide a corresponding reference number for each cancellation;

``(B) the determinations required under section 1021(a), together with any supporting material;

``(C) the reasons for the cancellation;

``(D) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect of the cancellation;

``(E) all facts, circumstances and considerations relating to or bearing upon the cancellation, and to the maximum extent practicable, the estimated effect of the cancellation upon the objects, purposes and programs for which the canceled authority was provided; and

``(F) include the adjustments that will be made pursuant to section 1024 to the discretionary spending limits under section 601 and an evaluation of the effects of those adjustments upon the sequestration procedures of section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985.

``(2) In the case of a cancellation of any dollar amount of discretionary budget authority or item of new direct spending, the special message shall also include, if applicable--

``(A) any account, department, or establishment of the Government for which such budget authority was to have been available for obligation and the specific project or governmental functions involved;

``(B) the specific States and congressional districts, if any, affected by the cancellation; and

``(C) the total number of cancellations imposed during the current session of Congress on States and

congressional districts identified in subparagraph (B).

``(c) Transmission of Special Messages to House and Senate.--

``(1) The President shall transmit to the Congress each special message under this part within five calendar days (excluding Sundays) after enactment of the law to which the cancellation applies. Each special message shall be transmitted to the House of Representatives and the Senate on the same calendar day. Such special message shall be delivered to the

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Clerk of the House of Representatives if the House is not in session, and to the Secretary of the Senate if the Senate is not in session.

``(2) <<NOTE: Federal Register, publication. ``CANCELLATION EFFECTIVE UNLESS DISAPPROVED>> Any special message transmitted under this part shall be printed in the first issue of the Federal Register published after such transmittal.

``Sec. 1023. <<NOTE: 2 USC 691b.>> (a) In General.--The cancellation of any dollar amount of discretionary budget authority, item of new direct spending, or limited tax benefit shall take effect upon receipt in the House of Representatives and the Senate of the special message notifying the Congress of the cancellation. If a disapproval bill for such special message is enacted into law, then all cancellations disapproved in that law shall be null and void and any such dollar amount of discretionary budget authority, item of new direct spending, or limited tax benefit shall be effective as of the original date provided in the law to which the cancellation applied.

``(b) Commensurate Reductions in Discretionary Budget Authority.--Upon the cancellation of a dollar amount of discretionary budget authority under subsection (a), the total appropriation for each relevant account of which that dollar amount is a part shall be simultaneously reduced by the dollar amount of that cancellation.

``Sec. 1024. <<NOTE: 2 USC 691c.>> (a) In General.--

``(1) Discretionary budget authority.--OMB shall, for each

dollar amount of discretionary budget authority and for each item of new direct spending canceled from an appropriation law under section 1021(a)--

``(A) reflect the reduction that results from such cancellation in the estimates required by section 251(a)(7) of the Balanced Budget and Emergency Deficit Control Act of 1985 in accordance with that Act, including an estimate of the reduction of the budget authority and the reduction in outlays flowing from such reduction of budget authority for each outyear; and

``(B) include a reduction to the discretionary spending limits for budget authority and outlays in accordance with the Balanced Budget and Emergency Deficit Control Act of 1985 for each applicable fiscal year set forth in section 601(a)(2) by amounts equal to the amounts for each fiscal year estimated pursuant to subparagraph (A).

``(2) Direct spending and limited tax benefits.--(A) OMB shall, for each item of new direct spending or limited tax benefit canceled from a law under section 1021(a), estimate the deficit decrease caused by the cancellation of such item or benefit in that law and include such estimate as a separate entry in the report prepared pursuant to section 252(d) of the Balanced Budget and Emergency Deficit Control Act of 1985.

``(B) OMB shall not include any change in the deficit resulting from a cancellation of any item of new direct spending or limited tax benefit, or the enactment of a disapproval bill for any such cancellation, under this part in the estimates

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and reports required by sections 252(b) and 254 of the Balanced Budget and Emergency Deficit Control Act of 1985.

``(b) Adjustments to Spending Limits.--After ten calendar days (excluding Sundays) after the expiration of the time period in section 1025(b)(1) for expedited congressional consideration of a disapproval bill for a special message containing a cancellation of discretionary budget authority, OMB shall make the reduction included in subsection

(a)(1)(B) as part of the next sequester report required by section 254 of the Balanced Budget and Emergency Deficit Control Act of 1985.

``(c) Exception.--Subsection (b) shall not apply to a cancellation if a disapproval bill or other law that disapproves that cancellation is enacted into law prior to 10 calendar days (excluding Sundays) after the expiration of the time period set forth in section 1025(b)(1).

``(d) Congressional Budget Office Estimates.--As soon as practicable after the President makes a cancellation from a law under section 1021(a), the Director of the Congressional Budget Office shall provide the Committees on the Budget of the House of Representatives and the Senate with an estimate of the reduction of the budget authority and the reduction in outlays flowing from such reduction of budget authority for each outyear.

``Sec. 1025. <<NOTE: 2 USC 691d.>> (a) Receipt and Referral of Special Message.--Each special message transmitted under this part shall be referred to the Committee on the Budget and the appropriate committee or committees of the Senate and the Committee on the Budget and the appropriate committee or committees of the House of Representatives. Each such message shall be printed as a document of the House of Representatives.

``(b) Time Period for Expedited Procedures.--

``(1) There shall be a congressional review period of 30 calendar days of session, beginning on the first calendar day of session after the date on which the special message is received in the House of Representatives and the Senate, during which the procedures contained in this section shall apply to both Houses of Congress.

``(2) In the House of Representatives the procedures set forth in this section shall not apply after the end of the period described in paragraph (1).

``(3) If Congress adjourns at the end of a Congress prior to the expiration of the period described in paragraph (1) and a disapproval bill was then pending in either House of Congress or a committee thereof (including a conference committee of the two Houses of Congress), or was pending before the President, a disapproval bill for the same special message may be introduced within the first five calendar days of session of the next

Congress and shall be treated as a disapproval bill under this part, and the time period described in paragraph (1) shall commence on the day of introduction of that disapproval bill.

``(c) Introduction of Disapproval Bills.--(1) In order for a disapproval bill to be considered under the procedures set forth in this section, the bill must meet the definition of a disapproval bill and must be introduced no later than the fifth calendar day of session following the beginning of the period described in subsection (b)(1).

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``(2) In the case of a disapproval bill introduced in the House of Representatives, such bill shall include in the first blank space referred to in section 1026(6)(C) a list of the reference numbers for all cancellations made by the President in the special message to which such disapproval bill relates.

``(d) <<NOTE: Reports.>> Consideration in the House of Representatives.--(1) Any committee of the House of Representatives to which a disapproval bill is referred shall report it without amendment, and with or without recommendation, not later than the seventh calendar day of session after the date of its introduction. If any committee fails to report the bill within that period, it is in order to move that the House discharge the committee from further consideration of the bill, except that such a motion may not be made after the committee has reported a disapproval bill with respect to the same special message. A motion to discharge may be made only by a Member favoring the bill (but only at a time or place designated by the Speaker in the legislative schedule of the day after the calendar day on which the Member offering the motion announces to the House his intention to do so and the form of the motion). The motion is highly privileged. Debate thereon shall be limited to not more than one hour, the time to be divided in the House equally between a proponent and an opponent. The previous question shall be considered as ordered on the motion to its adoption without intervening motion. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order.

``(2) After a disapproval bill is reported or a committee has been discharged from further consideration, it is in order to move that the

House resolve into the Committee of the Whole House on the State of the Union for consideration of the bill. If reported and the report has been available for at least one calendar day, all points of order against the bill and against consideration of the bill are waived. If discharged, all points of order against the bill and against consideration of the bill are waived. The motion is highly privileged. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. During consideration of the bill in the Committee of the Whole, the first reading of the bill shall be dispensed with. General debate shall proceed, shall be confined to the bill, and shall not exceed one hour equally divided and controlled by a proponent and an opponent of the bill. The bill shall be considered as read for amendment under the five-minute rule. Only one motion to rise shall be in order, except if offered by the manager. No amendment to the bill is in order, except any Member if supported by 49 other Members (a quorum being present) may offer an amendment striking the reference number or numbers of a cancellation or cancellations from the bill. Consideration of the bill for amendment shall not exceed one hour excluding time for recorded votes and quorum calls. No amendment shall be subject to further amendment, except pro forma amendments for the purposes of debate only. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion. A motion to reconsider the vote on passage of the bill shall not be in order.

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``(3) Appeals from decisions of the Chair regarding application of the rules of the House of Representatives to the procedure relating to a disapproval bill shall be decided without debate.

``(4) It shall not be in order to consider under this subsection more than one disapproval bill for the same special message except for consideration of a similar Senate bill (unless the House has already rejected a disapproval bill for the same special message) or more than one motion to discharge described in paragraph (1) with respect to a disapproval bill for that special message.

``(e) Consideration in the Senate.--

``(1) Referral and reporting.--Any disapproval bill introduced in the Senate shall be referred to the appropriate committee or committees. A committee to which a disapproval bill has been referred shall report the bill not later than the seventh day of session following the date of introduction of that bill. If any committee fails to report the bill within that period, that committee shall be automatically discharged from further consideration of the bill and the bill shall be placed on the Calendar.

``(2) Disapproval bill from house.--When the Senate receives from the House of Representatives a disapproval bill, such bill shall not be referred to committee and shall be placed on the Calendar.

``(3) Consideration of single disapproval bill.--After the Senate has proceeded to the consideration of a disapproval bill for a special message, then no other disapproval bill originating in that same House relating to that same message shall be subject to the procedures set forth in this subsection.

``(4) Amendments.--

``(A) Amendments in order.--The only amendments in order to a disapproval bill are--

``(i) an amendment that strikes the reference number of a cancellation from the disapproval bill; and

``(ii) an amendment that only inserts the reference number of a cancellation included in the special message to which the disapproval bill relates that is not already contained in such bill.

``(B) Waiver or appeal.--An affirmative vote of three-fifths of the Senators, duly chosen and sworn, shall be required in the Senate--

``(i) to waive or suspend this paragraph; or

``(ii) to sustain an appeal of the ruling of the Chair on a point of order raised under this paragraph.

``(5) Motion nondebatable.--A motion to proceed to consideration of a disapproval bill under this subsection shall not be debatable. It shall not be in order to move to reconsider

the vote by which the motion to proceed was adopted or rejected, although subsequent motions to proceed may be made under this paragraph.

``(6) Limit on consideration.--(A) After no more than 10 hours of consideration of a disapproval bill, the Senate shall proceed, without intervening action or debate (except as permitted under paragraph (9)), to vote on the final disposition thereof to the exclusion of all amendments not then pending and to the exclusion of all motions, except a motion to reconsider or to table.

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``(B) A single motion to extend the time for consideration under subparagraph (A) for no more than an additional five hours is in order prior to the expiration of such time and shall be decided without debate.

``(C) The time for debate on the disapproval bill shall be equally divided between the Majority Leader and the Minority Leader or their designees.

``(7) Debate on amendments.--Debate on any amendment to a disapproval bill shall be limited to one hour, equally divided and controlled by the Senator proposing the amendment and the majority manager, unless the majority manager is in favor of the amendment, in which case the minority manager shall be in control of the time in opposition.

``(8) No motion to recommit.--A motion to recommit a disapproval bill shall not be in order.

``(9) Disposition of senate disapproval bill.--If the Senate has read for the third time a disapproval bill that originated in the Senate, then it shall be in order at any time thereafter to move to proceed to the consideration of a disapproval bill for the same special message received from the House of Representatives and placed on the Calendar pursuant to paragraph (2), strike all after the enacting clause, substitute the text of the Senate disapproval bill, agree to the Senate amendment, and vote on final disposition of the House disapproval bill, all without any intervening action or debate.

``(10) Consideration of house message.--Consideration in the

Senate of all motions, amendments, or appeals necessary to dispose of a message from the House of Representatives on a disapproval bill shall be limited to not more than four hours. Debate on each motion or amendment shall be limited to 30 minutes. Debate on any appeal or point of order that is submitted in connection with the disposition of the House message shall be limited to 20 minutes. Any time for debate shall be equally divided and controlled by the proponent and the majority manager, unless the majority manager is a proponent of the motion, amendment, appeal, or point of order, in which case the minority manager shall be in control of the time in opposition.

``(f) Consideration in Conference.--

``(1) Convening of conference.--In the case of disagreement between the two Houses of Congress with respect to a disapproval bill passed by both Houses, conferees should be promptly appointed and a conference promptly convened, if necessary.

``(2) House consideration.--(A) Notwithstanding any other rule of the House of Representatives, it shall be in order to consider the report of a committee of conference relating to a disapproval bill provided such report has been available for one calendar day (excluding Saturdays, Sundays, or legal holidays, unless the House is in session on such a day) and the accompanying statement shall have been filed in the House.

``(B) Debate in the House of Representatives on the conference report and any amendments in disagreement on any disapproval bill shall each be limited to not more than one hour equally divided and controlled by a proponent and an opponent. A motion to further limit debate is not debatable. A motion to recommit the conference report is not in order,

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and it is not in order to move to reconsider the vote by which the conference report is agreed to or disagreed to.

``(3) Senate consideration.--Consideration in the Senate of the conference report and any amendments in disagreement on a disapproval bill shall be limited to not more than four hours

equally divided and controlled by the Majority Leader and the Minority Leader or their designees. A motion to recommit the conference report is not in order.

``(4) Limits on scope.--(A) When a disagreement to an amendment in the nature of a substitute has been referred to a conference, the conferees shall report those cancellations that were included in both the bill and the amendment, and may report a cancellation included in either the bill or the amendment, but shall not include any other matter.

``(B) When a disagreement on an amendment or amendments of one House to the disapproval bill of the other House has been referred to a committee of conference, the conferees shall report those cancellations upon which both Houses agree and may report any or all of those cancellations upon which there is disagreement, but shall not include any other matter.

``Sec. 1026. <<NOTE: 2 USC 691e.>> As used in this part:

``(1) Appropriation law.--The term `appropriation law' means an Act referred to in section 105 of title 1, United States Code, including any general or special appropriation Act, or any Act making supplemental, deficiency, or continuing appropriations, that has been signed into law pursuant to Article I, section 7, of the Constitution of the United States.

``(2) Calendar day.--The term `calendar day' means a standard 24-hour period beginning at midnight.

``(3) Calendar days of session.--The term `calendar days of session' shall mean only those days on which both Houses of Congress are in session.

``(4) Cancel.--The term `cancel' or `cancellation' means--

``(A) with respect to any dollar amount of discretionary budget authority, to rescind;

``(B) with respect to any item of new direct spending--

``(i) that is budget authority provided by law (other than an appropriation law), to prevent such budget authority from having legal force or effect;

``(ii) that is entitlement authority, to prevent the specific legal obligation of the

United States from having legal force or effect; or

``(iii) through the food stamp program, to prevent the specific provision of law that results in an increase in budget authority or outlays for that program from having legal force or effect; and

``(C) with respect to a limited tax benefit, to prevent the specific provision of law that provides such benefit from having legal force or effect.

``(5) Direct spending.--The term `direct spending' means--

``(A) budget authority provided by law (other than an appropriation law);

``(B) entitlement authority; and

``(C) the food stamp program.

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``(6) Disapproval bill.--The term `disapproval bill' means a bill or joint resolution which only disapproves one or more cancellations of dollar amounts of discretionary budget authority, items of new direct spending, or limited tax benefits in a special message transmitted by the President under this part and--

``(A) the title of which is as follows: `A bill disapproving the cancellations transmitted by the President on _____', the blank space being filled in with the date of transmission of the relevant special message and the public law number to which the message relates;

``(B) which does not have a preamble; and

``(C) which provides only the following after the enacting clause: `That Congress disapproves of cancellations _____', the blank space being filled in with a list by reference number of one or more cancellations contained in the President's special message, `as transmitted by the President in a special message on _____', the blank space being filled in with the appropriate date, `regarding _____.', the

blank space being filled in with the public law number to which the special message relates.

``(7) Dollar amount of discretionary budget authority.--(A) Except as provided in subparagraph (B), the term `dollar amount of discretionary budget authority' means the entire dollar amount of budget authority--

``(i) specified in an appropriation law, or the entire dollar amount of budget authority required to be allocated by a specific proviso in an appropriation law for which a specific dollar figure was not included;

``(ii) represented separately in any table, chart, or explanatory text included in the statement of managers or the governing committee report accompanying such law;

``(iii) required to be allocated for a specific program, project, or activity in a law (other than an appropriation law) that mandates the expenditure of budget authority from accounts, programs, projects, or activities for which budget authority is provided in an appropriation law;

``(iv) represented by the product of the estimated procurement cost and the total quantity of items specified in an appropriation law or included in the statement of managers or the governing committee report accompanying such law; and

``(v) represented by the product of the estimated procurement cost and the total quantity of items required to be provided in a law (other than an appropriation law) that mandates the expenditure of budget authority from accounts, programs, projects, or activities for which budget authority is provided in an appropriation law.

``(B) The term `dollar amount of discretionary budget authority' does not include--

``(i) direct spending;

``(ii) budget authority in an appropriation law which funds direct spending provided for in other law;

``(iii) any existing budget authority rescinded or canceled in an appropriation law; or

``(iv) any restriction, condition, or limitation in an appropriation law or the accompanying statement of man

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agers or committee reports on the expenditure of budget authority for an account, program, project, or activity, or on activities involving such expenditure.

``(8) Item of new direct spending.--The term `item of new direct spending' means any specific provision of law that is estimated to result in an increase in budget authority or outlays for direct spending relative to the most recent levels calculated pursuant to section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985.

``(9) Limited tax benefit.--(A) The term `limited tax benefit' means--

``(i) any revenue-losing provision which provides a Federal tax deduction, credit, exclusion, or preference to 100 or fewer beneficiaries under the Internal Revenue Code of 1986 in any fiscal year for which the provision is in effect; and

``(ii) any Federal tax provision which provides temporary or permanent transitional relief for 10 or fewer beneficiaries in any fiscal year from a change to the Internal Revenue Code of 1986.

``(B) A provision shall not be treated as described in subparagraph (A)(i) if the effect of that provision is that--

``(i) all persons in the same industry or engaged in the same type of activity receive the same treatment;

``(ii) all persons owning the same type of property, or issuing the same type of investment, receive the same treatment; or

``(iii) any difference in the treatment of persons is based solely on--

``(I) in the case of businesses and associations, the size or form of the business or association involved;

``(II) in the case of individuals, general

demographic conditions, such as income, marital status, number of dependents, or tax return filing status;

``(III) the amount involved; or

``(IV) a generally-available election under the Internal Revenue Code of 1986.

``(C) A provision shall not be treated as described in subparagraph (A)(ii) if--

``(i) it provides for the retention of prior law with respect to all binding contracts or other legally enforceable obligations in existence on a date contemporaneous with congressional action specifying such date; or

``(ii) it is a technical correction to previously enacted legislation that is estimated to have no revenue effect.

``(D) For purposes of subparagraph (A)--

``(i) all businesses and associations which are related within the meaning of sections 707(b) and 1563(a) of the Internal Revenue Code of 1986 shall be treated as a single beneficiary;

``(ii) all qualified plans of an employer shall be treated as a single beneficiary;

``(iii) all holders of the same bond issue shall be treated as a single beneficiary; and

``(iv) if a corporation, partnership, association, trust or estate is the beneficiary of a provision, the shareholders of the corporation, the partners of the partnership, the

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members of the association, or the beneficiaries of the trust or estate shall not also be treated as beneficiaries of such provision.

``(E) For purposes of this paragraph, the term `revenue-losing provision' means any provision which results in a reduction in Federal tax revenues for any one of the two following periods--

``(i) the first fiscal year for which the provision is effective; or

``(ii) the period of the 5 fiscal years beginning with the first fiscal year for which the provision is effective.

``(F) The terms used in this paragraph shall have the same meaning as those terms have generally in the Internal Revenue Code of 1986, unless otherwise expressly provided.

``(10) OMB.--The term `OMB' means the Director of the Office of Management and Budget.

``Sec. 1027. <<NOTE: 2 USC 691f.>> (a) Statement by Joint Tax Committee.--The Joint Committee on Taxation shall review any revenue or reconciliation bill or joint resolution which includes any amendment to the Internal Revenue Code of 1986 that is being prepared for filing by a committee of conference of the two Houses, and shall identify whether such bill or joint resolution contains any limited tax benefits. The Joint Committee on Taxation shall provide to the committee of conference a statement identifying any such limited tax benefits or declaring that the bill or joint resolution does not contain any limited tax benefits. Any such statement shall be made available to any Member of Congress by the Joint Committee on Taxation immediately upon request.

``(b) Statement Included in Legislation.--(1) Notwithstanding any other rule of the House of Representatives or any rule or precedent of the Senate, any revenue or reconciliation bill or joint resolution which includes any amendment to the Internal Revenue Code of 1986 reported by a committee of conference of the two Houses may include, as a separate section of such bill or joint resolution, the information contained in the statement of the Joint Committee on Taxation, but only in the manner set forth in paragraph (2).

``(2) <<NOTE: Applicability.>> The separate section permitted under paragraph (1) shall read as follows: `Section 1021(a)(3) of the Congressional Budget and Impoundment Control Act of 1974 shall _____ apply to _____.', with the blank spaces being filled in with--

``(A) in any case in which the Joint Committee on Taxation identifies limited tax benefits in the statement required under subsection (a), the word `only' in the first blank space and a list of all of the specific provisions of the bill or joint

resolution identified by the Joint Committee on Taxation in such statement in the second blank space; or

``(B) in any case in which the Joint Committee on Taxation declares that there are no limited tax benefits in the statement required under subsection (a), the word `not' in the first blank space and the phrase `any provision of this Act' in the second blank space.

``(c) President's Authority.--If any revenue or reconciliation bill or joint resolution is signed into law pursuant to Article I, section 7, of the Constitution of the United States--

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``(1) with a separate section described in subsection (b)(2), then the President may use the authority granted in section 1021(a)(3) only to cancel any limited tax benefit in that law, if any, identified in such separate section; or

``(2) without a separate section described in subsection (b)(2), then the President may use the authority granted in section 1021(a)(3) to cancel any limited tax benefit in that law that meets the definition in section 1026.

``(d) Congressional Identifications of Limited Tax Benefits.--There shall be no judicial review of the congressional identification under subsections (a) and (b) of a limited tax benefit in a conference report.".

SEC. 3. <<NOTE: 2 USC 692.>> JUDICIAL REVIEW.

(a) Expedited Review.--

(1) Any Member of Congress or any individual adversely affected by part C of title X of the Congressional Budget and Impoundment Control Act of 1974 may bring an action, in the United States District Court for the District of Columbia, for declaratory judgment and injunctive relief on the ground that any provision of this part violates the Constitution.

(2) A copy of any complaint in an action brought under paragraph (1) shall be promptly delivered to the Secretary of

the Senate and the Clerk of the House of Representatives, and each House of Congress shall have the right to intervene in such action.

(3) Nothing in this section or in any other law shall infringe upon the right of the House of Representatives to intervene in an action brought under paragraph (1) without the necessity of adopting a resolution to authorize such intervention.

(b) Appeal to Supreme Court.--Notwithstanding any other provision of law, any order of the United States District Court for the District of Columbia which is issued pursuant to an action brought under paragraph (1) of subsection (a) shall be reviewable by appeal directly to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 10 calendar days after such order is entered; and the jurisdictional statement shall be filed within 30 calendar days after such order is entered. No stay of an order issued pursuant to an action brought under paragraph (1) of subsection (a) shall be issued by a single Justice of the Supreme Court.

(c) Expedited Consideration.--It shall be the duty of the District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any matter brought under subsection (a).

SEC. 4. CONFORMING AMENDMENTS.

(a) Short Titles.--Section 1(a) of the Congressional Budget and Impoundment Control Act of 1974 <<NOTE: 2 USC 621 note.>> is amended by--

(1) striking ``and'' before ``title X'' and inserting a period;

(2) inserting ``Parts A and B of'' before ``title X''; and

(3) inserting at the end the following new sentence: ``Part C of title X may be cited as the `Line Item Veto Act of 1996'.''.

(b) Table of Contents.--The table of contents set forth in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 <<NOTE: 88 Stat. 297.>> is amended by adding at the end the

following:

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``Part C--Line Item Veto

``Sec. 1021. Line item veto authority.
``Sec. 1022. Special messages.
``Sec. 1023. Cancellation effective unless disapproved.
``Sec. 1024. Deficit reduction.
``Sec. 1025. Expedited congressional consideration of disapproval bills.
``Sec. 1026. Definitions.
``Sec. 1027. Identification of limited tax benefits.".

(c) Exercise of Rulemaking Powers.--Section 904(a) of the Congressional Budget Act of 1974 <<NOTE: 2 USC 621 note.>> is amended by striking ``and 1017" and inserting ``, 1017, 1025, and 1027".

SEC. 5. <<NOTE: 2 USC 691 note.>> EFFECTIVE DATES.

This Act and the amendments made by it shall take effect and apply to measures enacted on the earlier of--

(1) the day after the enactment into law, pursuant to Article I, section 7, of the Constitution of the United States, of an Act entitled ``An Act to provide for a seven-year plan for deficit reduction and achieve a balanced Federal budget."; or

(2) January 1, 1997;

and shall have no force or effect on or after January 1, 2005.

Approved April 9, 1996

LEGISLATIVE HISTORY--S. 4 (H.R. 2):

HOUSE REPORTS: Nos. 104-11, Pt. 1 (Comm. on Rules) and Pt. 2 (Comm. on

Government Reform and Oversight) both accompanying H.R. 2, and 104-491 (Comm. of Conference).

SENATE REPORTS: Nos. 104-9 (Comm. on the Budget) and 104-13 (Comm. on Governmental Affairs).

CONGRESSIONAL RECORD:

Vol. 141 (1995):

Feb. 2, 3, 6, H.R. 2 considered and passed House.

Mar. 20-23, S. 4 considered and passed Senate.

May 17, considered and passed House, amended, in lieu of H.R. 2.

Vol. 142 (1996):

Mar. 27, Senate agreed to conference report.

Mar. 28, House agreed to conference report pursuant to H. Res. 391.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 32 (1996):

Apr. 9, Presidential remarks and statement.

<all>

The Federalist Papers by Alexander Hamilton, James Madison and John Jay

With an introduction and commentary by Garry Wills

BANTAM BOOKS
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The Federalist No. 69: HAMILTON

March 14, 1788

To the People of the State of New York.

I proceed now to trace the real characters of the proposed executive as they are marked out in the plan of the Convention. This will serve to place in a strong light the unfairness of the representations which have been made in regard to it.

The first thing which strikes our attention is that the executive authority, with few exceptions, is to be vested in a single magistrate. This will scarcely however be considered as a point upon which any comparison can be grounded; for if in this particular there be a resemblance to the King of Great-Britain, there is not less a resemblance to the Grand Signior, to the Khan of Tartary, to the man of the seven mountains, or to the Governor of New-York.

That magistrate is to be elected for *four* years; and is to be re-eligible as often as the People of the United States shall think him worthy of their confidence. In these circumstances, there is a total dissimilitude between *him* and a King of Great-Britain; who is an *hereditary* monarch, possessing the crown as a patrimony descendible to his heirs forever; but there is a close analogy between *him* and a Governor of New-York, who is elected for *three* years, and is re-eligible without limitation or intermission. If we consider how much less time would be requisite for establishing a dangerous influence in a single State, than for establishing a like influence throughout the United States, we must conclude that a duration of *four* years for the Chief Magistrate of the Union, is a degree of permanency far less to be dreaded in that office, than a duration of *three* years for a correspondent office in a single State.

The President of the United States would be liable to be impeached, tried, and upon conviction of treason, bribery, or other high crimes or misdemeanors, removed from office; and would afterwards be liable to prosecution and punishment in the ordinary course of law. The person of the King of Great-Britain is sacred and inviolable: There is no constitutional tribunal to which he is amenable; no punishment to which he can be subjected without involving the crisis of a national revolution. In this delicate and important circumstance of personal responsibility, the President of confederated America would stand upon no better ground than a Governor of New-York, and upon worse ground than the Governors of Virginia and Delaware.

The President of the United States is to have power to return a bill, which shall have passed the two branches of the Legislature, for re-consideration; but the bill so returned is to become a law, if upon that re-consideration it be approved by two thirds of both houses. The King of Great Britain, on his part, has an absolute negative upon the acts of the two houses of Parliament. The disuse of that power for a considerable time past, does not affect the reality of its existence; and is to be ascribed wholly to the crown's having found the means of substituting influence to authority, or the art of gaining a majority in one or the other of the two houses, to the necessity of exerting a prerogative which could seldom be exerted without hazarding some degree of national agitation. The qualified negative of the President differs widely from this absolute negative of the British sovereign; and tallies exactly with the revisionary authority of the Council of revision of this State, of which the Governor is a constituent part. In this respect, the power of the President would exceed that of the Governor of New-York; because the former would possess singly what the latter shares with the Chancellor and Judges: But it would be precisely the same with that of the Governor of Massachusetts, whose constitution, as to this article, seems to have been the original from which the Convention have copied.

The President is to be the "Commander in Chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States. He is to have power to grant reprieves and pardons for offences against the United States, *except in cases of impeachment;* to recommend to the consideration of Congress such measures as he shall judge necessary and expedient; to convene on extraordinary occasions both houses of the Legislature, or either of them, and in case of disagreement between them *with respect to the time of adjournment,* to adjourn them to such time as he shall think proper; to take care that the laws be faithfully executed; and to commission all officers of the United States." In most of these particulars the power of the President will resemble equally that of the King of Great-Britain and of the Governor of New-York. The most material points of difference are these—First; the President will have only the occasional command of such part of

解釋憲法意見書

聲請法定代理人或代表人	
（姓名及身分證統一編號，如係法人團體或政黨請記名其名稱代表人姓名。）	關係人 韋　端　教授
性別	
出生年月日	
職業	
出生地	
住居所、營業所、主事務所及電話號碼	
送達代收人姓名、住址及電話號碼	

我國預算制度的剛性與彈性

—停建核四釋憲案意見書

關係人國立中山大學教授　韋　端

89、12、21　於大法官審查會

一、預算制度的剛性

我國特有的主計制度創制於七十年前，涵蓋政府歲計（預算及決算）、會計、統計業務，與公庫（財政部主管）、審計（審計部主管）共同構成政府財務的聯綜體系。主計制度創制時，於國民政府主席之下設文官長、參軍長、主計長三職，分掌國家文官、武官及主計事宜，因此主計法令之處分效力及於各級政府及各機關。

行憲後因應五權分立，主計業務改隸行政院，但主計法令仍適用於全國，故均冠以「各機關」字樣。其中之預算制度乃以民國二十一年公布施行的預算法為基礎，由於必須顧及預算的預測性質，故採剛性與彈性並顧的方式立法。其剛性表現之條文，有如「中華民國中央政府預算之籌劃、編造、審

議、成立及執行，依本法之規定。」（預算法第一條）、「因擔保、保證或契約可能造成未來會計年度之支出者，應於預算書中列表說明，其對國庫有重大影響者，並應向立法院報告」（預九）、「政府歲入與歲出、債務之舉借與以前年度歲計賸餘之移用及債務之償還，均應編入其預算。」（預十三）、「政府經常收支，應保持常衡，．．．．」（預二十四）、「政府不得於預算所定外，動用公款、處分公有財物或為投資之行為。」（預二十五）、「政府大宗動產、不動產之買賣或交換，均須依據本法所定預算程序為之。」（預二十六）、「政府非依法律，不得於其預算外增加債務；．．．．」（預二十七）。這些規定，旨在嚴格規範政府運用公款的合理、公開及接受監督，使弊端達到最小。在預算法之上，復有憲法規定之「行政院院長．．．須將應行提出於立法院之法律案、預算案、或戒嚴案、大赦案、宣戰案、媾和案、條約案及其他重要事項．．．提出於行政院會議議決之。」（憲法第五十八條）、「行政院．．．應將下年度預算案提出立法院」（憲五十九）、「行政院．．．應提出決算於監察院」（憲六十）、

「立法院有議決法律案、預算案．．．及國家其他重要事項之權。」（憲六十三），「立法院對於行政院所提預算案，不得為增加支出之提議。」（憲七十），使得預算程序之權責脈絡鮮明，其中籌劃、編製權屬行政院，審議、成立權屬立法院，執行則由各機關負責，主計、審計及財政機關監督。預算案經行政院會議通過，立法院三讀審議及總統公布等程序，復與法律相同，故法定預算乃措施性法律（釋字第三九一號解釋），肯定了預算具有強制規範之法律性質，其效力與法律無異。

二、預算執行之監督

為了有效監督法定預算之執行，特別設計審計權，故於憲法規定監察院設審計長，依法審核行政院所提出之決算（憲一〇四、一〇五），並明訂審計權職為「監督預算之執行．．．」（審計法第二條）、「審計機關考核各機關之績效，如認為有未盡職責或效能過低者．．．應報告監察院．．．」（審六十九）。以上對於預算自籌劃至審議、執行、監督之程序規定，體系完備周延，且對公務預算與事業

預算、單位預算與附屬單位預算之間，所依規定並無重大本質上的差異。行政部門的預算執行監督，從八十年度至八十七年度，均須依總預算執行條例，要求對預算執行不力的機關首長及相關主管應予議處。八十七年預算法修正後，預算執行改依預算法（第五十五條至七十八條）專章規定辦理，議處部分改依「行政院暨所屬各機關計畫預算執行考核獎懲作業要點」（八十九年八月三日行政院修正公布）辦理，其第四點規定「全年度計畫預算執行進度．．．．未達全年度百分之九十者，相關主管人員依下列標準予以議處．．．。」第五點規定「．．．所稱不可抗拒之特殊因素，．．．，其規定如下：（一）．．．1.因民意機關之決議，．．．，致所列預算無法據以執行，進度落後、緩辦或停辦者。」其中並無規定可由行政部門單方面決定停止執行法定預算。

三、預算制度之彈性

由於施政經緯萬端，預算自籌編至執行完畢亦長達二年以上，預算科目亦不可能巨細無遺，故須

有彈性規定，方不致於執行時產生窒礙，如「預算應設預備金．．．」（預二十二）、「各機關之歲出分配預算．．．應按中央主計機關之規定流用之。．．．」、「預算之執行，遇國家發生特殊事故而有裁減經費之必要時，得經行政院審議之決議，呈請總統裁減之。」（預七十一）、「各機關．．．得請求提出追加歲出預算．．．」（預七十九）、「法定歲入有特別短收之情勢．．．由行政院提出追加、追減預算調整之」（預八十一）、「．．．行政院．．．得提出特別預算」（預八十三）、「附屬單位預算之執行，如因市場狀況之重大變遷．．．報經行政核准者，得先行辦理，．．．，仍應補辦預算。公務機關因其業務附帶有．．．營業行為之作業者，．．．，准用前項之規定。」（預八十六）。其中預算法第八十一條乃針對國營事業或其他有市場性質的公務預算因應市場變化所作之規定，非云附屬單位預算之執行及監督與公務預算有本質上的差異，故特於預算法第九十條規定「附屬單位預算．．．本章未規定者，準用本法其他各章之有關規定。」這些彈性規定，使得政府五十年來的預算均能順利

執行，直至核四預算停止執行案的出現。以往雖亦有若干國營事業計畫之預算終止執行，然或因政策目標不復存在，或已有合法替代及處理方案，均依決算程序處理及追究責任、議處失職人員，且均非屬國家重要事項，故未引發立法院移請行政院變更或行政院移請立法院覆議等爭議，非謂任何附屬單位預算均可由行政院片面決定停止預算之執行。

四、變更核四計畫須符憲政程序

核能四廠計畫政策目標在於分散能源、補救北部電力之短缺。預算案於六十九年提出，預算總額一、六九七億元，歷年已編列法定預算一、二四〇億元（八十三年），當時行政院並未提覆議案，立法院復於八十五年提出廢核決議，惟經行政院提請覆議，立法院覆議表決「原決議不予維持」（八十五年），故迄今已順利執行四八一億元。如此規模的國家重要事項，行政院片面宣稱有此憲法權限作出決定，以行政院會議議決的方式，予以變更，停止興建核四，停止執行預算。是項決定，行政

院應已察覺其重大爭議性，否則何由對此決定要主動請大法官解釋合憲與否；是項決定，如果能夠在主計法規中找到依據，使之順利達成，則此項法規必有違憲之虞，因其與法律位階的法治基本原則不符。預算法無「法定預算得予停止執行」之規定，供作支持本案停建之依據，乃因預算法既已明定預算程序，對預算（連帶其計畫）的變更，不在預算法規定之彈性以內者，只須再經預算程序即可。因此本案無須在主計法規中尋找依據，亦即，無此依據，也不宜有此依據，故現任主計長林全在立法院表示「用預算法解決核四問題，正當性不足」、「以預算法為核四案解套，是模糊焦點，本末倒置。」審計長蘇振平亦在立法院表示「核四預算依法是要繼續執行，行政院若要停辦或緩辦，必須依程序處理」。再經預算程序的意思，就本案而言，乃是在取得立法院依法定程序對此國家重要事項的同意決議後，原預算併決算辦理（預八十七），同時追加（或特別預算）賠償、損失、處分公有財物、善後處理及替代方案之預算，既屬預算案，自須均經立法院之決議，非如此無法達成政策

目標，行政院無從規避此項預算程序，企圖一時之方便，置國家根本大法的永續性於不顧。是以本案乃屬行政院未依憲法所訂對立法院負責之違失。如果行政院此項決定乃屬合憲，吾人恐行政院可對任何立法院決議之「法律案、預算案、戒嚴案、大赦案、宣戰案、媾和案、條約案及國家其他重要事項」，予以停止執行，明顯牴觸憲法第六十三條賦予立法院之權，亦違背憲法增修條文第三條所規定行政院對立法院應負之責任，因而背離依法行政之原則，並使立法院之預算審查及制衡機制失卻意義，造成法定預算的高度不確定性，嚴重損害立法權與行政權間之權限分際。

一 二 三 四 五 六

此致

司法院

中華民國八十九年十二月廿日

關係人：韋端 簽名蓋：

時報

RECEIVED TIME 19. DEC. 8:41

中華民國八十九年九月二十九日／星期五

核四必須找主流民意支持

解套只是模糊焦點 可能把總統閣揆推入政治風暴

……政治風暴……他甚不能點頭，否則就是把總統、閣揆推進政治風暴，他不能這麼做。

近日堅持核四預算必須執行，否則違法的林全說，他講這些話之前，並沒有先向總統報告，也不須要向總統報告，他相信總統如果了解他的意思，也會了解他的「苦衷」。如果他不說「NO」，讓行政院透過預算手段解決核四問題，反而會把總統拖下水。

行政院法規會「停止核四計劃繼續興建報告」曝光，使行政院為停建核四所做的適法性研究報告又增加一本。面對各個解套版本，一面倒地從預算法中尋找答案，林全昨日仍堅持，他不能點頭，預算只是「解決核四案的下游程序」，先把源頭解掉，預算自然好處理。他如果輕率點頭，到時候連行政院長可能都會遭到彈劾。

林全直言，用預算法來解決核四問題，正當性不足，新政府硬要這麼做，一定會引起民意反彈，「會出大問題」。停建核四的問題在於，行政院能不能找到主流民意支持停建決定，如果能夠，預算問題自然可以解決。至於如何取得主流民意？方法有很多，例如提出停建案經立法院通過，或許還有其他，行政院可以再研究。

他解釋，核四的問題應該分成幾個層次，外界的討論把整個焦點都模糊了，甚至是本末倒置。

林全認為，第一個程序應該是先評估再評估，確定要不要建；如果不建，第二步再尋求從政治、法律面解決；解決了政治、法律問題，最後才是討論已經編好的核四興建預算要怎麼處理。整個程序本來應該從上而下來，一個一個走，現在卻倒著走，核四究竟要不要建都不知道，外界就把焦點放在核四預算要怎麼解決。

停建如引發股市崩盤金融風暴 願下台

于國欽／台北報導

經濟部長林信義昨日在立院答詢時表示，核四是核四，總預算案是總預算案，絕對不該有「交換說」的邏輯，而一旦最後行政院做出停建核四的決定，導致股市崩盤釀成本土型金融風暴，他當然會為此負責下台。他也強調以天然氣發電替代核四有可行性，可及時補足北部電力缺口，電價也未必調漲，經濟部仍在評估中。

立委李嘉進昨日在立法院經濟委員會中質詢林信義時指出，核四若宣布不建，極可能造成股市崩盤，經濟力衰退，更有可能因此釀成本土型的金融風暴，他拉高音量問林信義會否為此負政治責任。

林信義表示，股市起起伏伏不能歸咎於某一單一原因，崩盤到什麼地步？衰退到什麼水準？才能說是核四所引發的，並沒有明確的標準，縱使如此，林信義仍強調，若真的因為核四停建使得台灣經濟力衰頹，他當然會為此辭職負責。

于國欽／台北報導

林信義昨日同時表示，以燃氣電廠替代核有可行性，這一替代方案是以擴充北部地區光、長生、新桃、及亞裕發電規模，預計四完工，可以及時補足民國九十四年以後，北

林信義表示，經濟部已完成「以燃氣發的供氣可行性分析」，在北部擴大既彌補核四是具有可行性。林信義表示，廠從土地取得、環評到完成興建商轉供年，但是由於這次計畫擴建的國光、長電廠及新建的亞裕電廠，土地取得已沒

依法 核四預算 必須繼續執行

蘇振平：行政院若要停辦或緩辦 得依程序處理

郭珍珍／台北報導

核四停建的法律依據引起爭議，審計長蘇振平昨天表示，核四預算依法是要繼續執行，行政院若要停辦或緩辦，必須依程序處理，他指出，核四停建與否是「另一個問題」，審計部只能在確定停建之後，分析主管單位是否有違法失職或效能過低之處，並將事實報告監察院依法辦理。

立法院預算委員會昨天審查八十七、八十八年度中央政府總預算案附屬單位決算，由蘇振平報告並接受質詢。目前行政院主計長林全在預算委員會中提出廢建核四不適用預算法的主張，理由之一就是行政院可能因此遭審計部及監察院彈劾。

多位朝野立委昨天就此爭議質詢蘇振平，蘇振平則表示，核四預算執行期間到九十二年為止，目前已執行預算且付出的款項逾四百八十一億元，依法，核四預算必須繼續執行。

民進黨立委鄭寶清質問蘇振平過去是否曾有預算未執行的前例，蘇振平指出，台電烏山頭水力發電工程等三個計畫曾經依據中央政府附屬單位預算執行要點中的「情勢變遷」原則而停建。其中因土地取得問題無法解決而停建的烏山頭水庫案遭監察院糾正，原因就是計畫草率、未盡職責。

鄭寶清追問，烏山頭水庫是依中央政府附屬單位預算執行要點中的「情勢變更」而予停建，是否表示停止執行預算本身並不違法？蘇振平表示，審計部分析停止執行預算的原因是什麼、如果相關單位有未盡職責、效能不彰的情況，審計部將會送監察院處理。

林信義出 核四風暴中

[illegible]／特稿

爭議已久的核四問題，昨濟及能源委員會中，經濟部幾近攤牌式的對話，強烈地辯護，表達他是個堅持建核四政壇近日由多個管道傳出，故下台，林信義是接任行政之一。

新政府上台，擔任林信義長，企業界曾經深度疑慮人，業界的林信義，有數十年的瞭了解產業界的需要，喊水說，要是林信義是女性，就人選，這也透露出林信義在中的份量。

一位產業界的領袖說，企為，只要有電用，是核能還並不重要，所以經濟部長的

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行政院暨所屬各機關計畫預算執行考核獎懲作業要點

中華民國八十四年八月四日行政院台八十四研管字第二三六〇號函發
中華民國八十五年十月三十日行政院台八十五研管字第三五九〇號函修正
中華民國八十六年八月二十八日行政院台八十六研管字第三一三五號函修正
中華民國八十七年六月九日行政院台八十七研管字第〇二二四七號函修正
中華民國八十七年十二月廿九日行政院台八十七研管字第〇五四一九號函修正中華民國八十九年八月三日行政院台八十九研管字第一四〇一八之一號函修正

一、 為期行政院暨所屬各部、會、行、處、局、署（含國立故宮博物院，以下簡稱各部會）及其附屬機關之資本支出及固定資產投資計畫（以下簡稱計畫）能嚴密執行，有效推動，特訂定本要點。

二、 本要點以各計畫全年度計畫預算執行進度為考核對象，並依分層負責原則，分別由各部會及行政院審核小組辦理考核，其權責區分如下：

(一) 行政院列管或全年度可支用預算在十億元以上之計畫（以下簡稱重大計畫），由各部會初核後，送行政院審核小組複核。

(二) 非屬前款之計畫（以下簡稱其他計畫），由各部會負責考核後，送行政院備查。

三、 考核程序如下：

(一) 各執行機關（指各部會之執行單位及附屬機關）於其年度決算編竣後，應就該年度計畫執行結果詳加檢討，併同執行差異之理由填寫「年度計畫預算執行結果檢討表」，於一個月內報請上級主管部會審核；符合獎勵要件之計畫，得併提「年度計畫建議獎勵審查表」辦理審核。

(二) 各部會收到所屬各執行機關依前款所報資料後，應由研考、會計、人事及相關單位共同組成審核小組進行審核，並依第四點規定之獎懲標準作成獎懲建議，必要時得請執行機關提供說明或辦理實地查證，於一個半月內完成審核，並將所主管計畫之執行結果彙整為一覽表，併同綜合審核意見送行政院及行政院審核小組辦理第二點規定之備查及複核；其中送行政院審核小組部分，應併附部會審核小組初核同意之「年度計畫預算執行結果檢討表」及「年度計畫建議獎勵審查表」。

(三) 行政院審核小組由行政院秘書處、法規委員會、主計處、人事行政局、經濟建設委員會、國家科學委員會、研究發展考核委員會及公共工程

委員會等機關共同組成，於收到各部會所送資料後，應對重大計畫加以審核，必要時得請各部會就審核意見提供說明或辦理實地查證。

(四) 各執行機關應依規定時限，提供各項計畫完整確實資料，並配合審核小組之要求，提供相關佐證資料。

(五) 行政院審核小組完成各重大計畫之複核後，擬訂綜合審核意見陳報院長核定。於簽陳　院長前，行政院審核小組應將未達考核標準計畫之複核意見函知相關部會，並副知執行機關；各部會得於接到通知之日起十五日內提出申復，由行政院審核小組再予審核，申復以一次為限，未提出或逾期提出申復者，行政院審核小組即維持原審核意見。經奉　院長核定未達考核標準之計畫，各部會不得再提申復。

(六) 相關主管人員之獎懲，應於前款綜合審核意見報奉　院長核定後四個月內，由各部會依第四點規定之獎懲標準完成獎懲作業，並報行政院備查。

前項各款作業方式，由行政院審核小組定之。

四、 獎懲標準如下：

(一) 全年度計畫預算實際已執行進度（全年度可支用預算數之實際支付數加計計畫執行賸餘繳回款。但不包括預付款未扣回部分）達全年度百分之九十五，且達成原訂施政目標，產生預期效益，著有績效者。相關主管人員依核定之下列等級予以獎勵：

1．特優者，記一大功。

2．優等者，記功一次。

3．甲等者，嘉獎二次。

(二) 全年度計畫預算執行進度（全年度可支用預算數之實際支付數加計已執行之應付未付數及不可抗拒之特殊因素影響數）未達全年度百分之九十者，相關主管人員依下列標準予以議處：

1．全年度計畫預算執行進度達百分之八十以上，未達百分之九十者，應予申誡。

2．全年度計畫預算執行進度達百分之七十以上，未達百分之八十者，記過一次。

3．全年度計畫預算執行進度達百分之六十以上，未達百分之七十者，記過二次。

4．全年度計畫預算執行進度未達百分之六十者，記一大過。

五、 第四點第二款所稱不可抗拒之特殊因素，係指各執行機關執行年度資本支出及固定資產投資計畫，已善盡職責，但因遭遇非各該機關所能掌控情事、受天災等自然環境影響或為健全政府財政執行節約措施，致進度落後或延誤，或預算產生節餘等因素，或其他事由經審核小組認定者，其規定如下：

(一) 非執行機關所能掌控者，包括：

1．因民意機關之決議，或未能適時審議通過相關法案，致所列預算無法據以執行，進度落後、緩辦或停辦者。

2．因政府法令新定、變更，或因民眾、相關權益人抗爭影響，須調整原計畫或變更設計，或須協調解決紛爭，致進度落後者。

3．執行機關已在合理時間提出申請，而相關權責機關未能在規定作業期間核發核准文件，致影響計畫執行進度者。

4．因不可歸責於執行機關之事由，經招標未決，進度落後者。

5．收支併列性質之支出，因收入短收，致支出須相對減支者。

6．國外採購支出，因受他國政府、國外廠商未能配合，致進度落後者。

(二) 受天災、地質及天候等自然環境影響，無法順利施工，致工期延長、進度落後或未執行者。

(三) 執行政府節約措施或辦理招標，致預算賸餘未辦保留者。

(四) 其他不可歸責於執行機關之事由，經審核小組認定者。

六、 行政院以外之其他中央政府機關與其所屬機關計畫預算執行之考核獎懲作業，由其自訂辦法或參考本要點辦理。

行政院暨所屬各機關計畫預算執行考核獎懲作業要點修正對照表

回主頁

停止興建核能四廠並停止執行相關預算，聲請解釋憲法及統一解釋法律案補充意見書

聲請人 行政院 台北市忠孝東路一段一號

代表人 張俊雄 〃

訴訟代理人 洪貴參律師 台北市羅斯福路二段四十九號六樓

為行政院就決議停止興建核能四廠並停止執行相關預算，聲請解釋憲法及統一解釋法律案件，謹呈補充意見書事：

補充意見

一、核四預算為由行政院提出，經立法院三讀通過之附屬單位預算，雖經行政院長副署，並經八十五年十月十八日之覆議，核四廠興建與否仍回歸行政權核心領域之基本面。立法院對於國家重要事項或重要政策雖有議決權，依憲法第五十七條第二款規定，原有決議移請行政院變更之權限，惟依增修條文第三條，立法院已然喪失此項權力，此為我國憲法發展之現勢。就憲法之設計，行政院對於立法院決議之法律案、預算案、條約案，認為有窒礙難行時，得經總統之核可，於該等決議案送達行政院十日內，移請立法院覆議，是縱令憲法第六十三條之「重要事項」或第五十七條之「重要政策」包括本件核四預算案所涉及之事項，立法院之議決，對行政院並無拘束力，良以憲法第五十七條第三款或增修條文第三條第二項第二款行政

院所得移請覆議之事項，限於法律案、預算案及條約案，僅此三案對行政院有規範效力，「重要政策」或「重要事項」則不在此列，否則，行政、立法兩院失衡，殊非憲法所架構權力分立、制衡機制規範之意義。依現行規定（增修條文），立法院對行政院之重要政策或重要事項不贊同時，得依增修條文第三條第二項第三款之規定處理，為另一問題。行政院依固有職權決定停建核四，殊難遽指為違憲、違法。

二、憲法第五十七條第三款及增修條文第三條第二項第二款規定：「行政院對於立法院決議之法律案、預算案、條約案，如認為窒礙難行時：」，關於預算案，憲法第七十條規定：「立法院對於行政院所提預算案，不得為增加支出之提議」，行政院對立法院所議決通過之預算案認情事變更，重新評估可行之替代方案，無執行之必要時，當無移請覆議之問題。所謂「窒礙難行」，應指預算被過度刪減，難以達成政策目標之情形。本案於民國八十五年移請覆議即基此規定。茲行政院不執行預算，與各該款所規定「窒礙難行」要件不符，且已逾覆議時限，殊無再以憲法第五十七條第三款或增修條文第三條第二項第二款論究之餘地。

三、預算案有別於法律案，業經釋字第三九一號解釋闡明綦詳，預算案是否可稱之為「措施性法律」（如二二八事件處理及補償條例等）？預算之法律性質究採「預算行政說」或「預算法律說」？容有再討論之空間。縱係採「預算法律說」或「預算法規範說」之見解，均認預算之效力僅具有授權行政部門動支經費之性質，而無課以義務之效力，並不當然導致強制行政部

門動支預算之推論。

四、外國立法例之援引，應以性質相近、制度相當者，較具研討之價值。預算法制以日本為例，日本國憲法第八十三條規定「國家財政之處理權限，應基於國會之議決行使之」，為財政民主主義之體現；八十六條規定「內閣應編製每會計年度之預算，提出於國會，並經其審議、議決」；第九十條規定「國家收支之決算，每一年度應由會計檢查院檢查之，內閣應於下一年度，將決算連同檢查報告，提出於國會」，明確規定預算之編製權在行政部門，國會則擁有預算之審議、議決及決算之審議權。法律方面，明治憲法時代以來，即有「會計法」提供程序性以及有關預、決算之統一規範；戰後有關「國家預算及其他有關財政之基本事項」，統由「財政法」規範，就預算之配賦（第三十一條），目的外使用之禁止（第三十二條）等有所規定，但從無法定預算必須完全執行之規定。學界通說咸認歲出預算為授權行政機關在預算所定之最高限額內為支出，而非課以支出之義務，動支預算只要不違反法定金額之上限，不生違法之問題。杉村章三郎：財政法（新版，有斐閣）指出歲出預算之效力發生於：（1）支出目的：目的外使用之禁止；（2）金額：最高支出金額之限定，而非命令行政部門必須動用預算金額之全部；（3）時期：會計年度經費獨立，即「年度獨立」原則。其他如兵藤廣治、小林武、槇重博等所見均同，從無人認為預算有必須完全執行之效力。日本憲法將預算編製權劃歸行政部門，將審議、議決權分配給立法部門，與我國相當；財政法就預算之執行僅設有限制動

支經費之規定，復與我國預算法規定相近，因此，有參考借鏡之價值，不容忽視。

五、就本案核四預算之編列而言，八十三年行政院一次編列六年（與編列十年、二十年、一百年何異？）預算一一二五億八百萬元預算，橫跨二、三屆立委員之任期，違反民主共和之責任任期制，且與民主政治、政黨政治相違；又因對核四廠擴大機組容量未作環評及預算編列不當，八十四年監察院對經濟部、原能會等七個單位提出糾正案，八十八年監察院又針對核四機組變更及核四建照審核程序不當，對原能會及環保署等單位提出糾正案，核四興建案如此草率並違背程序正義，難道經由政黨輪替產生之新政府，對之只有「概括承受」，而無再行評估、重新決定之權能！？

六、立法院職權行使法第十七條、憲法第五十七條第一款、增修條文第三條第二項第一款，並無強制要求行政院事先向立法院報告之義務，立法院對行政院之報告不贊同時，亦有制衡之機制。依同條之規定向立法院報告並為行政院之權利，本案立法院阻絕行政院長於會外，致無法依規定報告，違背對憲法之忠誠於先，反指行政院違法違憲云云，殊非正辦。

七、立法院代表、代理人或關係人所舉預算法各該條文並無強制行政部門動用預算之義務，矧歲出預算之性質為授權性規範，而非義務性規範，預算為財政手段，本身不是施政目的，不動支預算是否違法或妥當，應以是否達成施政目的為判斷標準，施政目的得否達成，為另一層次之討論。本案牽動預算執行與否、核四是否興建之事項，更有上位概念之政黨政治、責任

政治、權力分立及憲法架構制衡機制等為判準之指標，汲汲於預算必須完全執行，核四非建不可之主張，淪為情緒性政治口號之叫囂，不具意義。至於核四停建後所涉及賠償預算問題，及衍生政治責任問題，則為另一政治現實，當非所論。

八、前已言之，核四興建與否，為行政權之核心領域，立法院縱制定「國家能源發展條例」規定必須興建核四，侵及行政權之核心領域，基於「個案性法律禁止原則」，違背權力分立及人民基本權、平等權，將行政院貶抑為立法院之行政局，違背憲政原理，與我國憲法發展大相背謬，亦屬違憲，併請明察。

謹呈

司法院大法官　公鑒

中　華　民　國　八　十　九　年　十　二　月　廿　九　日

具狀人　行政院

代表人　張俊雄

訴訟代理人　洪貴參律師

行政院 函

受文者：司法院

速別：最速件
密等及解密條件：
發文日期：中華民國八十九年十二月三十日
發文字號：台八十九規字第三六一八三號
附件：附件如文

主旨：為貴院大法官審理本院就決議停止興建核能四廠並停止執行相關預算，聲請解釋憲法及統一解釋一案，檢陳「行政院補充意見書」共三十份，請惠轉大法官參考。

說明：依貴院大法官本（八十九）年十二月二十一日審查會主席裁示事項「如有書面補充意見，應於十日內送大法官參辦」辦理。

正本：司法院
副本：

院長 張俊雄

大法官書記處
機關地址：台北市一〇〇忠孝東路一段一號
傳　真：（〇二）三三五六六九二〇

司法院大法官釋憲及統一解釋案

行政院補充意見書

行政院

聲請解釋憲法及統一解釋法律補充意見書

本院前於本（八十九）年十一月十日為本院決議停止興建核能四廠（以下簡稱核四）並停止執行相關預算，適用憲法發生疑義，並與立法院行使職權，發生適用憲法之爭議，及與立法院適用法律所持之見解有異，函請貴院解釋之解釋憲法聲請書及統一解釋法律聲請書中，已基於「核四繼續興建與否屬本院政策得決定之事項」、「預算案與法律案性質不同」、「法定預算之拘束力有一定範圍」、「預算之停止執行，法無明文禁止，實務上不乏先例」及「停止興建核四並停止執行相關預算，具有政策上之正當理由」等觀點，闡述本院從政策上決定停止興建核四，並配合政策變更而停止核四預算之執行，具合憲及合法性之理由。嗣為應貴院大法官十二月二十一日審理本聲請案召開之審查會所需，復檢陳本院綜合意見書，就貴院要求陳述之各項重點，具體說明本院之看法及

理由；茲為助於本案爭點之釐清，爰再針對「法定預算與法律之性質辨異」、「法定預算之拘束力」、「從權力分立原則檢視核四停建之本院與立法院權限行使」、「立法院覆議案決議之法律效力」、「就停建核四及停止執行核四預算，本院無行使覆議權之問題」、「本院宣布停建核四並停止執行相關預算，並無違反民意政治及責任政治」及「核四停建之損失預算及決算上之處理」等項予以補充論述，並參考外國立法例及實務見解，比較說明如后。

壹、法定預算與法律之性質辨異

本件有關預算案與法律案之不同，貴院釋字第三九一號解釋已論述綦詳，依其解釋理由書所載：「預算案亦有其特殊性而與法律案不同：法律案無論關係院或立法委員皆有提案權，預算案則祇許行政院提出，此其一；法律案之提出及審議並無時程之限制，預算案則因關係政府整體年度之收支，須在一定期間

內完成立法程序，故提案及審議皆有其時限，此其二；除此之外，預算案法律案尚有一項本質上之區別，即法律係對不特定人（包括政府機關與一般人民）之權利義務關係所作之抽象規定，並可無限制的反覆產生其規範效力，預算案係以具體數字記載政府機關維持其正常運作及執行各項施政計畫所須之經費，每一年度實施一次即失其效力，兩者規定之內容、拘束之對象及持續性完全不同，故預算案實質上為行政行為之一種，但基於民主憲政之原理，預算案又必須由立法機關審議通過而具有法律之形式，故有稱之為措施性法律（Massnahmegesetz）者，以有別於通常意義之法律。而現時立法院審議預算案常有在某機關之科目下，刪減總額若干元，細節由該機關自行調整之決議，亦足以證明預算案之審議與法律案有其根本之差異，在法律案則絕不允許法案通過，文字或條次由主管機關自行調整之情事。是立法機關審議預算案具有批准行政措

施即年度施政計畫之性質，其審議方式自不得比照法律案作逐條逐句之增刪修改，而對各機關所編列預算之數額，在款項目節間移動增減並追加或削減原預算之項目，實質上變動施政計畫之內容，造成政策成敗無所歸屬，政治責任難予釐清之結果，有違立法權與行政權分立之憲政原理。」，足見預算案與法律案不同，業經貴院釋字第三九一號解釋所肯認。而預算案經立法院審議通過後，即為法定預算，法定預算拘束之對象既係對行政機關就特定事項與款項有所確定，其內容非具一般性、抽象性，亦非對人民權利義務關係直接產生得喪變更之影響，並不具有外部效力，自與一般法律顯然有別。

貳、法定預算之拘束力

一、法定預算之性質屬授權性規範，並不課行政機關完全執行之義務

在民主國家中，預算案之審查及議決權乃是代表民意之國會在憲法規定

任務中最重要之一項。國會可經由預算案議決權之行使，從財政方面對政府作為之每一步驟加以限制及監督。在我國，立法院依憲法第六十二條及第六十三條之規定為國家最高之立法機關，有議決由本院所提中央政府總預算案之權，而相對於立法院之預算同意權，則本院作為國家最高行政機關，有憲法第五十八條規定之預算提案權。預算案之提案權及議決權分別由本院及立法院為之，此乃依據國民主權原則及其所導出之權力分立原則得出之必然結果。蓋預算乃國家收入支出預定之總計畫，且以國民負擔為基礎，在今日以國民作為國家主體之民主國家，為防止政府擅專，為不必要之浪費支出，造成國家財政上及人民稅賦上之沈重負擔，賦予代表國民之國會有審查及議決政府所提預算案之權力。因此國會之預算同意權被稱為立法者所單獨擁有之監督權。惟依我國憲法第七十條之規定：「立法院對於行政院所提預算案，不

得為增加支出之提議」，實已限制立法院預算案議決權之行使。

立法院經由審查而議決之法定預算，本質上是一種對行政機關之授權，使行政機關得為達到一定施政目的，而支出由立法院所同意之預算。且如前所述，預算法第六十七條之規定，以及當時適用之決算法第十三條、第十五條第三項及第二十三條等相關規定，均顯示預算得因撙節或停止執行而產生賸餘，即行政機關於必要時，得基於政策或業務需要，本於其政策決定權自為決定，並因此負其政治責任。如由立法院分別選擇預算項目，個別決定行政部門是否有支出預算之義務，不免使行政與立法部門就預算執行之責任劃分混淆不清。貴院釋字第三九一號解釋亦以「政策成敗無所歸屬，政治責任難予釐清之結果，有違立法權與行政權分立之憲政原理」為理由，否定立法機關審議預算案時，有於款項目節間移動增減並追加或削減預算項目之權限。

本於相同考量，基於責任分明之原理，為達釐清立法權與行政權責任界限之目標，亦應否認立法院有針對個別預算項目課予行政機關執行義務之權限；從而法定預算所課者，乃行政機關不得在無法定預算授權下支出經費，亦禁止行政機關違背各項經費預定用途而支出經費，除有其他法律課予行政機關義務，使其依該法律規定，在執行法律賦予任務範圍內支出經費外，並不課予行政機關完全執行法定預算之義務。

二、法定預算之停止執行，預算法並無禁止之明文規定

就預算法相關規定而言，預算法第五條第一項規定：「稱經費者，謂依法定用途與條件得支用之金額，……」，從本條規定將經費定義為「得支用之金額」以觀，預算法亦將歲出預算之各項經費定位為授權使用之金額，而非必須使用之義務性金額。次依同條項規定所謂經費，按其得支用期間可分為歲

定經費、繼續經費及法定經費三種，其中僅法定經費之設定、變更或廢止，始需以法律為之。換言之，只有法定經費之執行才是義務。但即使是法定經費之執行義務亦非來自預算本身，而是來自設定該項法定經費之法律。預算執行機關如果不動支法定經費而違法，係因違反設定該項法定經費之法律而違法，並非不動支經費之本身當然違法。本案所涉及之核四預算其依據並非法律，故非屬法定經費，因此現在廢止或停止動支自亦不需法律之依據，而未來是否編列此項經費，則最初編列之行政部門本身即可決定。

又預算法第二十四條規定：「政府徵收賦稅、規費及因實施管制所發生之收入，或其他有強制性之收入，應先經本法所定預算程序。但法律另有規定者，不在此限。」；第二十五條規定：「政府不得於預算所定外，動用公款、處分公有財物或為投資之行為……。」；第二十六條規定：「政府大宗動產、

不動產之買賣或交換，均須依據本法所定預算程序為之。」；第二十七條規定：「政府非依法律，不得於其預算外增加債務；……。」，前述條文均係規範政府機關不得為預算外徵取收入、動支公款、處分公有財物、進行投資或增加債務等，至於預算法對於因情勢變更而須停止法定預算之執行，則無禁止之明文規定。

至預算法第四章「預算之執行」係有關預算執行之規範，僅在提供預算執行之相關程序規定，亦未課予行政機關必須將法定預算全數執行完畢之義務。預算法第六十七條規定：「各機關重大工程之投資計畫，超過五年未動用預算者，其預算應重行審查。」，允許各機關重大工程之投資計畫，於五年內可斟酌衡量各項情事，決定是否予以執行，縱令執行機關於五年內從未動支該筆預算，亦僅使該筆法定預算之授權失效，從而如欲維持該預算，應由立

法院重新審查而已；第六十九條規定：「中央主計機關審核各機關報告，或依第六十六條規定實地調查結果發現該機關未按季或按期之進度完成預定工作，或原定歲出預算有節減之必要時，得協商其主管機關呈報行政院核定，將其已定分配數或以後各期分配數之一部或全部，列為準備，俟有實際需要，專案核准動支或列入賸餘辦理。」，對於未按進度完成之計畫，或預算有節減必要時，中央主計機關得就法定預算之一部分，報本院核定停止執行而列入賸餘；第七十二條規定：「會計年度結束後，……其經費未經使用者，應即停止使用。但已發生而尚未清償之債務或契約責任部分，經核准者，得轉入下年度列為以前年度應付款或保留數準備。」，法定預算於年度終了未執行部分，除已發生債務或契約責任，始得保留於下一年度繼續執行，否則即失去執行之授權。綜上，依預算法相關條文規定之意旨，均未課行政機關須依法定預

算完全執行之義務，就此觀之，法定預算之停止執行，亦為預算法所不禁。

三、預算係財政手段，本身非施政目的，不動支預算是否違法或妥當，皆應以是否達成施政目的為判斷標準

按預算本為達成政策目標之手段，至於預算是否完全執行，主要由執行機關內部控制即可。在正常情況下，預算既係政府達成政策目標之工具，又經立法機關事前同意，執行機關必然盡力執行，以爭取選民認同，否則政策目標無法達成。然而，正常情況下預算之完全執行，並不意味法定預算因此具有強制力，而係因預算之完全執行符合執行機關政策目標之緣故。惟執行機關認有必要，經審慎考量，亦非不可放棄預算之執行。行政機關既有政策制定權，則當然必須承認其可透過不執行預算之方式放棄政策目標。以興建核四而言，如行政機關已找到更便宜或其他更佳之電力供應替代方案，當然

應斟酌是否動支預算繼續興建核四。

四、核四預算之性質及與公務機關預算之不同

我國之中央政府預算，依預算法第十六條規定，分為總預算、單位預算、單位預算之分預算、附屬單位預算及附屬單位分預算等五類，其中附屬單位預算（連同其分預算）之內容，主要為編列政府有關商業型活動機構（如國營事業、國立醫院等）之財務收支事項，在預算法中基於其需為營業收支等與總預算及單位預算（即公務機關預算）不同之特色，遂另立一章規定。附屬單位預算又分營業基金部分與非營業基金部分兩種，本件所牽涉之核四預算即屬營業基金部分，通稱國營事業預算。

依預算法第八十五條規定觀之，附屬單位預算中之營業基金預算，應考量成本效益、收支盈虧等事項，其第一項第四款規定：「國營事業辦理移轉、

停業或撤銷時，其預算應就資產負債之清理及有關之收支編列之。」，足見預算法對於國營事業之「停業」已預作規範，依舉重以明輕之法理，本院衡酌各種情況作出停建核四之決定，屬行政裁量之運用，應無違憲之虞，自亦無須經立法院同意之必要。特別是立法院對於國營事業之營運，其是否盈虧情事，缺乏專業之判斷能力，自不宜對本院依營運實際情況所作之決策有所介入。從而，本院所為停建核四之決定，係屬本於行政權固有領域所作之決定，立法院應予尊重。

法定預算成立之後，行政機關之動支經費雖已得到授權，但亦同時受到種種限制，為免膠柱鼓瑟，轉而無法靈活運用預算以對應國家社會之實際情況，甚且有害公益，乃設有種種彈性調整之機制，以緩和法定預算之金額、目的等限制。此等彈性調整機制，在公務預算一般而言為：預算之流用、預

備金以及追加預算等；在營業基金部分即為預算法第八十七條及第八十八條所規定之彈性處理方式。按預算法第八十七條第一項規定：「各編製營業基金預算之機關……其配合業務增減需要隨同調整之收支，併入決算辦理。」；另同法第八十八條規定：「附屬單位預算之執行，如因市場狀況之重大變遷或業務之實際需要，報經行政院核准者，得先行辦理，並得不受第二十五條至第二十七條之限制。……」，其所以就附屬單位預算設有此等特別規定，乃因其受市場狀況之影響，收入與支出具有他動之特色，若以法定預算一律加以束縛，恐將無法對應實際情勢之發展而被市場淘汰，故而允許其在執行上擁有較大之彈性，並且以本院為核准機關。由於營業基金之經營必須個別負擔盈虧之責任，因此經營者之預算執行有類一般企業，以適度提高其競爭力，以免最終造成虧累而轉嫁給國庫乃至一般國民負擔。職是之故，其預算

執行彈性自較完全由國庫負擔之公務預算為高，過去之預算停止執行先例在營業基金部分所在多有，亦係基於此種原因。

參、從權力分立原則，檢視核四停建之本院與立法院權限行使

「權力分立原則」之精義在於分權與制衡，故適用、解釋憲法，應確保前揭權力分立原則不受破壞，本案停止興建核四係屬本院權限行使，停止相關預算之執行係配合政策變更而為，屬行政權預算執行上自我形成空間，且未妨礙立法院對本院之決策之監督權限，故並無違該原則而應屬合憲之舉。

一、本院決議停止興建核四，並無逾越憲法賦予本院之權限

依憲法第五十三條與憲法增修條文第三條第二項第一款規定，本院為憲法所定之最高行政機關，自有依憲法授予行政權之範疇內，為決策與執行之權，其他權力部門在憲法所定之範圍內固可進行監督，但對行政權之行使亦

應予以尊重。行政機關直接面對國家發展之需要與人民之需求，運用行政專業提出各種施政計畫固為行政權之核心內涵，因情勢變遷或國家需求之變化而作施政之變更，亦屬行政權之核心範疇。

核子反應器設施之設置，內含各種專業，舉凡成本效益分析、能源結構、安全分析、風險評估、後端營運、財務保證、緊急應變及風險溝通等，均需配合國內之發展與國際情勢作權衡分析，因此國際上有核能反應器設施之國家，除整體抽象之核能政策走向外，均透過法律之制定，由行政機關就個別核能反應器設施之設置，基於其專業作較周延之裁量與判斷。由於立法院已通過「原子能法」，就核子原料、燃料及反應器之管制等事項，包括建廠執照及使用執照之核發，由本院原子能委員會審核，就此而言，立法院已透過原子能法之制定，而將核能電廠興建之個案決定權授予本院（原子能委員

會）。

鑑於核四建廠計畫自推動以來，社會經濟情勢已發生重大變遷，過去評估所依據之基礎數據業已改變，國際上對核能電廠興建與否或核廢料之處理態度亦有所變化，在經濟部組成「核四再評估委員會」，就核四存廢之議題進行討論，並提出替代方案，且經多次召開會議邀集相關專家學者、社會公正人士、當地居民等，聽取各方意見後，本院經審慎評估決議同意經濟部建議停止興建並停止執行相關預算，且以建立非核家園作為日後施政方向，乃是行政權積極面對情勢變遷與國家發展需求所做之必要調整，並無逾越憲法賦予本院之權限。

二、本院停止核四預算之執行，係配合政策變更而為，屬行政權預算執行上之自我形成空間。

按經立法院審查通過之法定預算，其本質為一種對政府之授權，使政府得為達到一定施政上之目的，而支出由立法院同意之預算，俾在施政上直接受民意之監督，達到合理節制之目的，故立法院預算審議權在於控制本院經費使用上限，避免浮濫編列、動支經費，並不在使立法院取代本院最高行政機關之地位，而強制本院執行特定施政計畫；此觀我國憲法除第五十八條規定本院獨享預算之提案權外，於第七十條規定：「立法院對於本院所提預算案，不得為增加支出之提議。」，更限制立法院之修正權與審議權，可見預算之製作及執行乃屬行政權之領域，為我國憲法之基本精神。而貴院釋字第三九一號更明確釋示立法院不得對本院所提之預算編列數額在款項目節間移動增減並追加或削減原預算之項目，即以其涉及施政計畫之變動與調整，立法院無權為之，否則會導致政策成敗無所歸屬，有違行政權與立法權分立，

各本所司之制衡原理。至預算通過後，因其係授權行政機關依其編列項目支用法定預算，已為預算執行上之自我形成空間，故本院因決議停建核四並停止執行相關預算之執行，並無違憲可言。如立法院在預算編列或議決後，可任意干預或變更本院之預算執行，此不僅侵害行政權自我形成空間，亦無法確立預算編列與決議後本院應負政策成敗之政治責任，反使行政權與立法權之責任劃分不明確，違反法治國原則與權力分立下之責任政治。

三、依憲法第五十七條第二款規定，立法院僅能就其所認屬於本院之重要政策請求變更，並無所謂立法院通過重要政策可言，自亦無所謂本院對於經立法院通過之重要政策可否逕不予執行之問題

按憲法本文提到「重要政策」一詞者，僅憲法第五十七條第二款：「行政院依左列規定，對立法院負責……二、立法院對於行政院之重要政策不贊

同時，得以決議移請行政院變更之。行政院對於立法院之決議，得經總統之核可，移請立法院覆議。覆議時，如經出席立法委員三分之二維持原決議，行政院院長應即接受該決議或辭職。」

依憲法第五十七條第二款之文義觀之，乃指對本院之重要政策，立法院不贊同時，得以決議移請本院變更，對於立法院之決議，本院則可經總統之核可，移請立法院覆議。是以，單就本款之規範意旨以言，並無所謂立法院通過之重要政策可言，立法院至多僅能就其所認屬於本院之重要政策，請求本院變更而已，從而，自無所謂本院對於經立法院通過之重要政策可否逕不予執行之問題存在。況於八十六年修憲已將憲法第五十七條第二款移請變更重要政策與覆議制度停止適用，足見於現行規定之下，立法院更無通過重要政策之可能。

四、核四預算案非屬憲法第五十八條第二項所稱本院提出於立法院之其他重要事項，自亦無本院可否逕不予執行之問題

憲法提到「重要事項」者有二處，一為第五十八條第二項：「行政院院長、各部會首長，須將應行提出於立法院之法律案、預算案、戒嚴案、大赦案、宣戰案、媾和案、條約案及其他重要事項，或涉及各部會共同關係之事項，提出於行政院會議議決之。」，一為第六十三條。

就憲法第五十八條第二項而言，該項所指「其他重要事項」者，係指法律案、預算案、戒嚴案、大赦案、宣戰案、媾和案、條約案以外應行提出於立法院而須先提出於本院會議議決之事項，其乃屬憲法賦予本院之職權，至為明顯，核四預算係經本院以編列預算案之方式提出於立法院，立法院亦以預算案之方式議決，故並無本院對於提出於立法院通過之重要事項是否可逕

不予執行之問題存在。

五、核四預算案亦非憲法第六十三條所定立法院議決之國家其他重要事項，無本院可否逕不予執行之問題

憲法第六十三條規定：「立法院有議決法律案、預算案、戒嚴案、大赦案、宣戰案、媾和案、條約案及國家其他重要事項之權。」，該條所稱立法院有議決「國家其他重要事項」之權，係相對於立法院有議決「法律案」、「預算案」、「戒嚴案」、「大赦案」、「宣戰案」、「媾和案」及「條約案」之權。核四預算係經立法院以「預算案」之方式議決在案，並非該院依憲法第六十三條規定議決之國家其他重要事項，從而亦無本院對於經立法院通過之重要事項可否逕不予執行之問題存在。至立法院議決之預算案既無課予義務之規範效力，故本院變更預算案所彰顯之重要政策，**亦無再經立法院同意之必要**。

六、核四之興建與否乃具體個案之法律授權執行事項，屬行政權範疇，立法院不得以憲法第六十三條規定該院有權議決國家其他重要事項而認核四停建應取得其同意

（一）貴院釋字第三號、第一七五號及第三九一號解釋均強調「五權分治，平等相維」、「行政權與立法權分立，各本所司之制衡原理」，由上開解釋即可洞察我國憲法權力分立之基本精神。因此，在解釋憲法第六十三條之重要事項範圍時，應視該重要事項是否屬立法權範圍內之重要事項而定，貴院前大法官林紀東先生即認如該條係指凡屬重要事項，均可由立法院議決，則顯然與憲法將治權一分為五之五權體制不合，非憲法立法之原意；故該條所謂國家其他重要事項，宜從狹義解釋，僅限於與立法院列舉各職權有最密切之關係，而非總統及其他各院所能單獨決定者，

始足當之（參照林紀東著，中華民國憲法逐條釋義（二），修訂五版，第三二〇頁）。亦有認依權力分立原則，國家各種權力均有其明確之界定，定此界限者，厥為憲法之任務，是五院之職權均應依憲法之規定，故憲法第六十三條所稱國家其他重要事項，顯應提升其規範位階至憲法層次，例如構成法律案、宣戰案、媾和案等內容，或是憲法已明定者，方得屬於立法權之事項。申言之，立法權就其他四權並無享有所謂之「剩餘權」（參照陳新民著，中華民國憲法釋論，八十四年九月，第五三〇頁）。而貴院釋字第四一九號解釋所指明任何國家機關之職權均應遵守憲法之界限，其旨亦在此；另學者亦確認我國憲法所定之政體並非建立於「國會至上」之理念，既不同於英國式之內閣政府制，也與法國第四共和之國會政府制（或德國之修正版）有別，此不僅由憲法前言及形式體例上未

將立法院置於各權之首可得知，從憲法第五十五條至第五十七條及第七十五條等條文之實質內容更可得知，此為一種由總統與立法院共同制衡菁英政府，使其於「平等相維」之前提下對立法院負有限責任之體制。就我國立法機關之權限而言，其並無優越於其他四院之國權最高性（參照蘇永欽，憲法上的「受領遲延」、析論國會調查權的憲法爭議、也談三二五號解釋，輯於氏著，走向憲政主義，第一六〇至一六一、第二一七至二一八及第二二四頁）；綜上所述，學者意見均認重要事項，並非全歸立法院獨攬，而應從權力區分與權力平等相制相維之憲法原理，認本院有其得獨立行使之重要事項。就內閣制之德國而言，其聯邦憲法法院亦指出立法權縱具有直接民主正當性，亦不能否認行政權擁有間接民主正當性基礎之事實，德國基本法（第二十條第二、三項）明白揭示行政權

與立法權處於對等之地位，故國家重要事項非必由國會所壟斷[1]，從而參照德國制度，益顯並非凡屬重要事項，均可或應由立法院議決。

（二）貴院釋字第三九一號解釋已明確釋示立法院如涉及本院施政計畫實質變動，將導致政治責任難以釐清，有違立法權與行政權分立之憲政原理，足見該號解釋認為施政計畫內容之決定與變動權應屬本院，從而立法院應無得依憲法第六十三條議決重要事項之方式強迫本院變更施政內容或據而主張本院變更施政內容應取得其同意。

（三）由於立法院通過之原子能法，就核子原料、燃料及反應器之管制等事項，包括建廠執照及使用執照之核發，規定由本院原子能委員會審核，就此而言，立法院已透過原子能法之制定，將核能電廠興建之個案決

[1] BVerfGE 49, 89,125.

定權授予本院，故本院決議停止興建核四，係屬原子能法授權本院執行之事項，立法院不能再據憲法第六十三條規定以決議干預類此特定核電廠之個案決定，倘立法院為此決議，亦不具法拘束力。

七、本院決議停建核四並停止相關預算之執行，並未妨礙立法院對本院決策之監督權限

在現行法制及實務上，立法院就核四停建案得行使之職權，茲舉其要者分述如後：

（一）依立法院職權行使法第十七條規定本院於重要事項發生，或施政方針變更時，應向立法院院會提出報告

立法院職權行使法第十七條規定：「行政院遇有重要事項發生，或施政方針變更時，行政院院長或有關部會首長應向立法院院會提出報告，並備質詢。」

「前項情事發生時，如有立法委員提議，三十人以上連署或附議，經院會決議，亦得邀請行政院院長或有關部會首長向立法院院會報告，並備質詢。」，上開規定即已課本院於重要事項發生，或施政方針變更時，須向立法院報告之義務，其目的在使立法院得以知悉，並行使對本院監督之權限。惟該報告義務之性質並不以事前為必要，或須取得立法院之同意後始得變更，茲再詳述如次：

1、本院決定停建核四，係屬行政權之固有範圍，並不在立法院之職權範圍內，則在程序上自無須經立法院之同意，又其既無同意權，自亦無得要求本院應為事前報告。

2、立法院職權行使法第十七條規定之報告義務並不以事前為必要，一方面重要事項之認定二院或有不同看法；另一方面，如要求政策變更均須一

一事前向立法院報告始能著手實施，勢必與講求彈性、效率、快速、機動之行政本質不符，而難以推動政務。何況立法院受會期限制，不能天天集會執行職務，從而本院欲事事為事前報告究屬客觀不能，不僅違反行政之本質，更有立法權侵犯行政權之虞。從該條第二項規定「前項情事發生時，如有立法委員提議，三十人以上連署或附議，經院會議決，亦得邀請行政院院長或有關部會首長向立法院院會報告，並備質詢。」，更顯見其本質上係允許本院事後為報告。

3、經濟部於本（八十九）年九月三十日向本院提出停建核四建議後，即曾就該部停建核四之考量過程、相關替代方案之可行性，積極向立法院溝通說明，包括本年十月十一、十二日兩天，經濟部林部長列席立法院經濟及能源委員會，針對各立法委員對核四停建案之質詢逐一說明。

茲因核四停建之政策決定，與人民權利義務相關，允宜縝密檢討，以昭慎重，故未經本院會議決議通過前，本院院長亦不宜對外宣布。嗣立法院於十月二十四日就九十年度中央政府總預算案舉行朝野協商時，要求本院應於十一月十五日前就核四案作成決定，本院乃遵照於十月二十七日提出於本院第二七0六次會議通盤審慎討論後決議停建核四，本院院長除代表本院宣布外，並即安排於十月三十一日率全體部會首長至立法院院會，擬就該案向立法院院會說明並備詢，詎該日原排定之總質詢議程經立法院決議變更，而未有機會進行詢答說明；立法院復表明不歡迎本院院長列席該院院會，且旋即於十一月七日依該院親民黨黨團之提案，決議函請監察院就本院院長等予以依法糾彈，故本院院長迄今無法依據立法院職權行使法第十七條之規定，向立法院院會提出報告。而

本院院長赴立法院報告，具有使本院得藉機提出辯護，爭取更多立法委員，乃至國民對其政策變更之認同功能，故赴立法院報告不僅是本院義務而已，同時亦具權利性質，若否認其權利性質，不啻謂只准立法權對本院變更政策進行「攻擊」，卻不許行政權有效「防衛」，此於權力分立之天秤上實難求得其平。類此其他憲法機關參與國會議事之成文或不成文權利，德國學者 Arndt 就主張國會負有「忠誠合作」（loyale Zusammenarbeit）加以配合之義務，不能以國會議事自治為名，剝奪其他憲法機關參與議事之權利[註]。

（二）依憲法增修條文第三條第二項第三款規定「立法院得經全體立法委員三分之一以上連署，對行政院院長提出不信任案。……」。立法院如認本院

註：Klaus Friedrich Arndt, Parlamentarische Geschäftsordnungsautonomie und autonomes Parlamentsrecht, Berlin 1966, S.113.

院長為核四停建之決定不當，自得對本院院長提出不信任案，以追究政治責任。

肆、立法院對覆議案決議之法律效力

就八十五年覆議案之內容以觀，立法院於八十五年五月二十四日第三屆第一會期第十五次會議，討論張委員俊宏等五十三人為本院持續興建核能電廠，嚴重威脅人民生命，依憲法第五十七條第二款規定移請變更之提案，決議依憲法第五十七條第二款規定，立刻廢止所有核能電廠之興建計畫，刻正進行之建廠工程應即停工善後，並停止動支任何相關預算且繳回國庫，並經該院於同年六月四日(85)院臺議字第一六四二號函請本院查照辦理。本院經提同年六月六日本院第二四八三次會議決議通過，並經呈奉總統同年六月十一日核可後於八十五年六月十二日移請立法院覆議。上開覆議案經立法院第三屆第二會期第一次

全院委員會審查，提同會期第十一次會議以無記名投票表決：「贊成維持本院原決議者０人，未達憲法第五十七條第二款所定三分之二人數，原決議不予維持。」，則上開覆議案之議決效果，僅使立法院決議廢止核能電廠興建之原決議不予維持，本院處於如同立法院決議移請變更重要政策前之狀態，即得維持興建核四而已，至本院是否繼續維持興建核四之政策，則屬行政權得予決定之事項，故從該次覆議內容而言，實不能創造出本院應繼續維持興建核四政策之義務。

伍、就停建核四及停止執行核四預算，本院無行使覆議權之問題

一、停止興建核四，係屬本院當前施政事項，八十六年修憲後，憲法第五十七條第二款立法院對本院重要政策不贊同時得決議移請本院變更之制度，已停止適用

核四計畫係經本院審慎評估後決議同意經濟部建議停止興建，並以建立非核家園作為日後施政方向，是停止興建核四，係屬本院當前重要政策，並無疑義。立法院對本院停止興建核四計畫之重要政策若不贊同，本可依憲法第五十七條第二款規定主動以決議移請本院變更之，對此決議，本院則可提出覆議以資對抗。惟八十六年修憲時，上開憲法第五十七條第二款移請變更重要政策與覆議之制度，已停止適用。故修憲後，立法院若對本院重要政策不贊同時，得循憲法增修條文第三條第二項第三款規定程序提出不信任案，是憲法增修條文已定有相當之機制可循。

二、就停止執行核四預算，本院並無提起覆議之必要，復已逾越提起覆議之法定不變期間而無得行使之空間

核四案係經本院以編列「預算案」之方式提出於立法院，並經該院以「預

算案」之方式審議通過，對本院而言，既已獲得立法院對其施政計畫之財政支持與授權，自無窒礙難行而有提起覆議之必要，至本院嗣後因變更政策致引起預算執行上之變動，並未違反實體法律之強制規定，屬本院固有之職權，且並無因立法院刪減預算而使本院政策推展產生窒礙難行之情形，故亦無對立法院議決之預算案移請覆議之必要。

復依憲法增修條文第三條第二項第二款規定，本院對立法院通過之核四預算如認窒礙難行，須於立法院議決之預算案送達本院十日內移請立法院覆議，故本院就本案已逾越提起覆議之法定不變期間而無提起覆議之空間。惟立法院如不同意本院之政策決定仍可提起不信任案，並無行政權獨大，無從駕馭之慮。立法院代表有謂本院之停止執行預算因事涉違憲問題，不得援處理政策爭議之不信任案機制，以求

解決，惟立法院對本院院長提出不信任案原不須附具任何理由，對本院政策不贊同時可提起不信任案，自無對政策決定違憲之更嚴重指摘反不得提不信任案之理。

陸、本院宣布停建核四並停止執行相關預算，並無違反民意政治及責任政治

按民意政治固為現代民主法治國家之基本精神，惟其內涵及運作方式，恆須對照各該憲法之規定，以為判斷，並無放諸四海定於一尊之民意政治。我國幾經修憲之後，業已朝向所謂「二元民主」之體制發展，職掌行政權之本院不僅具有來自總統之民意基礎，且與立法院之間形成一定制衡與權力分享之關係，若謂所有之政策或事項皆需由立法院決定，不僅與現行憲法體制有所不符，更與民意政治之精神有所乖離。

次按預算之停止執行有無違反民意政治應視立法院所通過法定預算

之性質為何。法定預算之拘束力既如前述，僅具授權之性質，而非課予行政權之作為義務，則無違反民意政治之可言，蓋僅有違反立法院課予行政權之作為義務時，始得謂違反民意政治。換言之，停止執行預算是否違反民意政治，關鍵仍在於法定預算之效力究竟係屬授權抑或強制性質，立法院代表中既承認預算為授權性質，另方面卻又指摘不執行預算違反民意政治，顯自相矛盾。

又本院不執行預算亦無違反責任政治，因立法院倘不贊同，仍可透過不信任案追究本院之政治責任，另立法院之定期改選亦是在追究掌握行政權者之政治責任，故亦無違反責任政治可言。

柒、核四停建損失預算及決算上之處理

一、成本效益評估，非僅就有形計算，且應包括無形之成本、風險之考量及

核廢料之處理等

核四停止興建，係本院考量以不建核四不會缺電，核四可以具體可行方案替代，核廢料是萬年無解難題，核災萬一發生，危機處理堪慮，核四合約中止損失尚可忍受，為永續發展臺灣經濟，順應國際廢核能發電之趨勢，逐漸建立非核家園等因素，經通盤審慎評估所作決定，其效益遠大於停建可能發生之賠償。蓋就有形之費用觀察，核四停建損失雖有八八〇、七五億元，惟相對觀之，若決定續建核四，則須再投入約一一七九億元，且據反核人士之估計，日後核四除役所需費用更將相當於興建費用；再就無形之效益觀察，停建核四可使人民之生命、身體或財產免於核能災害及廢料之威脅，此種無形利益，亦非得以金錢評估之，綜上所述，不僅自有形之費用或無形之利益而言，停建核四之效益，均遠大於停建可能發生之賠償。

二、有關核四停建後可能發生之賠償問題，臺電公司將依其與相關廠商所簽訂之契約及預算法、會計法等相關主計法規處理

臺電公司乃屬國營事業，類此涉及私經濟行為部分之財務收支，並非比照一般公務機關預算處理，故預算法對於國營事業附屬單位預算之執行，均賦予較大之彈性處理空間。預算法第八十八條規定：「附屬單位預算之執行，如因市場狀況之重大變遷或業務之實際需要，報經行政院核准者，得先行辦理，並得不受第二十五條至第二十七條之限制。……」，即是排除一般公務機關預算執行之限制；而依同法第八十七條規定：「各編製營業基金預算之機關，……其配合業務增減需要隨同調整之收支，併入決算辦理。……」，上開停建損失當可併入臺電公司附屬單位決算辦理。另因臺電公司為公開發行公司，因此，其賠償或損失金額之認列，亦應同時遵照商業會計法、財團

法人中華民國會計研究發展基金會發布之財務會計準則公報第一號第四十七條：「損失業已發生，但金額尚未確定者，應按適當之估計數列作發生當期之損失。……」及財政部證券暨期貨管理委員會組織條例會發布之證券發行人財務報告編製準則第十一條第七款：「性質特殊且不常發生之非常損益應單獨列示，不得分年攤提。」之規定辦理。

三、未來立法院對賠償所引起決算審查同意與否之問題，乃屬未來之政治問題，應以政治手段解決

姑不論核能電廠設置問題涉及高度複雜性，無法單純以有形之成本為考量依據，就有形費用或併予考量無形之效益，停建核四之效益均遠大於停建可能發生之賠償，已如上述。至未來立法院對賠償所引起決算審查同意與否之問題，乃屬未來之政治問題，應以政治手段解決。再者，本案爭點在於停

建核四之是否合憲合法，若停建核四本身合憲合法，則不宜也不應以因其後續之決算處理問題影響其本身合憲合法之考量，以免陷入倒果為因之謬誤。

捌、外國立法例及實務見解

一、德國預算法制

（一）聯邦預算編列與審查決議

1、聯邦預算編列及聯邦眾議院預算同意權行使對象

德國之聯邦預算被視為一種經濟之規畫（Wirtschaftsplan），同時也是一種由國家作成之指導性高權行為（staatsleitender Hoheitsakt）[2]。聯邦總預算亦被視為是核定各項預算及經濟之基礎[3]。其是由一個總體計畫（Gesamtplan）及

[2] 見 BVerfGE 79, 311/328f.

[3] §2 BHO.

各種個別之計畫（Einzelpläne）所組成[4]，後者則為各部會預算。聯邦總預算之編列必須依照完整性原則為之[5]。此一原則也就是在於明確規定所有可期待收入及所有預定支出，必須完整（vollständig）在一個計畫中提出（德國基本法第一百十條第一項第一段）[6]。這也就是禁止所謂之「黑箱作業」（schwarze Kassen）[7]。此一完整性原則主要之目的在使國家預算明朗化（Haushaltsklarheit），使國民之負擔平等化（Lastengleichheit der Buerger）[8]。除了此一完整性原則外，另一總額原則（Brutto-Prinzip）亦在德國預算之編列上占有重要地位，其所要確定者為預算之支出及收入原則上必須分別的，

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[4] Jarass/Pieroth, Kommentar zum GG, Stand 1992, Art. 110, Rdnr. 1.

[5] 參見 Kisker, a.a.O., §89, Rdnr. 4.

[6] BVerfGE 55, 274/302f.; Kirchhof, Staatliche Einnahmen, in: Isensee/Kirchhof (Hrsg.), HdbStR, Bd. IV, §88 Rdnr. 19.

[7] Kisker, a.a.O., §89, Rdnr. 19.

[8] BVerfG, DVBl, 90, 985.

而且完整數額予以編列，亦即並不能僅編列收支差額（Saldo）[9]。除此二原則外，德國基本法上亦要求預算收入及支出之編列必須均衡，亦即禁止支出之編列多於依事先估計所期待之收入[10]。另外，整體經濟之平衡性（gesamtwirtschaftliches Gleichgewicht）亦是德國聯邦預算編列上所要考慮之重要且必要之一環[11]。

德國聯邦預算依據基本法第一百十條第二項第一段規定，是以一年或多年之會計年度在聯邦預算法（Bundeshaushaltsgesstz）中被確定。[12]因此德國聯邦預算就整體而言是屬於聯邦預算法之一部分[13]。依此，則「預算案」與「預算法

[9] Kisker, a.a.O., §89, Rdnr. 64.

[10] Jarass/Pieroth, Kommentar zum GG, Stand 1992, Art. 110, Rdnr. 3.

[11] Jarass/Pieroth, Kommentar zum GG, Stand 1992, Art. 110, Rdnr. 3.

[12] 此項規定之前身爲 1871 年帝國憲法第六十九條第二項及威瑪憲法第八十五條第二項。

[13] BVerfGE 20, 56/91; 38, 121/126.

律」應予區別，預算法律為預算案之「外衣」(Mantel)[14]，預算案通常以「附件」(Anlage)之方式，附加於預算法律之後，一併公布（惟僅總體計畫部分），二者構成「一體性」(Einheit)[15]。預算法律之內容，除表彰一種「確定之形式」(Feststellungsformel)外，主要是一些規定條款，對於歲入與歲出之運用，作各別具體之規定及其他之補充規定。

德國聯邦預算法是一種形式之聯邦法律，因此它必須經由聯邦眾議院（Bundestag）通過。另外聯邦參議院（Bundesrat）僅有一種異議權（Einspruchsrecht），例如在聯邦預算法中之附屬規定有關係到聯邦參議院依基本法之規定有行使同意權義務之事項時，才能行使上述異議權。相對於聯邦眾議院之預算審查議決權，聯邦政府單獨擁有提案權（Das Recht der

[14] 請參閱 *Kurt Heinig*, Das Budget, Bd. I, 1949, S. 300.

[15] BVerfGE 38, 121 (126); *Herbert Fischer-Menshausen*, in: von Münch/Kunig (Hrsg.), Grundgesetz-Kommentar, 3. Aufl., 1996, Art. 110 Rn. 3; *Jarass/Pieroth*, Grundgesetz, Kommentar, 5. Aufl., 2000, Art. 110 Rn. 1.

Gesetzesinitiative）[16]，提案權包含了對草案有修改之權力[17]，但此一權力之行使並不適用於已在立法程序中之修正。

又德國聯邦預算法之確定仍須遵守兩大原則，首先即所謂「夾帶禁止原則」（或稱「累載禁止」）（Bepackungsverbot）[18]，其目的在排除與預算案討論無關之事項，並防止立法者假審議預算之名，行敲詐之實。申言之，「夾帶禁止原則」為德國預算法之傳統部分，對預算法律作實踐上及事物上之限制。預算法律作為一種「限時法」（Zeitgesetz），不宜包含與預算審議無關之事項以及其他一般性之問題，以免造成法律之不明確性，並影響預算審議之進度。在時間上，預算法律之規定，必須在該預算案有效期間之內，是以，預算法律不能作長期性

[16] BVerfGE 45, 1/46.

[17] Stern, Das Staatsrecht der Bundesrepublik Deutschland, Bd. II, §49 IV 3, S. 1212, 1980.

[18] 請參閱 *Klaus Stern*, Das Staatsrecht der Bundesrepublik Deutschland, Bd. II, 1980, § 50 III 12, S. 1252 ff.; *Herbert Fischer-Menshausen*, in: von Münch/Kunig (Hrsg.), Grundgesetz-Kommentar, 3. Aufl., 1996, Art. 110 Rn. 24 f.; *Jarass/Pieroth*, Grundgesetz, Kommentar, 5. Aufl., 2000, Art. 110 Rn. 9.

之規範，亦即超越預算案有效期間之規定。違反夾帶禁止之規定，將導致該預算法律規定無效之結果[19]。

如前所述，由德國聯邦預算之編列、確定及預算之提案權與議決權之歸屬，可以得知德國聯邦預算案是被視為一種法律案，法律案之提案權完全由聯邦政府單獨行使，此不僅是一種政府之權利，也是一種義務[20]。此種義務是從德國基本法第一百十條第三項、第一百十一條及第一百十三條第一項得出的。相對於此，聯邦眾議院單獨擁有預算同意權（Das Recht der Haushaltsbewilligung）。其行使是以聯邦政府所提預算案之聯邦預算法為對象，另外聯邦參議院對此僅有如前所述之異議權。

2、聯邦眾議院預算同意權行使之限制

[19] 請參閱 *Theodor Maunz*, in: Maunz/Dürig, Grundgesetz, Kommentar, Stand: 1980, Art. 110, Rn. 45.

[20] Stern, a.a.O., S. 1212.

在德國基本法上並無類似我國憲法第七十條之規定，對國會欲提高預算案中之支出予以明文禁止。但在德國基本法第一百十三條中規定，如果聯邦眾議院欲就聯邦政府所提之預算支出為增加或包含新支出名目或導致未來有新支出名目時，所制定之法律必須獲得聯邦政府之同意（Zustimmung der Bundesregierung）。此種限制被稱為國會預算高權行使之界限（Grenzen der Haushaltshoheit des Parlaments）。正如上面所提及的，在民主國家中，國家行使預算議決權之目的乃在監督政府，防止其濫用權力，恣意編列預算，以致造成國家財政上、人民稅賦上之沈重負擔，故國會預算議決權之行使，通常以刪減政府所提之預算案為主，至多維持原預算。相對於國會之刪減預算權，德國基本法第一百十三條則規定國會之預算增額權，因行政權乃是就國會所制定的法律或所通過的事項加以執行。在其執行之過程中，對於實際之需要知之最

詳，因此國會如欲增加預算支出時，必先獲得聯邦政府之同意，此一規定設立的目的是在防止國會議員為了討好選民及其支持者，而犧牲經濟性及節約性之原則（Grundsaetze der Wirtschaftlichkeit und Sparsamkeit）[21]。依此條文，如聯邦眾議院欲提出增加預算支出之法律時，聯邦政府可以請求其延期議決此項法律，並在六個星期內，提出自己對此之意見（德國基本法第一百十三條第一項第三、四段），在聯邦政府表達過自己的意見後或是過了六個星期期限後，聯邦眾議院可以議決此項法律[22]，另一種情況則是，聯邦政府可以在聯邦眾議院議決增加預算支出之法律後，四個星期內請求其重新對此法律議決之（基本法第一百十三條第二項），在提出此要求時，可以附理由說明之[23]。

[21] Kisker, a.a.O., §89, Rdnr. 48.

[22] Jarass/Pieroth, Kommentar zum GG, Stand 1992, Art. 113, Rdnr. 3.

[23] Jarass/Pieroth, Kommentar zum GG, Stand 1992, Art. 113, Rdnr. 4.

綜上所述，可以得知，如果聯邦政府欲拒絕同意聯邦眾議院議決之增加預算支出或包含新預算支出名目或減少預算收入之法律時，聯邦政府必須為下列行為：（1）聯邦政府必先要求聯邦眾議院暫時不要議決此一法律，（2）並在六個星期內表達自己之意見；或在聯邦眾議院議決此一法律後，四個星期之內要求聯邦眾議院重新議決此一法律。

另一方面，聯邦眾議院依基本法第一百十三條第一項所議決之法律，如有下列之情形時，則具有一般形式法律之效力：

1聯邦政府沒有依基本法第一百十三條第一項第三段及時（rechtzeitig）提出請求聯邦眾議院暫緩議決此一法律之申請，亦沒有依本條文第二項，在聯邦眾議院議決此項法律後，四個星期內提出請求其重新審查議決此法律。

2聯邦政府明示（ausdrücklich）表達同意此項法律。

3聯邦政府在此項法律議決後，六個星期內，沒有明示之決定（keine ausdrückliche Entscheidung），是否其同意或拒絕此一法律（基本法第一百十三條第一項第二段）。

在闡述德國基本法第一百十三條之立法例後，可以得知德國基本法，並無如我國憲法明文禁止國會預算增額權之行使，只是其行使必須先得到聯邦政府同意。然而聯邦政府欲拒絕聯邦眾議院議決之法律時，亦必須受基本法第一百十三條規定之限制。在此聯邦政府僅有被動之意見表達權，請求聯邦眾議院暫緩或重新議決此一法律。另外在德國內閣制國家中，聯邦政府之成員實際上也是國會議員，其是由國會所選出，亦可由國會使之去職，因此如國會堅持提出預算增加支出之法律，聯邦政府實很難拒絕，因此此一條文在德國之現實政治環境下，

並未具有重大意義[24]。

（二）德國預算法律本質

德國學界均主張，應由國會與政府在今天民主憲政國家中之角色定位，來探討此一問題。質言之，這裡涉及的是國會與政府之間權力分配之問題。要界定兩者在預算一事上扮演之角色如何，則首先必須掌握預算計畫之法律性質，之後乃能探討，在權力分立之憲政組織原則下，國會與政府就預算計畫而言各自應分得如何之權限。

德國聯邦憲法法院在一九八九年四月十八日之裁判中[25]對於預算計畫之法律性質為廣泛之說明：「依基本法第第一百十條第二項第一句必須透過預算法律案加以確定之預算計畫，是一種經濟計畫，同時也是一種以法律形式來表現的，主

[24] Stern, a.a.O., Bd. II, §49 IV 6, S. 1223.
[25] BVerfGE 79, 311/328f.

導國家之高權行為（ein staatsleitender Hoheitsakt）…它被稱為「在預算期間內，引導國家經濟，同時也主導國家政治的國家整體方案」…這個描述恰如其分地指出預算計畫之特質，它包含了一個時間上受到限制、取向於國家任務，並且出之以法律形式之政府方案，於此，政府之政策要以數字表現出來：國家任務在預算計畫裡表現為支出，它們要透過收入來滿足。因此，預算的範圍與結構繫諸於整體政治。」

其次，關於「預算案」之性質，可以先從「預算基本原則法」(Haushaltsgrundsätzegesetz = HGrG)之規定予以觀察，其第三條之標題為「預算案之效力」(Wirkungen des Haushaltsplanes)，其內容如下：

1、預算案授權行政動用支出，並履行其義務。

2、經由預算案，並未形成或廢止權利及義務[26]。上開第二項之規定，主要涉及預算案外部效力之問題，其明白顯示，人民並未因預算案而被賦予權利或課予義務。預算案之規範相對人僅是國家機關，故有學者稱其為一種「組織法」(Organgesetz)[27]。亦即，預算案被定義為一種規範國會與政府內部關係之具有法拘束力之「組織法」[28]。多數學者認為，預算案之法律效力，不同於通常法律之效力，其主要有三個特徵[29]：

1、預算案不含一般、抽象之規範，而是對於個別措施予以授權之一種集合或體系（單純形式之法律）。

2、預算案並無外部效力。

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[26] 其原文如下：(1)Der Haushaltsplan ermächtigt die Verwaltung, Ausgaben zu leisten und Verpflichtungen einzugehen. (2) Durch den Haushaltsplan werden Ansprüche oder Verbindlichkeiten weder bedründet noch aufgehoben.

[27] 請參閱 *Klaus Stern*, Das Staatsrecht der Bundesrepublik Deutschland, Bd. II, 1980, § 49 III 4b, S. 1203.

[28] 請參閱 *Klaus Stern*, Das Staatsrecht der Bundesrepublik Deutschland, Bd. I, 1977, § 20 IV 4.

[29] *Gunter Kisker*, Staatshaushalt, in: Isensee/Kirchhof (Hrsg.), Handbuch des Staatsrechts, Bd. IV, 1990, § 89 Rn. 25; *Jarass/Pieroth*, Grundgesetz, Kommentar, 5. Aufl., 2000, Art. 110 Rn. 15 f.

3、預算案僅授權行政權，而非課予其義務。

由於預算案缺乏外部效力，故其對於人民之法律地位並無直接之影響，從而人民不得根據預算案，要求行政機關給付由國會所作成有利其之預算項目，例如資金補助，其必須另有法律之特別規定，或經由行政機關具體之核發程序，始能構成人民之主觀權利[30]。

其次，預算基本原則法第三條第一項明定，預算案係「授權」行政權動支預算之款項，以遂行其任務，由此可以推知，預算案本身並未課予行政權有執行特定支出之義務。立法者通過預算之旨趣毋寧是，行政權於執行特定之預算項目時，不得逾越預算案所定之數額。行政權享有自由，不去執行預算案所授予之權限[31]。換言之，「無預算之授權不得動支預算」之原則，不能反面推論為「有

[30] 請參閱 *Hartmut Maurer*, Allgemeine Verwaltungsrecht, 12. Aufl., 1999, § 24 Rn. 20 ff.

[31] 請參閱 *Gunter Kisker*, Staatshaushalt, in: Isensee/Kirchhof (Hrsg.), Handbuch des Staatsrechts, Bd. IV, 1990, § 89 Rn. 28.

預算之授權即有動支預算之義務」，蓋「預算決定」與「政策決定」有關，行政部門既有政策形成之主導權，自可決定預算之執行與否[32]。

再者，從法律保留原則之意旨以言，即使有預算案之授權，有時尚須法律之特別授權，始得為之，特別是在涉及人民基本權利之限制。換言之，預算案之通過，是否符合法律保留原則之意旨，尚有推求討論之餘地[33]。

綜合言之，預算案之規範內涵，其問題之關鍵並非在於預算案之性質，究屬特定、具體之規範（形式意義之法律），抑或一般抽象之規範（實質意義之法律），其問題之癥結，毋寧是國會是否具有「政府功能」(Regierungsfunktion)？此乃屬權立分立之問題，應從權限之層面(kompetetielle Dimension)予以探析[34]。

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[32] 關於「預算」與「政策」之交互關係，請參閱 *Helmut Siekmann*, in: M. Sachs (Hrsg.), Grundgesetz, Kommentar, 2. Aufl., 1999, Art. 110 Rn. 3; BVerfGE 79, 311 (329).

[33] 請參閱 *Fritz Ossenbühl*, Vorrang und Vorbehalt des Gesetzes, in: Isensee/Kirchhof (Hrsg.), Handbuch des Staatsrechts, Bd. III, 1990, § 62 Rn. 21.

[34] *Matthias Pechstein*, Die Begründung von rechtsverbindlichen Ausgabeverpflichtungen der Exekutive durch den gesetzlich festgestellten Haushaltsplan als verfassungsrechtliches Problem, VerwArch 86 (1995), S. 359 (365); *Herbert Fischer-Menshausen*, in: von Münch/Kunig (Hrsg.), Grundgesetz-Kommentar, 3. Aufl., 1996, Art. 110 Rn. 6.

（三）、德國實務見解

1、憲法法院判決

在德國聯邦之釋憲實務上，截至目前為止，似未曾發生聯邦政府因不執行法定預算而發生爭訟之情形，不過，聯邦憲法法院於涉及預算憲法之爭訟程序中，曾多次對於預算案及預算法律之性質及效力，有所闡釋，茲擇若干重要裁判，節錄其相關段落如下，以供參考：

（1）政黨補助案(BVerfGE 20, 56 ff.)

「依基本法第一百十條第二項第一句規定，聯邦預算案以法律確定之。基本法第一百十一條授權聯邦政府，當預算年度將屆滿而下一年度之預算案尚未通過時，得以儘量接近本年度之預算方式支出。依基本法第依百十二條規定，預算

之超支或不合計畫之支出，應得到財政部長之同意，由此二條規定（此二條規定於威瑪憲法中並無前例），可知所有政府支出均需預算法律之確定。由基本法第一百十一條、第一百十二條之脈絡及第一百十條之規定可知，預算法並非只是「確認」，其同時含有對預算案支出款項之「同意」，亦即對於政府依預算案之目的支出款項之授權。…

聯邦預算法律並非僅是確認預算案中所列不具法律意義之數字，亦非僅是創設一種事實狀態，如 Laband…所言。…預算法律與預算案係構成一體(Einheit)，預算案中各項目節及目的規定之法律意義，來自預算法律第一條，該法律規定包含對於依項目、目的支出款項之授權。……[35]」

（2）緊急動用支出案(BVerfGE 45, 1 ff.)

[35] BVerfGE 20, 90 ff.

「依據基本法第一百十條第二項規定，預算案之確定乃屬立法者專屬之權限。立法者預算案之決定，係一種經濟計畫，同時是以法律形式表現之引導國家之高權行為，藉此立法者對於特定計畫期間內之政治重要領域作出一種經濟上之基本原則決定。[36]」

（3）確認預算案無效案(BVerfGE 79, 311 ff.)

「依基本法第一百十條第二項第一句須以預算法律確定之預算案，乃是一種經濟計畫(Wirtschaftsplan)，同時是一種以法律形式表現之引導國家之高權行為(ein staatsleitender Hoheitsakt in Gesetzesform)(BVerfGE 45, 1 [32]; 70, 324 [355])。其被稱為「在預算期間內，引導國家經濟，進而引領國家政治之國家整體方案（…）。此項描述適切地掌握預算案之特質，其——在時間上受有

[36] BVerfGE 45, 32.

限制且關涉支出事項——含有一種法律形式之政府計畫，並且以數字表現出政府政策。…國家之任務，展現在預算案中之支出，其需透過收入予以支應。準此以言，預算之範圍及結構繫於整體之政策。反之，預期之收入則限定履行國家任務之形成空間。…[37]」

2、邦憲法法院判決

於邦之釋憲實務上，曾發生一則邦政府因停止執行法定預算所引發之憲法爭訟，值得介述。一九九三年間，柏林邦議會之 FDP 黨團及 Bündnis 90/Grüne 黨團向柏林憲法法院提出聲請，請求確認柏林邦政府於一九九三年六月二十二日有關關閉柏林國家劇院（即「席勒劇場」(Schiller-Theater)）之決議，是否牴觸邦議會之預算法及法律保留原則，蓋該劇場之預算業經議會通過。經柏林憲法

[37] BVerfGE 79, 328 f.

法院審理後，以「無理由」駁回本件聲請[38]。其裁判理由略以：

（1）關於是否牴觸法律保留原則部分：原則上，聯邦憲法法院所發展出之「重要性理論」，於邦憲法之層次亦有適用，惟法律保留原則僅適用於具有拘束力之誡命與禁止(verbindliche Gebote und Verbote)。邦政府關閉國家劇院之決定，雖係涉及人民之文化生活（重要事項），而應由立法者予以決定。惟邦政府之決定並非直接對外發生拘束力之決定，從而無須邦議會之共同決定，從而亦無牴觸法律保留原則可言。

德國憲政體制係基於民主共和社會之法治國原則，此一原則意味著，國會對於政府之政策決定並無一般之共同決定權，其亦非優位於其他國家機關。對於立法者而言，權力分立原則足堪構成其權限之界限。申言之，憲法所蘊含之權力

[38] BerlVerfGH, Beschl. V. 12. 1994, NJW 1995, 858 ff.

分立原則，將國家權力交給立法權、行政權及司法權分別行使。依據邦憲法之規定，邦政府有擬定施政計畫及施政方針之權，其雖需經邦議會之同意，惟邦議會不得修改或補充邦政府所提出之施政計畫及方針。反面言之，邦政府不受邦議會「政策方針」之拘束。準此以言，邦政府得基於憲法之規定，獨立且自我負責地行使其職權，而無須受制於邦議會之指令。如果邦議會不同意邦政府之政策決定，僅能以憲法所賦予之政治手段反制之，例如提出不信任案，或以通過法律之方式，拘束行政權之作為。就系爭國家劇院關閉之問題而言，由於並無法律對此有所規範，故邦政府作出關閉之決定，無須經由邦議會之同意。

（2）關於是否違反預算法部分：依柏林邦憲法第七十三條第一項規定，每會計年度之支出與收入，應先編列於預算案中，再由邦議會以預算法律(Haushaltsgesetz)確定之。此項預算法律構成邦政府每年支出與收入之基礎。

依據柏林邦憲法及相關預算法之規定，邦政府並無義務去動支（執行）邦議會所通過之預算支出。預算案僅授權行政權動用所編列之支出預算（柏林邦預算法第三條第一項）。因此，一九九三年預算案中有關國家劇院之預算，並未課予邦政府動支該預算之義務。部分學者有關邦政府有執行預算義務之見解(Fröme1, DVB1. 1974, 65 ff.)，並不足採，蓋其忽略了邦憲法將行政任務交予邦政府行使之事實。邦政府此項任務之履行，須遵守法律之規定及預算案所設定之範圍。換言之，預算法律僅是對邦政府任務之遂行「設定界限」，而非課予義務[39]。

二、法國預算法制

法國預算法制之基本特色有以下幾項：

[39] BerlVerfGH, Beschl. V. 12. 1994, NJW 1995, 860.另請參閱 *Klaus Grupp*, Theaterschließung und Haushalts(verfassungs)recht, NVwZ 1994, 238 ff.

（一）法國現行之預算法是由憲法及一九五九年一月二日有關預算法之組織法（以下簡稱組織法）等兩項法規構成其核心。就憲法層次而言，第五共和憲法第三十四條規定預算案之通過乃屬立法權之領域。惟針對此點，憲法委員會在其判例[40]中特別指出：預算案不得以憲法第三十八條所規定之授權機制，授權內閣以條例(Ordonnances)方式制定。換言之，國會可將一般法律案授權內閣代為制定，但預算案則是國會專屬權，不得將之委託予行政權代行。

（二）法國第五共和憲法中之組織法(loi organique)，位階高於法律，可以拘束立法者。一九五九年有關預算之組織法中便明白指出：預算法最根本之特質就是它是一種授權法，政府與國會分別扮演之角色：就是政府提出預算與國會授權。國會審查預算之目的是修改行政部門過去之錯誤，以及對授權內容作整

[40] C.C. 370 DC, 30 déc 1995, *R.J.C.* I-650.

體評價；但絕不是讓國會取代政府(41)，若允許將一般法律案混夾於預算案中，則國會立法權將大受傷害。所以嚴格定義預算法，明確地將其與一般法律案作區隔，事實上是為了保護立法權；但同時也發揮維護行政權之效果。

（三）在維護行政權方面，組織法第四十二條更具體規定：「針對預算案，任何附加條款或修正條款皆不得被提出，除非是為了真正刪除或減少一項支出，創設或增加一項收入或為了確保對政府財政的監督。」，該條文不僅區別預算法與一般法律案不同，且亦顯示預算法乃行政權之專屬領域，立法權僅能有限介入(42)。該條文所規定之禁止修正案原則，與憲法第四十條之限制修正案原則正好成對比。憲法第四十條(43)規定：在一般法律案中，國會原則上有主動提案

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41 B. BAUFUME, *Le droit d'amendement et la Constitution sous la Cinquième République*, Paris, L.G.D.J., 1993, p. 99.

42 除了強化監督手段的修正案外，憲法委員會的判例明確指出，國會僅能提出以下三種修正案：減少歲出、增加歲入或以新財源取代舊有的財源，但金額不得少於舊財源。至於增加歲出的提案，即使是刪除某一部分的預算，再將所得金額挹注於所欲增加的部門；或以增加歲入的方式來挹注所欲增加的部門，皆違法而不得被提出。

43 條文內容為：「國會議員提出之法案及修正案，若可減少國家收入，或新設或增加國家支出者，不得接受之。」

權，亦可修正政府之法案；惟有國會提案或修正案有減少國家收入或增設國家支出之情事時，才不得被受理。反之，在預算案中，國會不僅沒有主動提案權，原則上也禁止修正政府所提預算案；僅有在例外情況下，國會修正案才可被接受。

法國預算法既然不同於一般法，其效力自亦不同於一般法律，首先就授權法本身之性質而言，該法僅建立國會與政府間之關係，而不對授權關係以外之人民發生效力。更具體地說，一個合法之行政行為不會因無預算而變成違法[44]。一個違法之行政行為，亦不會因預算通過而變成合法[45]。預算之通過不賦予可能享有該預算之人民一種公法上權利，亦即人民不能以預算法為基礎，要求政府給付[46]。而在與政府間之關係上，組織法也賦與行政權相當可觀之自主

[44] C.E. 7 mai 1924, Dagnaud, *Dalloz Périodique*, 1924, III, 31.
[45] C.E. 13 nov 1953, Chambre syndicale des Industries et des commerces de chasse, *Rec.*, p. 487.
[46] C.E. 28 mars 1924, Jaurou, *Dalloz Périodique*, 1924, III, 31.

命令權，而此自主命令權最主要存在於政府支出之執行面上，例如：歲出預算之移轉（組織法第十四條）、流用（組織法第十四條）、展延（組織法第十二條及十七條）及撤銷（組織法第十三條）等，基於健全國家財政收支、避免浪費公帑之考量，此種自主權之賦與甚至是必要的。事實上，政府無論如何總是有權因國家政經、社會情勢變化而暫時凍結某項預算支出，上述預算領域自主命令權之存在，對國會授權效力的確產生相當程度影響(47)。恰能顯示執行預算屬行政權之領域，立法者之介入自然應受相當程度之限制。

三、美國預算法制

美國預算法制之基本特色有以下幾項：

（一）預算之編製、提案及審議權：依美國憲法第一條第七項第一款、第八項

[47] 部分學者甚至認爲預算的執行是行政權的專屬領域，除總額授權外，預算的分配與運用政府有裁量權。如 L. TALLINEAU, "Une annexe budgétaire en quête d'identité", *R.D.P.*, 1987, p. 1054 : C. MAITRE, *La mise à disposition des crédits budgétaires*, Paris, L.G.D.J., 1989, p. 75 : C. DUVAL, "Le Premier Ministre, autorité budgétaires, *Revue de la Recherche Juridique*", 1998, I, p. 134. 等。不過，這樣的見解也遭批判。

第一、二款、第九項第七款等規定，聯邦國會享有完整之預算權。如依美國憲法規定，不僅預算之審議權屬於國會，就連預算之編製及提案權也專屬國會。嗣由於事實需要及總統權力之擴張，在一九二一年之後，改由總統向國會提出概算(Estimates)，再由國會審議。但國會對於總統提出之概算仍然享有幾乎沒有限制之議決權，不僅可以刪減預算，也可增加預算之項目及金額。

（二）國會對預算之審查範圍及目的：美國國會對於預算可以提議增加或減少金額、增列新項目及金額、對任何項目或金額之動支附加條件或限制、或透過撥款法案課予行政部門進行特定計畫及執行支出之義務。以歲出部分而言，美國國會完全可以自行決定各項特定支出之撥款究竟是有拘束力之義務，或只是對預算執行部門之裁量性授權。

（三）預算案之形式：美國憲法第一條第九項第七款明文規定金錢之動用必需

透過法律進行撥款(No money shall be drawn from the Treasury but in consequence of appropriations made by law;)，因此，美國「預算案」是採取「法律案」之形式，稱為「撥款法案」(appropriation acts)(參 1 USC §105)，各項撥款法案不論是形式、內容或議決程序基本上都和「法律」一樣，本身就是法律(Pubic Laws)，因此也具有法律拘束力。

（四）、撥款法案與總統之否決權：由於撥款法案本身也是法律，因此也有總統否決權之適用。美國國會在一九九六年四月通過「條項否決法」(Line Item Veto Act of 1996，2 U.S.C. §§691ff)(1997 年 1 月 1 日生效)，正式准許美國總統針對「裁量性預算權力的任何金額」(any dollar amount of discretionary budget authority)、「任何新的直接支出項目」(any item of new direct spending)或「任何有限(人數)的稅捐優惠」(any limited tax benefit)，進行條項否決，

除非國會在三十日內通過「不同意法案」(disapproval bills)，才能推翻總統之條項否決，並使原先撥款決定復活。

按美國為總統制之國家，在權力分立上對於國會之預算權特予明文所有支出均須經由國會立法，為立法對行政制衡之結果，我國則無類似之憲法條文規定，而美國預算制度之設計，除有預算案外，並須由國會通過撥款法案始得動支預算，總統對該撥款法案則得行使單項否決權，我國亦無類似制度，由於美國預算之撥款法案不論在形式上或內容上都和一般法律案沒有差別，因此當然亦具有法律拘束力。但就像所有法律規定會有強行與任意規定之分，撥款法案亦然。換言之，各項具體之撥款決定究竟是義務性之強制支出(mandatory expenditure)，或是裁量性之支出(discretionary expenditure or unobligated funds)，仍要探討撥款法案之具體內容及立法意旨才能決定。也只有強制性支

出才會產生行為義務，預算執行機關始有執行並動支該項撥款之義務，而裁量性支出，其裁量權則在行政部門內；我國核四興建經費既非法定強制支出，即有類於美國法制之衡量性支出。

四、日本預算法制

日本憲法之規定：

「日本國憲法」在第七章設有「財政」專章，就財政之基本事項，諸如：財政處理權限之國會議決原則（第八十三條）、租稅法律主義（第八十四條）、國費支出及國庫債務負擔行為（第八十五條）、預算之做成、提出及議決（第八十六條）、預備金（第八十七條）、皇室費用與國會之議決（第八十八條）、公財產之支出與利用限制（第八十九條）、決算與會計檢查院（第九十條）、內閣之財政報告義務（第九十一條）設有規定。其中第八十三條規定：「國家財政之處理權

限，應基於國會之議決行使之。」，即通稱之財政民主主義之體現，但亦僅止於規定國會之財政事項議決權。另第八十六條規定：「內閣應編製每會計年度之預算，提出於國會。」，第九十條規定：「國家收支之決算，每一年度應由會計檢查院檢查之，內閣應於下一年度，將決算連同檢查報告，提出於國會。」，明確規定預算之編製權在行政部門，而國會所擁有者則為預算之審議、議決權與決算之審議權。

日本法律之規定：

明治憲法時代以來，就政府之收入與支出，即有會計法提供程序性以及若干有關預、決算之統一性規範，但會計法對法定預算之效力並未特為規定。戰後伴隨日本國憲法之制定、施行，有關「國家預算及其他有關財政之基本事項」，統由財政法加以規範（第一條參照）。但就法定預算之施行，財政法僅只規定：預

算之配賦（第三十一條）、目的外使用之禁止（第三十二條）、支付計畫（第三十四條）、支出負擔行為實施計畫（第三十四條之一），移用、流用之禁止（第三十三條）、預備金之管理及使用限制（第三十五條）、預備金使用之國會事後承諾（第三十六條）等，在性質上均為對行政權動支預算所加之程序或實體限制，而未明言法定預算必須完全執行之拘束力問題。

日本學說之主張：

日本學者通說主張：歲出預算之效力在於授權行政機關於預算所定之最高限額內為支出，而非課以支出之義務，因此動支經費只要不違反法定金額之上限，均不生違法之問題。換言之，預算之執行，其主要權限劃歸行政部門，國會主要透過事前審議及決算之方式加以控制，至於執行過程中之控制，除財政法所定者以及會計法的技術性規定外，主要仍由行政部門自行控制。預算之動支，

必須遵守節約及效率之原則，因此若不完全執行預算亦得達成政策目標，本為性質上之所許：又因為內閣既有有政策制定權，並得透過動支預算方式以實現之，則在政策目標已然改變之前提下，預算之不予執行，當然亦非法所不許，但最後必須透過選票，由選民決定此種政策目標之改變是否應負起政治責任。亦即，法定預算乃是國會同意內閣動支經費以實現政策目標之工具，政策目標之實現既係內閣所期盼，則預算之賦予即具有對內閣「授益」之性質，而難以解為目的在課以義務。

五、綜觀德國、法國、美國及日本等有關預算法制及實務所見，各國法制雖各異其趣，然卻可歸納出其於預算之性質及拘束力之相通處：

（一）各國法制多認預算之性質係屬國會授權之性質：

日本國憲法就其權限分配，將預算之編製權劃歸給執行最主要之行政部門，再

透過預算案交給國會審議、議決之方式，以實現財政民主主義；最後將預算之執行權分配給行政部門，使其透過預算之執行，以實現其政策，其歲出預算之效力在授權行政部門於預算所定之目的、金額與時期之內動支經費，而無課以執行義務之內涵，與我國憲法規定及預算法制極為類似。另法國亦屬表現明顯者，由法國憲法及一九五九年有關預算法之組織法規定觀之，預算乃屬行政權之領域，預算法則是一種國會之授權法，政府與國會分別扮演的角色：就是政府提出預算，國會授權，於此原則下，行政部門享有之相當之自主權。復以德國而論，德國預算基本原則法第三條第一項明文規定，預算案係「授權」行政權動支預算之款項，以遂行其任務，可知並非課行政權有執行特定支出之義務，即以預算法律對行政權而言，亦屬積極授予行政權動支所通過之預算金額。縱使以國會為中心之美國預算法制，其亦承認預算中有衡量性支出，其裁量權即

屬行政部門。

（二）關於預算之效力部分，各國法制多肯認行政部門享有相當程度之自主權：日本預算之執行，其主要權限劃歸行政部門，國會主要透過事前審議及決算之方式加以控制，至於執行過程中之控制，除財政法及會計法規定外，主要仍由行政部門自行控制。預算之動支，必須遵守節約及效率之原則，因此若不完全執行預算亦得達成政策目標，本為性質上之所許，又因為內閣既有有政策制定權，並得透過動支預算方式以實現之，則在政策目標改變之時，預算之不執行，當然亦非法所不許。於法國法制下，對於國會通過之歲出預算，行政部門得享有之自主權包括歲出預算之移轉、流用、展延及撤銷。其中歲出預算之撤銷，顯示法國國會對歲出預算之授權，在法律上僅是允許政府支出，而非強制政府支出，從而行政部門得因國家政經、社會情勢變化而撤銷歲出預算，此種自主

權當有助於國家財政收支之健全，且可避免公帑之浪費。另德國預算法制雖與法國法制有異，惟其於肯認行政權有不執行預算案權限之自由則屬相同，蓋依德國預算基本原則法之規定，預算案本身並未課予行政權有執行特定支出之義務，立法者通過預算之意旨在於，行政權於執行特定之預算項目時，不得逾越預算案所定之數額。再以美國預算法制言之，美國於相關預算執行之法案仍須經由總統簽署生效，總統仍具相對之否決可能，並得於預算相關法案行使條項否決權，此外，美國總統並得依法保留或廢止國會通過之預算，可見於預算之執行上，行政權亦容有相當之保留或廢止之權能。

立法院秘書長 函

大法官書記處

受文者：司法院秘書長

速別：最速件
密等及解密條件：
發文日期：中華民國八十九年十二月卅日
發文字號：（八九）台立議字第五三二一號
附件：如說明二

主旨：檢送有關「停止興建核能四廠並停止執行相關預算」釋憲案之「憲法解釋案補充意見書」三十份，請　查照。

說明：

一、依　貴院八十九年十二月二十一日召開「停止興建核能四廠並停止執行相關預算」釋憲案之審查會會議主席吳大法官庚指示辦理。

二、有關「停止興建核能四廠並停止執行相關預算」釋憲案之「解釋憲法暨統一解釋法律意見書」，本院已於八十九年十二月二十日以（八九）台立議字第五一八三號秘書長函函送　貴院秘書長，爰再補送前述釋憲案之補充意見書三十份，敬請卓參。

正本：司法院秘書長
副本：本院院長室、本院秘書長室、本院議事處、大法官助理　（副本均不含附件）

秘書長林錫山

機關地址：台北市中山南路一號
傳真：（02）

監印 周春梅
校對 安可珍

憲法解釋案補充意見書

聲請人 法定代理人 代表人 或代理人	關係 院立 代表人 王金平 法院
（姓名及身分證統一編號，如係法人團體或政黨請記明其名稱代表人姓名。）	
性別	
出生年月日	
職業	
出生地	
住所、營業所、主事務所及電話號碼	
送達代收人姓名、住址及電話號碼	

為行政院就決議停止興建核能四廠並停止執行相關預算，認與本院行使職權發生適用憲法爭議，聲請解釋憲法及統一解釋案，提出補充意見事：

一、行政院無片面決定不執行法定預算之權

㈠「預算之未經立法程序者，稱預算案；其經立法程序而公布者，稱法定預算」為預算法第二條中段所明定。而「預算案又必須由立法機關審議通過而具有法律之形式，故有稱之為『措施性法律』者」業經 貴院釋字三九一號解釋在案。足徵，經立法院以立法程序審議通過之法定預算，其性質係採「預算法律說」，具有法規範之效力，行政機關應受其拘束。就此點，本院於歷次書狀及審查會中已陳述綦詳，茲不贅述。

㈡行政院先以法定預算僅為立法院對於預算「支出總額上限」之授權，主張預算之動支與否為行政權之核心權限，故其有權決定執行預算與否，且無義務完全執行云云。然則，本於議會「預算高權」之基本精神（證十七號），以及奠定民意政治基礎之「議會優越」、「財政民主主義」之原則，憲法第六十三條既賦予本院議決預算案之權限，經本院依據行政院提出之預算案，議決通過之法定預算，自有

拘束行政機關之效力，絕非其得片面「廢止」。

(三)再者，本院固不否認「執行預算」確屬行政權之核心權限，但此不代表其他憲政機關（如司法院、考試院、監察院等）即無此等權限，更非謂行政權因此即有「不執行預算」之權；詳言之，就行政權之核心權限而言，「執行法律」及「執行預算」皆屬之，然從此等「執行法律」之核心權限，並不能得出行政院有權選擇是否執行法律之結論。姑且不論行政院或有在法律之限制範圍內，有如何執行法律之裁量，但絕無經一次「行政院院會」之決議「即得拒絕執行某法律」之權限；同理，亦不能自行政權有「執行預算」之權，便直接推論出行政權有權「拒不執行預算」。行政院代理人許宗力教授之補充意見書亦認：「就實際執行的手段而言，行政權必然會有相當的裁量範圍」、「動支預算之裁量權是**本於行政部門的決定權及責任**而生」，然「動支預算」既屬行政部門之「責任」，即無決定「不予執行」之裁量餘地。實則，行政院絕無擅自拒絕執行預算之權，不僅為核四廠興建與否個別預算項目之問題，而屬於憲法上之重要通則性規範，例如每年度本院均通過軍公教人員薪資之法定預算，行政院皆有據之發放薪資之義務與責任，若行政院皆得以是否執行預算為其核心權限為由逕自決定不予發

放，可乎？

㈣行政院代表復以 貴院大法官釋字三九一號解釋理由中「立法機關審議預算案具有『批准』行政措施即年度施政計畫之性質」之文字以及對於預算案之特殊性質與法律案不同之論述，而稱法定預算僅為授權性規範，行政院並無執行之義務云云，亦無可採。按 貴院釋字三九一號解釋理由，對於條約案亦稱「立法機關僅有『批准』與否之權」，而條約案與法律案效力相埒，為 貴院大法官釋字三二九號解釋立論之基礎（證十八號），乃無從根據釋字三九一號解釋理由書以「批准」二字得出預算案僅為授權而無法律拘束力之結論。

㈤復查，釋字三九一號所處理者，為憲法第七十條「審議預算案」之規定，僅在於說明「預算案」之審議過程與法律案之不同之處，且認為法律案、預算案乃至於條約案等審議之過程及方式所以有差異，乃係議案性質不同之故，並未否定三者同對行政院具有拘束力。亦即，釋字三九一號解釋僅為說明預算審議與法律案審議於程序上之差異，並非否定法定預算之法效力，實則憲法第七十條所規範者，僅為「預算案」之審議原則，核與審議完成之「法定預算」之效力如何無涉。行政院以釋字三九一號解

釋認為法定預算無法拘束力，實屬錯誤援引、斷章取義之見解，要無可採。

(六)行政院又以憲法第五十九條其享有預算提案權之規定，主張預算權為一權力部門間之「分享權」，而認為行政院有權不執行法定預算云云。然查，行政院代理人葉俊榮教授於其意見書中亦承認「立法院的議決若透過法律案的審議而成為法律，自有以法律拘束行政機關之效果。但是，若是以預算的形式，則產生預算的效果」，而所謂預算的效果，依據 貴院大法官釋字二六四號解釋之闡釋（證十九號），當係「為謀求政府用度合理，避免浪費起見，委由代表人民之立法院議決之，以發揮其監督政府財政之功能」，固不因行政院擁有提案權，而使行政權有任意變更預算內容之權力，反係更強調立法院決議之「監督功能」；更何況，單就預算為「分享權」之本質，便已不容行政權片面未經立法院同意前，擁有議決不予執行此一需經兩院共享之預算權限。要言之，預算之提案權與議決權既分屬行政與立法，在預算之設定時，要求必須有兩院之參與，豈有在預算廢止時，僅由行政單方面即可合法做成決定？行政院以此置辯，顯無理由。

(七)本院議決之法定預算固有授權行政機關之意涵，但此絕非單純僅有拘束支用上限之效力，且為立法機

關賦予行政部門之責任，本院通過之各種委任立法，亦為對行政院之授權，惟在授權之同時，亦寓有課與責任之要求；換言之，即便憲法第七十條規定本院不得為增加支出之提議，本案通過之預算，基於民意政治及前揭監督制衡之精神，當非僅為拘束上限之授權而已，要求法定預算需經本院議決之憲法真正精神，應為防止行政機關不盡其執行預算之責任，以貫徹行政院向本院負責之憲法意旨。

(八)申言之，憲法修正條文第三條第二項行政院向本院負責之規定，即為要求立法機關基於民意對行政部門為民主控制，而立法院對行政行為之控制，依憲法規定，為雙層控制，第一層次為「立法控制」，即以通過法律之方式，課與行政部門作為或不作為之義務，由行政部門依法行政；第二層次即為「預算控制」，當行政部門依據法律課予之權責，做出施政計畫與施政財務計畫之預算之後，再由立法機關以質詢及審查預算之方式，做第二次之控制。故此等預算之決議，自有拘束行政之法效力，除了授權外，更有責任；非行政權所得單獨變更。

(九)行政權執行法律與法定預算之責任及義務，並不影響行政權執行法律及預算所應有之裁量權，而其分際，就在於行政權具有「忠誠執行」法律及預算之義務。是否盡此「忠誠」義務，正是判斷區別行政

機關究係行使其職務上之裁量抑係推卸責任行為之分野所在。茲者行政院代表「行政院無任何憲法或法律上之義務興建核四」之說法，已然模糊了本件爭議屬「不執行法定預算」之本質，又圖以行政權核心權限曲解行政權執行預算之義務，無非都在掩飾其未盡忠誠執行預算之義務而已。亦即行政權執行法律、預算之裁量，係在法律及法定預算之授權範圍內如何執行，但絕無逕自「不執行」之權限，如不執行，即為忠誠執行義務之違反，而屬不忠誠之行為，應依預算法、審計法、決算法等相關法規負其責任。而行政院主計處五十五年八月六日台（五五）處孝一字第二二〇四〇號令且認為「預算經立法程序即成為法定預算，應不得變更其用途」（詳見證十二號）。相關法條之規定與解釋，本院前次書狀以及關係人韋端教授之意見書中，皆已有詳盡之說明，不再贅述。在此，本院擬僅就行政院稱「得不執行法定預算」之條文依據，駁解如後。

1.行政院代表首先以預算法第五條對於「經費」之定義，認為預算係屬授權，而非義務性規定；然則，該條所稱之經費已與本件涉及之「法定預算」有別，其重點在於規範行政機關得動用之範圍，強調超出此規範外即不得動用，而非在授與行政機關任意選擇動用與否之權；至本條第一項第三款

所稱之「法定經費」，從同條第二項規定可知，更屬因個別法律規定而支出之費用，如依據全民健康保險法所需支出之補助費用。是本條規範之情形，全然與法定預算之效力無涉，行政院無非意欲以「經費」之規定混淆「法定預算」於預算法中之地位，要無可採。

2.行政院復以預算法第六十七條「各機關重大工程之投資計畫，超過五年未動用預算者，其預算應重行審查」之規定，認為行政權有權決定是否執行；並以第二十四條、二十六條等規定，主張預算法未禁止行政機關不執行預算。惟查，行政院所舉之預算法各條規定，皆為因應憲法賦予行政院預算提案權所設，而規定行政院應如何進行預算編列及其提案之權限範圍，如有任意不執行或執行不力之情事，自當由審計部依據審計法等相關規定追究不執行預算之責任，行政院前開說法，徒以法無明文禁止，便否認法定預算之拘束效力，非但刻意忽略追究責任之相關規定，更是刻意曲解「依法行政」之基本內涵。況本案預算早已動用，應無本條之適用，行政院顯然引喻失義。

3.而審計部代表於審查會中稱法定預算僅指單位預算（即公務預算），不及於附屬單位預算之說法。則更是無視預算法第二條及第十六條對於法定預算包括附屬單位預算之定義，而曲解預算法第十八

條僅界定「單位預算」內涵之規定，實則，依據同法第四十六條、四十九條、第五十條以及第九十條之規定，皆足以得知附屬單位預算亦屬法定預算之一種，並無疑義。

4.至行政院又以「中央政府附屬單位預算執行要點」規定，得由行政院予以核定停辦或緩辦云云。按依預算法第四十六條規定預算包括附屬單位預算，核四既為附屬單位，且經立法程序而公布，即為法定預算，其執行即應依法為之，不能藉口附屬單位與公務機關性質不同，即不依法執行。而依預算法第十九條規定，其執行如另有管理之必要，依同法第四條第二項規定，得另以法律定之，故有關核四附屬單位預算執行係屬應以法律規定之事項，不得以非法律且無法律授權之「中央政府附屬單位預算執行要點」行政規則，作為停止執行之依據。且行政院所舉該要點叁九(二)有關停辦預算執行之規定，牴觸預算法第八十八條，市場狀況重大變遷，得報經行政院核准先行辦理，並無附屬單位預算執行得經行政院核准先行停辦之明文，應屬無效。更遑論「中央政府附屬單位預算執行要點」並未依法送立法院審查，乃脫免國會監督，具有程序上瑕疵之行政規則，不得以之作為核四停辦之依據。

5.按本於依法行政中「法律優越」及「法律保留」之基本原則，行政機關既已有預算法就法定預算所課予之執行義務，則只有在法律明文授權之情形下，方有不予執行之裁量可言；所謂「法無明文禁止」即得為之之原則，實屬誤用，此在政府與人民之關係上，固屬當然，例如本於憲法人身自由之保障，如非法律明文禁止，人民即有行為之權利；惟在權力分立之領域內，殊無將行政機關依法行政之義務，與人民基本權利保障之原則做相同類比之餘地，誤解憲法基本法理至於此，實令人遺憾。

(十)綜之，「法定預算」具有法律規範之效力，應拘束行政機關，行政院並無片面拒絕執行法定預算之權力。

二、本院對於興建核四所作國家重要事項之議決，具有拘束力

行政院無非以本院未曾就「興建核四」做成決議，且縱經議決亦屬個案而非屬憲法第六十三條重要事項之決議，而主張此種單純決議並無拘束力，故行政院無「興建核四」之義務云云。惟查，姑不論本案應屬前揭法定預算執行問題之意旨，行政院已無拒絕執行之權力；即便就本件核四業經「重大政策變更」

之覆議程序觀之，行政院欲片面解釋本院就核四之相關議決無拘束其之效力，亦屬無稽。詳言之：

㈠核四興建與否之政策，屬於國家「重要事項」，行政院亦不否認；本案於八十五年間業經本院依據憲法第五十七條第二款對行政院之「重大政策」不贊同，移請行政院變更，經行政院移請覆議後，由本院通過原決議不予維持。更足徵興建核四為「國家重要事項」實為本院與行政院之共同認知，不容行政院事後翻異其詞。

㈡至行政院反覆稱「立法院未曾議決興建核四」、「縱有議決興建核四，亦只針對核四個案，應屬單純決議，無拘束行政院之效力」乙節。如前所述，此純為行政院欲將本案涉及國家憲政體制基本結構之議題，與個案行政處分兩相混淆之說辭而已，民國八十五年本院議決移請行政院變更其「重大政策」時，係決議「立刻廢止所有核能電廠之興建計畫，刻正進行之建廠工程應即停工善後，並停止動支任何相關預算且繳回國庫」（證二十號），而行政院則亦係對此決議表示實難接受移請覆議，行政院移請覆議時，即以「核能四廠興建計畫覆議案報告」為其標題（證二十一號），故本院先前之議決當屬對於核能政策之重要決議，事實上經濟部亦始終並未撤銷台電之建廠執照，本件非屬個案處分，至為

昭然。

㈢再者，行政院於今（八十九）年十月二十七日加開行政院院會，就經濟部「核四計畫再評估簡報」為討論並作成停建之決議，係依憲法第五十八條第二項「行政院院長、各部會首長，須將應行提出於立法院之法律案、預算案、戒嚴案、大赦案、宣戰案、媾和案、條約案及其重要事項，或涉及各部會共同關係之事項，提出於行政院會議決議之。」之規定行之，若核四案非屬本條項所定之「應提出於立法院之其他重要事項」，行政院僅需比照其解釋憲法聲請書第十頁中所舉停止執行國營事業資本支出計畫之事例，依通常之行政程序核定即可，斷無提報行政院院會之必要，可見行政院對於核四案亦有屬重要政策之認知。另依行政院「統一解釋聲請書」參、五中所稱「本案經濟部成立核四再評估委員會，從能源政策、產業政策及社會總成本等觀點重新評估……」，可見新政府對於停建核四廠亦有屬於重大政策變更之認知。

㈣況且，本院對所有預算之審查，皆要求行政院附送完整之施政計畫，以為委員審查之依據。按預算之審查，實為本院委員監督行政院施政之重要手段，尤其核能電廠此等重大事項之預算，經本院審查通

過後，不獨有通過預算之意旨，更具有議決其重大施政計畫並課予行政院執行義務之意義，此亦為前揭本院對行政院第二層「預算控制」之精神所在。更遑論，本件核四預算具有第一層立法（預算法）之控制，是行政院稱本院未曾通過興建核四重要事項之決議、其無執行預算之義務云云，即非事實。

(五)本院有議決「國家其他重要事項之權」為憲法第六十三條所明定，該條所定屬於本院職權之事項，因有憲法依據，而且符合權力分立、權力制衡的設計，對外當然產生法律上的拘束力，貴院大法官釋字第四一九號解釋理由書中復著有明文。舉例言之，本院依據憲法行使之人事同意權，雖為單純決議，卻當然具有法拘束力。因此，本院依據憲法第六十三條所擁有議決權之事項，做成之決議自有拘束力，要非行政院單方面可任意推翻變更之（證二十二號）。行政院稱本院單純決議無拘束力云云，顯係以偏蓋全，曲解憲法。

(六)總言之，本件為經本院議決通過之法定預算及重大施政計畫，且經本院與行政院循重大政策變更之覆議途徑確定在案，具有拘束力，行政院逕自違反其忠誠執行之義務，自屬違法違憲。

三行政院本件恣意停止執行之行為？將使憲法之預算制度、審計制度、副署制度及覆議制度四大制度之機

制實質歸零

㈠預算制度部分

1.承前所述，依據憲法第五十八條、第五十九條以及第六十三條之規定，預算案「應」由行政院提出於立法院，由立法院議決。本於民意政治、財政民主主義之理念，以及貫徹行政院對立法院負責之制衡、監督之體制精神，行政院自應受到立法院議決通過之法定預算之拘束，而該法定預算具有「措施性法律」之性質，行政院自應遵守，不得拒絕執行。

2.如本件行政院會議之決議被認為合憲，則我國憲法之預算審議制度將不復有存在之必要，立法院也失去以預算審查、監督行政院施政計畫之基本權力，所有權力分立、民意政治之憲政基礎，即遭破壞殆盡。按民意機關審查通過之法定預算，竟容許非民意機關任意不予執行，勢將使預算制度徒具形式，嚴重打擊憲政體制。

3.行政院代表雖舉美國一九七四年 Congressional Budget Impoundment and Control Act 為例，瞭稱在美國亦承認總統有權片面不予執行（Impoundment）預算云云；實則，該法實係立法禁止總統未經國

會一院之同意而拒絕執行預算，用以防止總統不執行預算；而且區分為 terminate（拒絕執行）以及 delay（推遲執行）兩個類型，前者係指終止執行亦即確定不再執行，後者則為現在暫時不執行，而前者之規定，由於授權總統得經國會同意後不執行預算，且被認係「立法否決」之設計，而遭美國最高法院一九八三年及聯邦地方法院一九八七年兩次判決宣告為違憲。而一九九八年美國最高法院更以美國國會一九九六年通過授權總統有權取消個別預算之法律，違反法律保留原則，宣告違憲。是以，該一九七四年之法律非僅並未授權總統有權任意拒絕執行預算，且違其規定國會得逐案同意行政權終止執行預算的部分，亦遭認為違憲；行政院前開辯解，顯與事實不符。

㈡審計制度部分

1. 審計法第二條明定，審計職權包括：「監督預算之執行」、「稽查財務及財政上之不法或不忠於職務之行為」以及「核定財務責任」等事項，如允許行政機關任意以自身之意志，決定是否執行「法定預算」，則不啻掏空審計制度之內涵，蓋行政機關既有執行與否之裁量權限，執行為合法，不執行亦為合法，審計機關又有何監督、稽查之需要？審計制度當只剩下統計數字之部分而已。

2.再者，憲法第一〇七條第五款規定，電政（包括電力與電信）為中央立法並執行事項，而此次核四案決策係由行政院院會決定停止興建，並以命令經濟部遵照辦理，經濟部再下達台電公司執行，決非私經濟行為之作用。況且，依憲法第一百四十四條規定公用事業，屬基本國策之一環，而電力供應自屬涉及國計民生之公共政策，而非私經濟行為；甚者，台電公司為國營事業，迄今該公司董事會並無因電力供應充足且有替代方案而無需繼續興建核能四廠之決議，反因行政院以統治權之優越地位由上而下命令該公司停止興建，如此赤裸裸之公權力干預，自非純屬「私經濟作用」而必需由審計制度加以監督。如允許行政機關得任意藉私經濟之名躲避立法監督，審計制度必將無以為繼。

(三)副署制度部分

憲法第三十七條明定，總統依法公布法律、發布命令，需經行政院院長之副署。就立法院通過之法定預算，自當由行政院院長於總統公布時副署之。憲法規定副署制度之目的，即為要求行政權之最高首長簽署法定預算，以示負責執行之意旨，以明其權責。如行政院長就其已經副署，表示願意執行之法定預算，復得事後任意反悔，則憲法立此一副署制度當無意義，更使責任政治之要求成為具文。

(四)覆議制度部分

1.憲法增修條文第三條第二項第二款明定，行政院對於預算案應依覆議制度之規定，向立法院負責。因此對於預算案如認有窒礙難行之處，行政院除循覆議途經尋求翻案外，只有接受一途。實則，覆議制度乃基於國會之「預算高權」、「議會優越」以及「預算法律性」之原則而來，要求行政院必須受法定預算之拘束，如欲變更亦應依循覆議途徑取得立法機關之支持。如本件行政院得逕自決定不執行預算之例一開，則覆議制度之意義將不復存在，各種民意政治、財政民主主義之憲法要求，亦將土崩瓦解。

2.行政院反覆以釋字三九一號，為其預算授權說之理論基礎，然該號解釋之後，覆議制度曾經經過憲法修正，大幅提高了行政院覆議成功之門檻，由原來僅需掌握本院出席委員三分之一以上之席次，增為需有本院全體委員半數以上之委員支持，始得否定本院通過之預算案；**本項修正，可以看出我國憲法加重了前開國會「預算高權」、「議會優越」以及「預算法律性」之要求，並強化了預算案對行政院之拘束力**；因此，縱使誤認為釋字三九一號解釋有「預算行政說」之色彩，但就其後之修

憲條文觀之，我國憲法於修正後，更加確立了「預算法律說」之原則，不容忽略。

3.再者，我國憲法於民國八十六年修正後，更將覆議後行政院院長辭職之規定刪除，亦即規定行政院院長於覆議不果時，僅有「接受」立法院覆議結果一途，尤足見我國憲法重在強調行政院院長必須執行立法機關通過之預算之意旨。按行政院院長於覆議失敗時，苟欲辭職，亦無從論之為「違憲」，然則憲法增修條文第三條第二項第二款未將憲法第五十七條規定之辭職贅語刪除，以免產生「行政院院長於覆議失敗時必須辭職、若接受立法院之決議則屬缺乏風骨」之誤解。憲法增修條文強調行政院遵守立法院依職權所為之預算加以執行之意旨極為顯然。實則，行政院非屬民意機關，接受代表民意之立法院之預算案決議，實乃天經地義，動輒辭職反非憲政常態。因此，民國八十六年修憲將辭職之規定刪除，可謂回復覆議制度之應有面貌，既已彰顯行政院院長必須接受覆議決定之基本原則，即不容行政院別作他解。

4.因此，如認為行政院就預算案，有權自行決定執行與否，將完全斲傷覆議制度之功能，使行政機關獨大，更傷害民意政治、權力分立之基本精神。

四、行政院未循合憲合法途徑停止為本件停止與建核四決議

(一)承前所述，行政院對於本件經本院議決通過之法定預算、重要政策，如欲重新檢討，認為窒礙難行，自當循合法之途徑，送經本院依法決議後為之。而行政院不圖此舉，竟以片面之決議，便將兩院多次決議通過之法定預算及重要政策一筆勾消，如此完全破壞憲政體制，先例一開，顧於其他案件之處理方式亦有援用可能，破壞既有制度，非同小可，不能忽視。

(二)或謂憲法第五十七條第二款對於「重要政策」覆議之規定業經停止適用，故就重大政策行政院自不受立法院之拘束，而得自行變更者；然則，憲法第五十七條第二款之規定停止適用後，原本賦予「立法院」得要求行政院變更政策之權限消失，並不代表行政院即有權主動變更；換言之，立法院如對行政院之重大政策有意見，本有依據憲法第六十三條規定議決以拘束行政院之效力，且得在預算案或法律案中表達其立場，並無必須運用憲法第五十七條第二款要求行政院變更之必要，該款規定不免多餘。因此，本款停止適用後，僅產生使行政院對於立法院關於變更重大政策之決議喪失覆議機會之效果。而本件並非立法院要求行政院變更既定政策，而係行政院主動變更經立法院議決之法定預算及重大政

策；故本案實與憲法第五十七條第二款之規定無涉，行政院亦不因該款之刪除而取得任何拒絕執行法定預算之權利。

(三)本於憲法規定行政院向立法院負責、副署制度及覆議制度之基本精神，受立法院之決議拘束者，乃「行政院」此一憲政機關，要不因行政院長之人事更迭而受影響，否則國家恐無發展長期政策之空間，各項施政方針經常變動不居，亦將無可預測性可言，此無異造成國家資源之浪費，抑且難以建立政策信用。因此，本諸憲政機關權限制衡之機制，繼任之行政院院長，對於業經本院通過之法定預算及重大政策，自有接受、續行之義務；換言之，繼任之閣揆在接任前就必須認知其有承繼前手所遺留尚未執行完畢之法定預算之憲法上義務，如其不能接受，即不應接受閣揆之任命。按在民主憲政國家，「政黨輪替」實屬憲政常態，如因政黨之輪替，便完全推翻前手業經議會通過具有法效力之法定預算，則國家之憲政穩定，將不可期待，絕非憲法規定權力分立制度之本意。況且，徵諸世界各國之先例，未見因政黨輪替而必須變更核能電廠政策之例，因之，新政府不得以政黨輪替做為藉口，任意辭卸其執行法定預算之憲法責任。

㈣再就行政院對於預算之執行如確有發生實質困難，有必須變更之必要者之處理先例觀之，依預算法規定亦係應循變更預算之途徑，另行提出預算案於本院，於本院議決後，始行變更，絕無自行決議不予執行之權力。舉例言之，諸如因九二一震災毀損之台灣電影製片廠及年度中民營化之農民銀行、交通銀行等案，皆由行政院重行提出八十八年下半年及八十九年度總預算案修正案，送本院審議，以為變更（證二十三號），絕非如主計處代表所稱併入決算辦理，而規避本院之合法監督。重編預算、事前交本院審議乃行政院一般處理預算變更之途徑，較不重要之項目尚且如此，重要預算項目如本案者反不此之圖，其故安在？更足證本件中行政院係屬明知故違。

㈤復查，行政院本案非但未依照前開正當程序為之，竟違依據憲法增修條文第三條第二項第一款就重大施政方針向本院報告負責之程序，亦不踐行，毫無機關間之憲政尊重；更刻意曲解立法院職權行使法第十七條之規定，飾詞報告不限於事前，事後報告亦無不可。然本案此等國家重要事項，本需經立法院之議決（憲法第六十三條），本件行政院長對如此重大之決策，於十月十七日向本院為施政方針報告時，尚且隻字不提，僅言「妥善處理核四問題」，不先向本院報告，反於數日（十月二十七日）後

迅速做成決策後，復稱願向本院報告，顯屬避就之詞，並非無法向本院報告。

㈥復觀諸憲法增修條文第二條第三項規定總統依法發布緊急命令，亦需於十日內提交立法院追認，不獲同意時，該緊急命令立即失效之規定。顯見，即便具有民意基礎之總統，在國家面臨緊急危難或財政經濟上重大變故時，所發布之緊急命令，本院尚且有十日內追認議決之權；則對於本案既非緊急危難，亦無重大變故，更無急迫必要性之純由行政院自行決議不予執行之重大事項，豈有不於事前向本院報告取得同意，即得有效之理？

㈦或謂立法院可行使不信任案以追究行政院之政治責任，故本件並非違憲之問題。然則，不信任投票是內閣制國家的國會用以監督政府的運作之一，一旦國會通過不信任投票，內閣即應辭職，但國會也將面臨被解散之命運。就制度本質而言，該制度具有權力平衡及武器對等之性質，惟依我國憲法增修條文之相關規定，總統解散立法院，須於立法院通過行政院院長之不信任案，經行政院院長呈請，並諮詢立法院院長後，始得宣告解散，亦即總統僅有被動解散立法院之權。因此，不信任案之行使，深受總統、行政院與立法院三角結構所左右。我國之行政院院長及各部會首長並非立法委員兼任，如總統

解散立法院重新改選，內閣閣員並無需投入選舉，接受民意檢驗，三方武器未必對等。再者，本院對於行政院重大政策不贊同，依憲法尚可以通過法律案，議決國家其他重要事項等方式處理，並不一定非採不信任案之途徑不可。如美國為例，國會即以創制新法律或修正舊法律之方式，來糾正行政部不符民意之政策或創設行政權應予執行之義務。故本院有權提不信任案，並不代表本件僅為個案政策之爭，行政院即不違憲。

㈧綜上，行政院本件不執行法定預算之決策，實屬違法違憲，誠無疑義。

五.綜據前述，本件行政院以院會決議逕行停止執行法定預算之決議，實屬違憲違法，且對日後我國憲政之運作、立法行政兩權之制衡監督關係，影響至鉅。而觀諸行政院代表及代理人之書狀，並無任何法理及學說之根據，僅反覆意圖以刻意曲解法條文字及穿鑿附會之說作為論說基礎。為此，狀請　貴院迅就本案做成解釋，以維憲政。

此致

司法院

一、證十七號：預算高權之定義
二、證十八號：大法官釋字三二九號解釋
三、證十九號：大法官釋字二六四號解釋
四、證二十號：本院八十五年決議停建核能電廠之紀錄
五、證二十一號：行政院八十五年覆議案報告標題
六、證二十二號：鄭培麗，單純國會決議之研究－以德國法為借鏡，輔仁大學碩士論文，許宗力指導，第八六、一一〇～一一四頁
七、證二十三號：行政院八十八年下半年及九十年度總預算修正案
八、

中華民國八十九年十二月　日

本院代表人姓名：王金平　（簽名蓋章）

Badura

Staats-
recht

Peter Badura

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...steraufkommen des ... 377,3 Mrd. DM geschätzt. Auf den Bundesanteil an Lohnsteuer und veranlagter Einkommensteuer entfallen ... n 134 Mrd. DM und auf den Bundesanteil an Steuern vom Umsatz 115,8 ...d. DM. Die sonstigen Einnahmen des Bundes werden 1995 auf 38,35 Mrd. DM geschätzt, darunter Einnahmen aus wirtschaftlicher Tätigkeit und Vermögen (ohne Zinsen) in Höhe vom 16,81 Mrd. DM und Verwaltungseinnahmen in Höhe von 6,18 Mrd. DM.

Den Einnahmen steht 1995 ein veranschlagter Ausgabenbedarf des Bundes in Höhe von 484,7 Mrd. DM gegenüber. Der Anteil der Investitionsausgaben macht 74,37 Mrd. DM aus. Die Ausgaben für die soziale Sicherung betragen rd. 178 Mrd. DM; davon entfallen 75,5 Mrd. DM auf Zuschüsse an die Rentenversicherung und ähnliche Aufwendungen.

G. Stricrodt, Finanzrecht, 1975; F. Neumark, Hrsg., Handbuch der Finanzwissenschaft, 4 Bde, 3. Aufl., 1977–83; W. Hartz u.a., Hrsg., Handwörterbuch des Steuerrechts, 2 Bde, 2. Aufl., 1981; N. Andel, Finanzwissenschaft, 2. aufl., 1990; Ch. B. Blankart, Öffentliche Finanzen in der Demokratie, 1991.

Finanzhoheit des Staates

2 Unter der Finanzhoheit des Staates versteht man das dem Staat zukommende Recht durch Gesetz und in Ausführung des Gesetzes selbst über die staatlichen Einnahmen und Ausgaben zu entscheiden. In einem engeren Sinne kann darunter die staatliche Befugnis, sich Einnahmen im Wege der öffentlichen Abgaben, insbes. also der Steuern, zu verschaffen, begriffen werden. Die Steuerhoheit ist das Kernstück der so gesehenen Finanzhoheit. Der moderne Staat ist „Steuerstaat".

Im Bundesstaat stellt sich die verfassungspolitische Aufgabe, die Finanzhoheit des Bundes und der Länder gegeneinander abzuscheiden. Die Anerkennung des Selbstverwaltungsrechts kommunaler Gebietskörperschaften bedingt die weitere Notwendigkeit, deren Position in der öffentlichen Finanzwirtschaft festzulegen. Diese technisch als Kompetenzordnung auftretenden Rechtszuweisungen sind der Gegenstand der „Finanzverfassung", über die das Grundgesetz im Abschnitt X. Das Finanzwesen, entschieden hat.

P. Kirchhof, Verfassungsrecht und öffentliches Einnahmesystem, in: Schriften des Vereins für Sozialpolitik N.F. 134, 1982, S. 33.

Die öffentliche Hand

3 Mit dem Sammelnamen „öffentliche Hand" bezeichnet man den Staat und die im Staat bestehenden juristischen Personen des öffentlichen Rechts, insoweit als sie Ausgaben tätigen, ihr Vermögen bewirtschaften oder unternehmerisch oder sonst erwerbswirtschaftlich am Wirtschaftsverkehr teilnehmen.

Wenn im Hinblick auf die Bundesrepublik von der öffentlichen Hand gesprochen wird, sind demnach der Bund und die bundesunmittelbaren Körperschaften und Anstalten des öffentlichen Rechts sowie die Länder und die landesunmittelbaren Körperschaften und Anstalten des öffentlichen Rechts, hier insbes. die kommunalen Gebietskörperschaften, gemeint.

4 Die Ausbildung des modernen Staates seit der Renaissance und dem Zeitalter des Absolutismus ... untrennbar mit der Entwicklung des Finanzinstruments der Steuer verbu...n. Für das Mittelalter und die Zeit des Ständestaates ist die Steuer stets eine außerordentliche Abgabe, die einer besonderen Bewilligung durch die Standevertretung bedarf. Nach der älteren Anschauung hatte der Fürst seinen Finanzbedarf grundsätzlich aus seinem eigenen Gut, besonders den ihm als Grundherrn zustehenden Herrschaftsrechten zu decken.

Steuern wurden zunächst auf den Grund und Boden und auf die Wirtschaftstätigkeit erhoben. Neben diesen direkten Steuern spielten indirekte Steuern, etwa Abgaben auf Salzverbrauch, eine nicht unbedeutende Rolle. Erst im Verlauf des 19. Jahrhunderts wurde die Einkommensteuer ausgebildet die allerdings lange Zeit mit einem weit unter 10% liegenden Höchstsatz erhoben wurde. Erst die Kriege des 20. Jahrhunderts und die sozialstaatliche Umorientierung der Staatsaufgaben mit dem außerordentlich gesteigerten Finanzbedarf des Staates haben die Steuer, zumindest der Wirkung nach, in ein Werkzeug der Umverteilung verwandelt. Unter den indirekten Steuern ist heute die Umsatz- oder Mehrwertsteuer beherrschend.

Die starke Stellung des Reiches, heute des Bundes in der Finanzverfassung ist erst durch die Weimarer Reichsverfassung zustande gekommen. Aufgrund der Erzbergerschen Finanzreform (bes. Gesetz über die Reichsfinanzverwaltung vom 10. 9. 1919, RGBl. S. 1591; Reichsabgabenordnung vom 13. 12. 1919, RGBl. S. 1993) ist auch die Finanzverwaltung Sache des Reiches geworden. Später ist dann die Entstehungsgeschichte des Grundgesetzes in erheblichem Maße von dem Streit zwischen dem Parlamentarischen Rat und den Alliierten über die mehr unitarische oder mehr föderative Finanzverfassung beherrscht worden. Die bundesstaatliche Finanzverfassung hat sich bis in die Gegenwart als ein zentraler Punkt der Auseinandersetzung zwischen Bund und Ländern erwiesen. Die Länder haben in der neueren Zeit im Rahmen einer zunehmend „kooperativen" Finanzverfassung Boden gewinnen können.

H. Schultz, Das System und die Prinzipien der Einkünfte im werdenden Staat der Neuzeit, dargestellt anhand der kameralwissenschaftlichen Literatur (1600 bis 1835), 1982; V. Press, Finanzielle Grundlagen territorialer Verwaltung um 1500 (14. – 17. Jahrhundert), Staat 1991, Beiheft 9, S. 1.

Der „Steuerstaat"

5 Die ohne spezifische Gegenleistung oder Zweckbindung allein durch die Erfüllung eines gesetzlich festgelegten Tatbestandes erhobene Steuer ist das beherrschende Finanzierungsinstrument des Staates. Allein durch sie kann der demokratische Sozialstaat seinen wachsenden Finanzbedarf auf der Grundlage gesellschaftlicher Solidarität und in einem permanenten Prozeß der Umverteilung decken. Die vielfältigen gewollten und ungewollten Wirkungen der Besteuerung bilden ordnend, gestaltend und lenkend eine Art zweite Struktur neben der Rechte und Pflichten zuteilenden Rechtsordnung. In mehrfacher Hinsicht kann der moderne Staat als „Steuerstaat" gekennzeichnet werden.

40. – Anm. W. Leisner, NJW 1995, 2591; K. Vogel, [illegible] 96, 43). Die Bedeutung dieser Entscheidungen, in denen das Gericht steuerpolitische Grundsätze für den Zugriff der Steuergesetzgebung auf die Ertragsfähigkeit von Vermögensgütern aufstellt (siehe dazu die Abweichende Meinung des Richters Böckenförde zum Vermögensteuer-Beschluß), reicht weit über die erfolgreiche Beanstandung der Einheitswertbemessung hinaus. Die „wirtschaftliche Grundlage persönlicher Lebensführung" muß gewährleistet bleiben; sie muß unter Berücksichtigung der steuerlichen Vorbelastung des Vermögens, vom Steurgesetzgeber auch gegen eine – als solche zulässige – Sollertragsteuer abgeschirmt werden. Die verfassungsrechtlichen Schranken der Besteuerung des Vermögens durch Einkommen- und Vermögensteuer begrenzen den steuerlichen Zugriff auf die Ertragsfähigkeit des Vermögens. An dieser Grenze der Gesamtbelastung des Vermögens haben sich durch den Gleichheitssatz gebotenen Differenzierungen auszurichten. Der Spielraum für den steuerlichen Zugriff auf den Erwerb von Todes wegen findet seine Grenze dort, wo die Steuerpflicht den Erwerber übermäßig belastet und die ihm zugewachsenen Vermögenswerte grundlegend beeinträchtigt. Die Ausgestaltung und Bemessung der Erbschaftsteuer muß den grundlegenden Gehalt der Erbrechtsgarantie wahren (siehe C RNr. 88). Aus Art. 6 Abs. 1 GG ergibt sich ein Gebot für den Vermögensteuergesetzgeber, die Kontinuität des zur ökonomischen Grundlage individueller Lebensgestaltung gewordenen „Ehe- und Familiengutes" zu achten.

P. Kirchhof/H.H. von Arnim, Besteuerung und Eigentum, VVDStRL Heft 39, 1981; H.-J. Papier, Besteuerung und Eigentum, DVBl. 1980, 787; Th. Weikert, Geldwert und Eigentumsgarantie, 1993.

e) *Parlamentarisches Budgetrecht und Haushaltswirtschaft*

Das parlamentarische Budgetrecht

26 In der Entwicklung des Parlamentarismus, noch in der Zeit der konstitutionellen Monarchie, setzte die parlamentarische Volksvertretung durch, daß ihr ein Mitwirkungsrecht bei der periodischen Festlegung des Budgets, d.h. des in Einnahmen und Ausgaben für einen bestimmten Zeitraum geordnet aufgestellten Haushaltsplans als Grundlage der Ausgabenwirtschaft der Exekutive, zugestanden wurde. Dem schon den ständischen Vertretungen des Mittelalters zustehenden Recht der Steuerbewilligung, das heute in der gesetzgebenden Gewalt und dem Grundsatz der Gesetzmäßigkeit der Verwaltung aufgegangen ist, trat erst lange Zeit später in Gestalt des parlamentarischen Budgetrechtes die verfassungsmäßig gesicherte Befugnis der Volksvertretung zur Seite, auch über die Verwendung der staatlichen Finanzmittel zu entscheiden, also einen Einfluß auf die Ausgabenwirtschaft der Exekutive auszuüben. Das Budgetrecht des Parlaments bedeutet, daß die Exekutive den periodisch aufzustellenden Haushaltsplan dem Parlament vorzulegen hat und dieser nur dann zur Grundlage der Bewirtschaftung durch die Exekutive gemacht werden darf, wenn er die Zustimmung der Volksvertretung durch einen Beschluß oder durch gesetzliche Feststellung des Haushaltsplanes erhält. Das parlamentarische Budgetrecht kann dementsprechend als ein Werkzeug der Kontrolle der Regierung im Rahmen des parlamentarischen Regierungssystems verstanden werden.

Der preußische Budgetkonflikt, der daraus entstand, daß das Abgeordnetenhaus die von dem Staatsministerium im Haushaltsplan veranschlagten Kosten für eine Heeresvermehrung verweigerte (1865–70), betraf die Reichweite des Budgetrechtes in der durch die preußische Verfassungs-Urkunde von 1850 eingerichteten konstitutionellen Monarchie. Das preußische Staatsministerium und der Ministerpräsident von Bismarck beharrten mit Erfolg auf dem Standpunkt, daß die Regierung verfassungsrechtlich nicht gehindert sei, den Haushaltsplan zugrunde zu legen, wenn die parlamentarische Volksvertretung ihre Zustimmung verweigere.

P. Laband, Das Budgetrecht nach den Bestimmungen der preußischen Verfassungs-Urkunde, Ztschr. für Gesetzgebung und Rechtspflege in Preußen 4, 1870, S. 625; Ders., Staatsrecht, 3. Aufl., 1895, II. Bd., §§ 129, 130; Ders., Dt. Reichsstaatsrecht, 7. Aufl., 1919, S. 428 ff.; K.H. Friauf, Der Staatshaushaltsplan im Spannungsfeld zwischen Parlament und Regierung, Bd. 1, 1968; E.R. Huber, Dt. Verfassungsgeschichte, Bd. 3, 2. Aufl., 1970, S. 305 ff.; R. Mussgnug, Der Haushaltsplan als Gesetz, 1976; Chr. Tomuschat, Die parlamentarische Haushalts- und Finanzkontrolle in der Bundesrepublik Deutschland, Staat 19, 1980, S. 1.

Ausgestaltung im Grundgesetz

Der Haushaltsplan wird für ein oder mehrere Rechnungsjahre, nach Jahren 27
getrennt, vor Beginn des ersten Rechnungsjahres durch das Haushaltsgesetz festgestellt. In den Haushaltsplan sind alle Einnahmen und Ausgaben des Bundes einzustellen. Die Vorlage für das Haushaltsgesetz sowie Vorlagen zur Änderung des Haushaltsgesetzes und des Haushaltsplanes werden gleichzeitig mit der Zuleitung an den Bundesrat beim Bundestag eingebracht; der Bundesrat ist berechtigt, innerhalb von sechs Wochen, bei Änderungsvorlagen innerhalb von drei Wochen, zu den Vorlagen Stellung zu nehmen (Art. 110 GG). Die zentrale Vorschrift ist Art. 110 Abs. 2 GG, der das parlamentarische Budgetrecht festlegt (BVerfGE 45, 1).
Von entscheidendem Gewicht für die Reichweite des parlamentarischen Budgetrechts ist der Grundsatz der Spezialität, wonach die einzelnen Ansätze für die Ausgaben jeweils gesondert mit ihrer Zweckbestimmung im Haushaltsplan veranschlagt werden müssen. Auf diesem Grundsatz beruhen eine Reihe weiterer Regelungen, durch die das Haushaltsrecht die Ausgabenwirtschaft der Exekutive bindet.
In innerem Zusammenhang mit dem in Art. 110 GG geregelten parlamentarischen Budgetrecht stehen die Bestimmungen über die Aufnahme von Krediten und die Übernahme von Bürgschaften, Garantien oder sonstigen Gewährleistungen, die zu Ausgaben in künftigen Rechnungsjahren führen können; die Regierung bedarf insoweit einer der Höhe nach bestimmten oder bestimmbaren Ermächtigung durch Bundesgesetz (Art. 115 Abs. 1 GG). Die dem Bundesminister der Finanzen obliegende Rechnungslegung nach Art. 114 Abs. 1 GG ermöglicht eine Kontrolle über die dem Haushaltsgesetz entsprechende Wirtschaftsführung und Finanzgebarung der Exekutive.

查詢內容

司法解釋：

發文單位： 司法院
解釋字號： 釋字第329號
解釋日期： 民國 82 年 12 月 24 日
資料來源： 司法院公報 第 36 卷 2 期 4 頁
相關法條： 中華民國憲法 第 4、38、58、63 條

解 釋 文： 憲法所稱之條約係指中華民國與其他國家或國際組織所締約之國際書面協定，包括用條約或公約之名稱，或用協定等名稱而其內容直接涉及國家重要事項或人民之權利義務且具有法律上效力者而言。其中名稱爲條約或公約或用協定等名稱而附有批准條款者，當然應送立法院審議，其餘國際書面協定，除經法律授權或事先經立法院同意簽訂，或其內容與國內法律相同者外，亦應送立法院審議。

理 由 書： 總統依憲法之規定，行使締結條約之權；行政院院長、各部會首長，須將應行提出於立法院之條約案提出於行政院會議議決之；立法院有議決條約案之權，憲法第三十八條、第五十八條第二項、第六十三條分別定有明文。依上述規定所締結之條約，其位階同於法律。故憲法所稱之條約，係指我國（包括主管機關授權之機構或團體）與其他國家（包括其授權之機關或團體）或國際組織所締結之國際書面協定，名稱用條約或公約者，或用協定等其他名稱而其內容直接涉及國防、外交、財政、經濟等之國家重要事項或直接涉及人民之權利義務且具有法律上效力者而言。其中名稱爲條約或公約或用協定等名稱而附有批准條款者，當然應送立法院審議，其餘國際書面協定，除經法律授權或事先經立法院同意簽訂，或其內容與國內法律相同（例如協定內容係重複法律之規定，或已將協定內容訂定於法律）者外，亦應送立法院審議。其無須送立法院審議之國際書面協定，以及其他由主管機關或其授權之機構或團體簽訂而不屬於條約案之協定，應視其性質，由主管機關依訂定法規之程序，或一般行政程序處理。外交部所訂之「條約及協定處理準則」，應依本解釋意旨修正之，乃屬當然。至條約案內容涉及領土變更者，並應依憲法第四條之規定，由國民大會議決之。而臺灣地區與大陸地區間訂定之協議，因非本解釋所稱之國際書面協定，應否送請立法院審議，不在本件解釋之範圍，併此說明。

一部不同意見書： 大法官 張特生

一 本件係立法委員陳建平等八十四人聲請解釋憲法，其聲請書「主旨」所載聲請解釋之事項有四：

（一）憲法第三十八條、第五十八條第二項、第六十三條及第一百四十一條有關「條約」一詞之內容及範圍如何？

（二）條約以外之國際書面協定，何者應送立法院審議，何者僅須送立法院備查？

（三）前項協定送審查或備查之分類標準如何？其有權認定之機關應爲立法院或行政院？

（四）外交部訂定發布之「條約及協定處理準則」第七條及九條是否違憲違法，而應屬無效。

二 就前述第一項問題而言，固可認係立法院行使條約案審議權時，適用憲法所生疑義，聲請解釋，符合司法院大法官審理案件法第五條第一項第三款之規定，自當予以受理，並依據憲法有關規定之意旨及國際法之學理，爲適當之解釋。然就多數意見所作成之解釋全文以觀，有下列各項尚值商榷：

（一）條約指國家與其他國家或國際組織間依合意締結之國際書面協定而具有國際法上拘束力者而言。條約有時用協定、協約等名稱，但只要雙方當事人具有國際法主體之地位，依國際間合意所作成之書面協定而有國際法上之拘束力者，無論用何種名稱均屬實質上之條約。依我憲法第六十三條規定立法院有議決條約案之權，具有前述實質上條約要件之書面協定皆應送立法院審議。本件多數意見之解釋文（以下簡稱解釋文）謂用協定等名稱者，以其內容直接涉及國家重要事項或人民之權利義務，且具有法律上效力者始爲條約，而應

司法解釋 全文

【第 1/1 筆】

【解釋字號】
釋字第 264 號

【裁判日期】
79/07/27

【相關法條】
中華民國憲法第七十條(0361225)

【解釋全文】
解釋文
憲法第七十條規定：「立法院對於行政院所提預算案，不得爲增加支出之提議」，旨在防止政府預算膨脹，致增人民之負擔。立法院第八十四會期第二十六次會議決議：「請行政院在本（七十九）年度再加發半個月公教人員年終獎金，以激勵士氣，其預算再行追加」，係就預算案爲增加支出之提議，與上述憲法規定牴觸，自不生效力。

解釋理由書
按憲法規定，行政院應提出預算案，由立法院議決之，旨在劃分預算案之提案權與議決權，使行政院在編製政府預算時能兼顧全國財政、經濟狀況與年度施政計劃之需要，並爲謀求政府用度合理，避免浪費起見，委由代表人民之立法院議決之，以發揮其監督政府財政之功能。爲貫徹上述意旨，憲法第七十條明文規定：「立法院對於行政院所提預算案，不得爲增加支出之提議」，以防止政府預算膨脹，致增人民之負擔。立法院第八十四會期第二十六次會議決議「請行政院在本（七十九）年度再加發半個月公教人員年終工作獎金，以激勵士氣，其預算再行追加」，乃對於行政院所提預算案爲增加支出之提議，雖係以委員提案方式作成，實質上仍與前述憲法規定牴觸，自不生效力。

大法官會議 主席 林洋港
大法官 翁岳生 楊日然 劉鐵錚 鄭健才 吳庚 張承堂 張特生 李志鵬

聲請書
抄行政院聲請函
行政院函
七十九年二月十日
台(79)規０二五０五號

主旨：立法院函送該院第八十四會期第二十六次會議決議：「請行政院在本（七十九）年度再加發半個月公教人員年終工作獎金，以激勵士氣，其預算再行追加」，與憲法第七十條規定有無牴觸發生疑義，爰依司法院大法官會議法第四條第一項第一款規定，請查照轉請　貴院大法官會議解釋惠復。

說明：
一、依立法院七十八年十二月三十日（七八）台院議字第三二０六號函送該院第八十四

周陽山　錢　達　葉菊蘭　饒穎奇　郭廷才　施台生
林哲夫　林瑞卿　王　拓　曾振農　陳健民　張文義
柯建銘　黃國鐘　陳文輝　張光錦　劉松藩　蕭萬長
陳光復　李俊毅　陳癸淼
陳漢強　陳其邁　蕭裕珍
蘇嘉全　朱高正　黃天福
張旭成　王雪峯　黃爾璇
陳永興　尤　宏　廖大林
蔡正揚　巴燕達魯　林文郎
周　荃　林光華　蘇煥智
洪奇昌　施明德　趙永清

三、棄權者：一人

郭金生

二、反對者：四十二人

曾爾忠　曾永權　徐少萍
吳克清　黃清林　陳鴻基
王志雄　蕭金爐　蔡璧煌
吳惠祖　林志嘉　沈智慧
洪冬桂　莊金生　林政則
許舒博　羅傳進　劉盛良
游淮銀　林國龍　李鳴皋
洪玉欽　翁重鈞　高揚昇
鄭永金　丁守中　洪昭男
李友吉　鍾利德　楊吉雄
林明義　陳朝容　黃主文

主席：王委員天競表示反對，特此更正，列入紀錄。

現作決議如下：

立刻廢止所有核能電廠之興建計劃，刻正進行之建廠工程應即停工善後，並停止動支任何相關預算且繳回國庫。

進行討論事項第二案。

二、本院委員柯建銘、張俊宏、趙永清、瓦歷斯．貝林、陳癸淼、郁慕明、廖學廣、顏錦福、翁金珠、盧修一、蘇貞昌、周伯倫、李應元、周　荃、蔡正揚、巴燕達魯等五十三人，因美國聯邦政府發表關於核能發電之重要文件，證明核能發電不合經濟效益；且核四擴大機組案受監察院糾正逾半年未結案、核四廢標逾一年未能再招標以及民眾不贊成興建核能電廠之意見擴大。依照憲法第五十七條第二款，向行政院提出撤銷核四計畫案，請公決案。

主席：討論事項第二案的內容與第一案相同，第一案係要求立刻廢止所有核能電廠之興建計畫，第二案則要求向行政院提出撤銷核四計畫案。所以，第一案可說已包括了第二案，現第二案提案人同意撤回，本案毋庸處理。

周委員伯倫：（在台下）第二案與第一案不同，應繼續處理，且第二案有許多委員連署，提案人同意撤回，其他委員不一定同意。

主席：該案已宣告決議，現在休息，下午三時繼續開會。

休息（十三時五分）

核能四廠興建計畫覆議案報告

報告人：行政院院長 連 戰

私立輔仁大學法律學研究所碩士論文

指導教授：許宗力 博士

單純國會決議之研究

——以德國法為借鏡

研究生：鄭培麗 撰

中華民國八十四年六月

行政院主計處、財政部及審計機關，分別就其主管事項負責監督，並於次會期將辦理情形向立法院提出報告。前項辦理情形，審計機關應提述意見送立法院。」（註98）。此條規定即為立法院對預算事項為「附帶決議」的法源依據。然而此種單純決議是否有拘束力的判斷，若純粹由法律關係說出發，因為有中央政府總預算執行條例作為法源依據，應有拘束力；但由於此種預算的附帶決議在本質上以屬「預算的執行」，似已侵犯了行政機關執行預算的固有權限，因違反了權力分立原則，所以縱使該單純決議背後有法律為根據，仍無法通過第二階段的考驗，故不能肯定其拘束力（註99）。由以上的例子可以得知，我們判斷單純決議之拘束力應分成兩階段觀察，第一階段需以法律關係說為基礎加以判斷，若有憲法和法律為依據者，仍需在第二階段中符合權力分立、憲法政策及依法行政原則時，才能肯定其拘束力。

以下即表列拘束力的判斷方法：

	第一階段	第二階段		結論
單純決議之拘束力	以憲法為依據的單純決議	是否符合： <權力分立> <憲法政策> <依法行政>	是	有拘束力
			否	無拘束力
	以法律為依據的單純決議		是	有拘束力
			否	無拘束力
	以議事規則為依據之單純決議	此議事規則是否有憲法或法律依據	是	有拘束力
			否	無拘束力
	無任何法源依據之單純決議	不用作第二階段的判斷		無拘束力

4.3 單純決議的法律救濟

本節所欲探討的是，在那些有拘束力的單純決議中，所涉及的行政機關與人民中，如何在應獲保障的法律地位中，尋求救濟途徑。而單純決議法律救濟的問題，仍應取決於單純決議公布時所依據的法源，所以在複雜的法律關係中，再次證明了區別單純決議法源依據的重要性。既然那些有憲法法律依據的單純決議，原則上對外產生拘束力，我們可進一步了解到，這些單純決議已具備了規範效力，所以有必要去探討針對單純決議所生之權利救濟問題。

學者曾將單純決議區分爲「對國家機關的單純決議」與「對人民的單純決議」分別觀察，因爲前者所涉及的救濟途徑是機關權限爭議(Organstreitverfahren)的問題，而後者所涉及的是憲法訴願(Verfassungsbeschwerde)，兩者各有不同的法律效果，所以分別探討：

4.3.1 國家機關間的救濟

首先先探討單純決議針對國家其他機關所爲，而造成的權利救濟問題。此種權利救濟是一種機關間的關係(Inter-Organ-Verhältniss)。此種國家機關間的相互關係特別是介於國會與政府間，當單純決議對政府爲表示時，是否能夠成爲機關權限爭議程序(Organstreitverfahren)的客體，則成爲討論重點（註100）。單純決議除了能使內閣閣員到場接受質詢、不信任投票、解散內閣以發揮監督功能外(Kontrollfunktion)，更進一步看出其能對總理的選任產生影響，以達創造功能(Kreationsfunktion)。所以當行政機關不遵守那些有拘束力的決議時，該如何對抗國會壓力的要求？是否符合機關權限爭議的要件？

14 ）。

5.1.5 其 他

立法院所做出的單純決議，有絕大多數係委員以「臨時提案」的方式提出。依立法院議事規則第十一條第一項之規定：「出席委員提出臨時提案，以具有亟待解決事項爲限，並須有十人以上之連署或附議」，立法委員大多運用此種簡便的提案方法，表達出不同於行政院政策的國會意思，或要求行政院應爲特定的措施、作爲。其議決過程先由提案之委員說明提案意旨，說明之後，未經院會廣泛討論，主席對此案即表示出「建請行政院研處」有無異議之裁決，若無異議則代表院會通過此單純決議案。如「建請將二二八事件列入教材，成立客觀、公正之撰寫委員會」（註 15 ），「建請行政院針對各級學校，每學期至少實施一次地震、火災的逃生演習」（註 16 ），「農民年金制度尚未完成立法前，政府應實施六十五歲以上老農津貼，並在農保條例中增列老年給付制度」（註 17 ）等決議，皆屬之。而此方式的單純決議係立法院所議決數量最多的一種。

5.2 法律上之拘束力

藉由上文 4.2 中爲單純決議法律上拘束力的介紹，本文以「法律關係說」（註 18 ）爲出發點，主張單純決議拘束力與否應包涵兩個判斷階段，第一個階段以單純決議的法源依據爲區分。依法律關係說的見解，原則上有憲法或法律爲依據的單純決議有法律上的拘束力，但在此兩種單純決議中，仍應再進一步的檢驗，若賦予其拘束力是否符

合權力分立、憲法政策或依法行政原則，若不致違反，才能肯定其拘束力。依上述的判斷模式，回歸到我國立法院所做的單純決議是否有拘束力的問題上，在此即根據單純決議的法律基礎做分類，探討其是否有法律上之拘束力：

5.2.1 以憲法爲法源依據者

本文 3.2.1 中曾述及我國做爲單純決議憲法依據之規定。以法律關係說做爲第一階段的評量標準者，原則上有憲法爲依據的單純決議對外應有拘束力，然而是否眞的對外發生拘束力則應進一步檢驗：

5.2.1.1 人事同意權之決議

憲法第五十五條係立法院對行政院院長任用同意權之規定，第一百零四條爲對監察院之審計長人事同意權的憲法依據，此兩條規定係爲發揮立法院的創造功能（Kreationsfunktion），爲民主國家中國會固有的設計，此種人事同意權雖係以單純決議方式爲之，但因有憲法依據，而且該規定符合權力分立、權力制衡的設計，故對外當然產生法律上的拘束力。

5.2.1.2 聽取報告與質詢權之決議

依憲法第五十七條第一款之規定，立法院除了聽取行政院所提之施政方針及施政報告，以了解行政院該年度施政方針及施政結果外，更應經由議員的質詢，對於政府之施政報告加以質疑問難（註 19），憲法以質詢做爲行政院對立法院負責的一個方法，以發揮國會的監督功能（Kontrollsfunktion）。立法院依上開憲法依據，於議事規則第六

十四條至第七十二條將聽取報告與質詢程序予以具體化。如院會依據議事規則第六十六條之規定，遇有重要事項發生，經立法委員提議，二十人以上連署或附議，經院會議決，要求行政院院長或有關部會首長向本院會議報告者，因爲有憲法第五十七條第一款的憲法根據，且此質詢權及聽取報告權也是民主國家中，國會與行政間合憲的權力設計，故行政院院長及其相關部會首長應予遵守，該決議有法律上之拘束力。

5.2.1.3 對行政院重要政策不贊同請求變更之決議

依憲法第五十七條第二款之規定，立法院對於行政院之重要政策不贊同時，得以決議移請行政院變更之。而此請予變更之提案，應有二十人以上之連署（參照立法院議事規則第十條）。然而何謂「重要政策」，在學說上曾出現爭議。由於本款後段規定，行政院對於立法院之決議，得經總統核可移請立法院覆議，如果覆議後仍維持原案，行政院長若不接受該決議，即須以辭職一途表示負責，所以對於「重要政策」的詮釋即具相當的意義，學者間有認爲重要政策係指法案者（註 20 ），另有認爲重要政策係針對施政方針與施政報告而爲（註 21 ）。

主張憲法第五十七條第二款之重要政策與法案同義之學者認爲，立法院既握有議決法律案、預算案、戒嚴案、條約案等權，則行政院之重要政策，莫不表現於上列各案中，對國家人民利害甚大，立法院如不贊同，自可決議移請行政院變更之。依此解釋，立法院須於行政院將政策制爲法案，提出於立法院之後，始得依決議移請變更，事先不宜加以干涉，以劃分立法權與行政權之分際，慎重覆議權之行使。所以，本款和第三款之不同在於第三款覆議的主動權操於行政院，而

本款之主動權操於立法院而已（註 22 ）。準此，立法院須俟行政院所提法律案、預算案、戒嚴案、條約案、大赦案、宣戰案及媾和案等，至立法院成爲議案後，經認爲不贊同時，才可以決議請求行政院變更政策。如此解釋，將使得立法院變更重要政策的單純決議之行使趨於愼重，其對於重要政策請求變更的決議所生法律上拘束力的範圍，只限於該重要政策已成爲各項提案者，除此之外則只有「建議」之性質。若不依此解釋而認爲針對行政院所訂之政策方針或計劃，立法院即可以單純決議請求變更，因爲涉及行政院請求覆議之後，是否須接受原案或辭職與否的問題，其事關重大，故應採狹義解釋。

主張重要政策係指施政方針與施政報告之見解認爲，憲法第五十七條第二款之規定，係由第一款而來，此不僅立法之原則如此，且在法理上亦復如是。即立法院聽取行政院之施政方針及施政報告以後，如有不明之處，則予以質詢，因質詢而明白後，認爲有不當之處，或認爲有需改進之處，便以決議移請行政院變更其施政方針，行政院之施政方針與施政報告，爲行政院之重要政策，如此解釋較爲合理。若以爲第二款與與三款同義，則憲法實無在同一條文中，作疊床架屋重覆規定之必要（註 23 ）。行政院之重要政策因關係人民權益、福祉，固以「法律」的形式呈現其合法化，而受民意監督爲最佳方式，但如因時間急迫或其他因素並未擬定成法案，而以方案、計劃等方式呈現者，如該項政策經規劃後定案並列入施政方針與施政報告者，當立法院認爲不妥時，即得依「決議」要求變更之。惟若立法院僅就行政院「尚在研擬中」而未定案的政策，爲反映民意或對該措施表示政治意見，而提案要求行政院研究改善或處理者，因該政策既未生效，恐無變更可言，其僅能解釋爲「建議性」的提案，如經決議通過，似應無法律上之拘束力（註 24 ）。

本文則認爲，行政院的職權，依憲法第五十八條第二項之規定，「行政院有向立法院提出法律案、預算案……及其他重要事項之權」，故行政院除了有法案提案權外，仍有重要政策決定權，此乃因其負實際的政治責任，及擁有最高行政統率權之當然結果（註25）。所以行政院的移請覆議權應包括關於重要政策之覆議及關於法律案、預算案、條約案之覆議兩種。而並非如第一說所言，認爲已制成法案者才屬重要政策。本文認爲第二款與第三款之不同並非只是主動提起覆議權之誰屬不同而已，第二款之目的應在說明，行政院雖擁有重要政策的決定權，但並非代表著此重要政策之決定權即由行政院獨攬，立法院仍可以以決議表示不贊同，以突顯出行政與立法兩權間共同協力於國家領導（Staatsleitungs）之重要性。此款規定，似乎比德國基本法第六十五條第一句（註26）略勝一籌。若將「重要政策」解釋爲行政院所擬定的重要方案而於立法院中所提的施政方針時，當立法院對於不贊同的重要政策以決議請求變更者，依本款之規定，應不致使權力分立原則失衡，因爲在本款後段明文規定，行政院對此可經總統之核可後；移請立法院覆議，就權力制衡的角度觀之，仍使得立法與行政兩者間的武器平等。依此，將所謂的重要政策理解爲行政院的施政方針，而不一定須制成法案之見解，應符合憲法政策，否則，兩款規定將致重覆且失其原貌。故立法院以單純決議對於重要政策表示不贊同，該決議應發生法律上之拘束力。

然而補充說明的是，在認定「重要政策」之範圍上，因缺乏一定的標準，立法院應謹愼爲之，不可輕易地以決議移請變更，因爲行政院雖可請求立法院覆議，但立法院多會維持原決議，屆時，行政院院長爲顧及政治之安定，只好接受此決議；否則即以辭職以示負責，這也多多少少會導致政治情勢的變化（註27），但這也只好由立法院自

我節制了。

5.2.1.4 戒嚴案、大赦案、宣戰案、媾和案、條約案及國家其他重要事項之決議

關於戒嚴、大赦、宣戰、媾和及條約等案中，只有戒嚴案可於立法院認為必要時，得以決議請總統解嚴（憲法第三十九條後段），是為立法院自動議決外，其他各案自法理上言，認為應由行政院之提案送請審議，立法院始得為之議決，而不得逕自提案以為議決（註28）。依憲法第六十三條，立法院除有議決上述列舉各案之職權外，並有議決國家其他重要事項之權，此為一概括之規定，以補列舉事項之不足。上述列舉之各案及國家其他重要事項之議決，在我國皆屬非法律案、預算案之對外單純決議（參照立法院議事規則第三十七條第二項）。在此發生疑問的是，究竟「國家其他重要事項」的範圍有多廣？立法院以單純決議就戒嚴等案及國家其他重要事項為決議時，對外是否會發生拘束力？

要解決上述問題，首先即面臨到如何判定「國家重要事項」的範圍。依照德國聯邦憲法法院所發展的重要性理論（Wesentlichkeitstheorie）為出發點，該理論由判決中慢慢形成所謂「重要性」的範圍，認為凡與基本權利關係重大的領域，一般來說可認定為「重要」，即係指對基本權利的實現重要而言（Wesentlich für die Verwirklichung der Grundrechte），此理論不再引用傳統法律保留「干預公式」（Eingriffsformel）的標準為判斷（註29）。除了德國聯邦憲法法院對重要與否為詮釋之外，也有學者指出，應以「政治的爭議性」（politische Kontroverse）為標準，若某事務能引起政治上的爭議，才屬具重要性的價值，例如在教育法上，於教育宗旨（Lernziele）之確定未引發爭議以前，

人們根本不會想到法律保留的要求，所以重要意指政治上有爭議的主張（註30）。除了以「政治的爭議性」爲標準外，也有學者提出以「政治的重要性」(politische Wichtigkeit)作爲判斷重要與否的標準。例如針對政治生活(politische Leben)與國家、社會秩序(gesellschaftliche Ordnung)的原則性決定，即屬重要性事項（註31）。

然而，不論是主張以「基本權利之實現」、「政治上之爭議」或「政治上重要」爲判斷標準，多多少少存在著抽象與不確定性。我國憲法教授林紀東先生曾就廣義與狹義見解，指出國家其他事項的意涵：由廣義言之，則總統及行政、司法、考試、監察各院所掌之事項，莫不爲國家之重要事項，但並非此均須由立法院議決，否則將與憲政體制不合，而非憲法之原意。也不能謂凡憲法未明定爲屬於總統及各院專管之事項，均屬立法院議決之範圍。故議決其他重要事項一語，宜從狹義解釋，限於與立法院列舉各職權，有「最密切之關係」，而非總統及其他各院所能單純決定者屬之（註35）。若依林紀東教授所採狹義見解，仍未能把重要事項予以具體化。甚至所謂與立法院列舉職權有密切關係的範圍一語，即十分模糊，所以，除非客觀上有可能將重要事項列出一清單外，否則在本質上皆會存在著一些不確定性。但不可否認的是，立法院仍得依憲法第六十三條規定爲國家其他重要事項之決定（註33）。

如果我們先不去界定「國家其他重要事項」的涵意爲何，進一步要檢驗的則是，立法院對於國家其他重要事項以單純決議爲之是否發生拘束力？對於憲法六十三條所列舉之戒嚴案、大赦案、宣戰案、媾和案及條約案爲單純決議是否也有拘束力？若純粹由法律關係說之主張觀之，因此等單純決議有憲法做爲法源依據，原則上已符合第一階段的檢驗應有法律上之拘束力。接下來我們仍應進一步於第二階段中，

段的檢驗。接下來我們仍應於第二階段中，視其若對外發生拘束力者，是否妥適？欲思考此問題，應由憲法第五十七條第三款著手，依該條規定：「行政院對於立法院決議之法律案、預算案、條約案，如認爲有窒礙難行時，得經總統之核可，於該決議案送達行政院十日內，移請立法院覆議。覆議時，如經出席立法委員三分之二維持原案，行政院院長應即接受該決議或辭職」。本款移請立法院覆議之對象只表明法律案、預算案及條約案，而於戒嚴、大赦、宣戰、媾和等案及國家其他重要事項之議案則未明白列入可由行政院移請立法院重新覆議的標的中。對此，學者間有主張憲法第五十七條第三款係「列舉規定說」及「例示規定說」之不同見解。

主張「列舉規定說」者，如管歐教授所言，行政院對於立法院所爲關於戒嚴案等四種議案之決議，縱認爲窒礙難行時，亦不得移請覆議，因若採肯定見解，則憲法第五十七條第三款所明文列舉「法律案、預算案、條約案」之規定，將失其列舉規定之意義，此即拉丁法諺所謂：「省略規定之事項，應認爲有意省略」、「明示其一，排除其他」原則之適用（註 34 ）。此外，覆議權之行使，宜採取嚴格解釋，因爲覆議案之結果，足以迫使行政院長接受該決議或辭職，形成兩種極端的途逕，若行政院院長不予接受，而採辭職一途時，勢將影響政局安定（註 35 ）。對此問題，薩孟武教授也採相同見解，並認爲戒嚴案等四案，當無窒礙難行之事，因爲立法院對此四議案只能表示贊同或否決，自不得修改，所以行政院對此也不致於有窒礙難行之情況（註 36 ）。

主張本款爲「例示規定說」之學者爲林紀東教授，他認爲五權憲法下之覆議制度，與三權憲法不同，非在消極的予行政機關以抵抗立法機關之權，應在積極的溝通行政、立法兩院之意見。戒嚴等四案對

國家利害之大，不在法律案、預算案及條約案之下，固須經立法院之議決，立法院亦有權就行政院提出之原案，加以修正變更，則於行政院認為窒礙難行時，自應就本款規定擴張解釋，許其提出覆議。而列舉規定說則太偏重文理解釋，只注意條文之文字，且忽略了憲法解釋也應著重立法精神與目的。此外，行政院對戒嚴等四案並非真的不會產生窒礙難行之情況，立法與行政之間，仍可能對此有所歧見，所以列舉規定說應不可採（註37）。

由上述兩種不同見解推之，採列舉規定說者主張行政院對於戒嚴等四案及國家其他重要事項之議決無移請覆議權；反之，若採例示規定說則行政院有權為之。本文認為，欲使憲法第六十三條之戒嚴等單純決議案，對外產生法律上拘束力，而通過拘束力第二階段之審核者，唯有將憲法第五十七條第三款解釋為「例示規定」，使得行政院對戒嚴案等單純決議有移請覆議權，積極的有機會抵抗立法權，進而使得兩權在權力監督與制衡(Check and balance)的天秤下保持平衡；否則，該等議案的單純決議若在行政院無法相對抗的情況下，即讓其發生拘束力的話，將使得兩院的緊張關係昇高，所以，依憲法第六十三條對戒嚴案等議案及國家其他重要事項為單純決議，其對外發生拘束力之同時，也不可忽略基於憲法政策的考量，應將憲法第五十七條第三款理解為例示規定，才能使此種單純決議的運作更加妥適。

5.2.1.5 剩餘權之決議

憲法於第一百零七條至一百十條列舉中央與地方之權限，如有未列舉之事項發生時，其事務有全國一致之性質者屬於中央，有全省一致之性質者屬於省，有一縣之性質者屬於縣，遇有爭議時，由立法院解決之（憲法一百十一條），此即剩餘權分配由立法院決定之規定。

至於立法院對於此種爭議之解決方法，憲法無明文指出，然學者管歐指出，以制定法律案爲規定，抑僅以單純之議決方式爲之，均無不可（註 38 ）。有疑問的是，立法院若以單純決議的方式，解決中央與地方剩餘權之分配，是否能發生拘束力？雖然該單純決議有憲法做爲法源依據，但該憲法規定應如何解釋有進一步討論的必要，相對地，由該規定而爲單純之決議，其拘束力也因此有重新考量的餘地。

依憲法第一百十一條推之，中央與地方的爭議大致可分成三種：(1)中央與省的爭議，(2)中央與縣的爭議，(3)省與縣的爭議。此種爭議乃屬於憲法上的權限爭議，其中省與縣的爭議，因立法院不是爭議當事人，故由其解決爭議應尚可勉強爲之。而中央與省、縣的爭縣，常發生於立法院與各省縣之間。雙方當事人的爭議，若由同是當事人之一方解決，殊難想像其公平性（註 39 ）。再者，此規定顯與憲法第七十八、七十九條相牴觸，因憲法爭議之裁判，本質上是憲法解釋之範圍，當然應由司法院大法官會議審理之（註 40 ）。此應屬中央與地方機關，因行使職權與其他機關之職權，發生適用憲法之爭議（參照司法院大法官審理案件法第五條第一項第一款）。而且由立法機關參憲法爭議案件之裁判者，亦有違憲法之最高指導原理－權力分立原則（註 41 ）。所以，若立法院依憲法一百十一條之規定，以單純決議解決中央、地方權限之爭權者，因該規定有違權力分立原則之虞，故縱使此決議係以憲法爲法源，仍無法使其賦有法律上的拘束力，唯一的方法只能透過司法院大法官解釋中央、地方權限分配之歸屬問題。

5.2.2 以法律爲法源依據者

依照法律關係說的見解，單純決議由法律做爲法源依據而對外公

中華民國八十八年下半年及八十九年度中央政府總預算案附屬單位預算及綜計表（營業部分）審查總報告

查中華民國八十八年下半年及八十九年度中央政府總預算案附屬單位預算及綜計表（營業部分）為該年度中央政府總預算之一部分，本院前於審查中華民國八十八年下半年及八十九年度中央政府總預算案時，曾經決定，本年度總預算案內有關營業盈餘、資本收回暨獨占及專賣收入與附屬單位預算及綜計表（營業部分）等，均暫照列，俟專案審定後再行調整。準此，本會即依照八十八年下半年及八十九年度中央政府總預算案分組審查辦法分為五組，由十二個委員會共同參與，並經十二個委員會召集委員協調決定，第一組由財政、預算及決算、外交及僑務、司法四個委員會共同審查，並由財政、預算及決算委員會召集委員輪流擔任主席，審查中央銀行（含中央造幣廠、中央印製廠）、中國輸出入銀行、交通銀行（含交通銀行歐洲公司）、中國農民銀行、中央信託局、中央再保險公司、中央存款保險公司、臺灣銀行（含南非臺灣銀行、臺灣銀行歐洲公司）、臺灣土地銀行、臺灣省合作金庫（含臺灣聯合銀行）、菸酒公賣局等單位；第二組由經濟及能源、預算及決算、科技及資訊、內政及民族四個委員會共同審查，並由經濟及能源、預算及決算委員會召集委員輪流擔任主席，審查臺灣糖業公司、臺證貿業公司、臺灣肥料公司、中國石油公司、臺灣電力公司、臺灣省政府印刷廠、高雄硫酸銨公司、臺灣中興紙業公司、臺灣省農工企業公司、唐榮鐵工廠公司、臺灣省礦務局、臺灣省政府糧食處、臺灣省政府物資處等單位；第三組由交通、預算及決算、教育及文化、法制四個委員會共同審查，並由交通、預算及決算、教育及文化委員會召集委員輪流擔任主席，審查郵政總局（含郵政儲金匯業局）、臺灣鐵路管理局（含臺灣鐵路貨物搬運公司）、臺灣汽車客運公司、基隆港務局、臺中港務局、高雄港務局、花蓮港務局、臺灣文化事業公司、臺灣新生報業公司、臺灣電影文化事業公司等單位；第四組由衛生環境及社會福利、預算及決算、經濟及能源、內政及民族四

個委員會共同審查，並由衛生環境及社會福利、預算及決算、內政及民族委員會召集委員輪流擔任主席，審查勞工保險局、藥酖藥品經理處（即改制後管制藥品管理局製藥工廠）、中央健康保險局、臺灣省自來水公司、臺灣省北區水資源局、臺灣省中區水資源局、臺灣省南區水資源局等單位；第五組由科技及資訊、預算及決算、國防、經濟及能源、交通五個委員會共同審查，並由科技及資訊委員會召集委員擔任主席，審查中華電信股份有限公司、漢翔航空工業公司、榮民工程公司、臺灣機械公司、中國造船公司等單位。另據八十八年十月二十日本院議事處以(88)台立議字第三六〇〇號函為請本會併案審查行政院函請審議配合移轉民營及依法改制調整重編之「八十八年下半年及八十九年度中央政府總預算案附屬單位預算及綜計表（營業部分）」案，經提本院第四屆第二會期第五次會議報告後決定：「交預算及決算委員會，與相關提案併案審查」。爰自八十八年十一月八日、十日、十一日、十五日、十七日、十八日、二十二日，由本會會同各有關委員會每日同時舉行各組會議，審查上述各案，並函請各主管機關首長及事業單位主管人員列席報告，答復委員質詢及提供參考資料，經詳加討論，分別作成決議，旋經起草各組審查報告與預算及決算委員會綜合整理完成審查總報告後，提報十一月二十九日、十二月一日、二日舉行之全院各委員會聯席會議，另依本院議事處八十八年十一月二十六日以（八八）台立議字第四二一一號函為行政院函送配合台灣電影文化事業股份有限公司結束營業修正重編之「八十八年下半年及八十九年度中央政府總預算案附屬單位預算及綜計表——營業部分（配合台灣電影文化事業股份有限公司結束營業修正重編部分）」，並請連同前送之該公司結束預算一併審議案，經提本院第四屆第二會期第十次會議報告後，決定：「交預算及決算委員會會同有關委員會，與相關提案併案審查」，暨八十八年十一月二十六日以（八八）台立議字第四二一二號函為行政院函請審議「台灣電影文化事業股份有限公司結束預算」案，並請併同原送之八十八年下半年及八十九年度中央政府總預算案附屬單位預算及綜計表（營業部分）審議案，經提本院第四屆第二會期第十次會議報告後決定：「交預算及決算委員會會同有關委員會，與相關提案併案審查」，嗣經全院各委員會聯席會議予以併案決定：「㈠台影公司結束預算案暨配合重編之八十八年下半年及八十九年度營業預算案，併同原編營業預算案審議；㈡原台灣省政府所屬事業改隸中央主管機關及變更

名冊，准予備查。」並就審查總報告加以討論，茲將預算內容及審查結果，分別說明如次：

壹、事業單位

本次（八十八年下半年及八十九年度）國營事業機構預算編列共有五十四單位，較上年度增加二十九單位，增加之單位均係原臺灣省政府所屬事業依「臺灣省政府功能業務與組織調整暫行條例」之規定改隸中央政府，並自本次預算起納入中央政府附屬單位預算。其中，編列附屬單位預算者四十六單位，編列附屬單位預算之分預算者八單位。茲因行政院函以經濟部主管之「臺灣肥料股份有限公司」、財政部主管之「中國農民銀行」、「交通銀行」（含交通銀行歐洲公司）因配合政府推動公營事業民營化政策，分別於八十八年九月一日、三日及十三日完成釋股移轉民營，故依預算法規定免編附屬單位預算；衛生署主管之「藥酐藥品經理處」，依管制藥品管理條例及行政院衛生署管制藥品管理局組織條例之規定改制為管制藥品管理局，並附設製藥工廠，其中管制藥品管理局部分屬公務機關，其本次預算所需經費改由第二預備金支應，而製藥工廠仍屬國營事業，故其原編送之附屬單位預算應予修正重編；又原臺灣省政府所屬之「台灣電影文化事業股份有限公司」，配合臺灣省政府組織之調整改隸行政院新聞局，並於八十八年十月三十一日結束營業，其原編送之附屬單位預算應予改編結束預算，致八十八年下半年及八十九年度原列附屬單位四十六單位，減為四十二單位。

另配合臺灣省政府組織之調整，除上開「臺灣電影文化事業股份有限公司」改隸行政院新聞局外，原臺灣省政府所屬之「臺灣省政府印刷廠」更名為「財政部印刷廠」，並與「臺灣省菸酒公賣局」均改隸財政部；「臺灣文化事業股份有限公司」改隸教育部；「臺灣省礦務局」更名為「經濟部礦務局」、「臺灣省北區水資源局」更名為「經濟部水利處北區水資源局」、「臺灣省中區水資源局」更名為「經濟部水利處中區水資源局」、「臺灣省南區水資源局」更名為「經濟部水利處南區水資源局」、「臺灣省政府物資處」更名為「經濟部第二辦公室」，並與「高雄硫酸錏股份有限公司」、「臺灣中興紙業股份有限公司」、「臺灣

中華民國八十八年下半年及八十九年度

中央政府總預算案

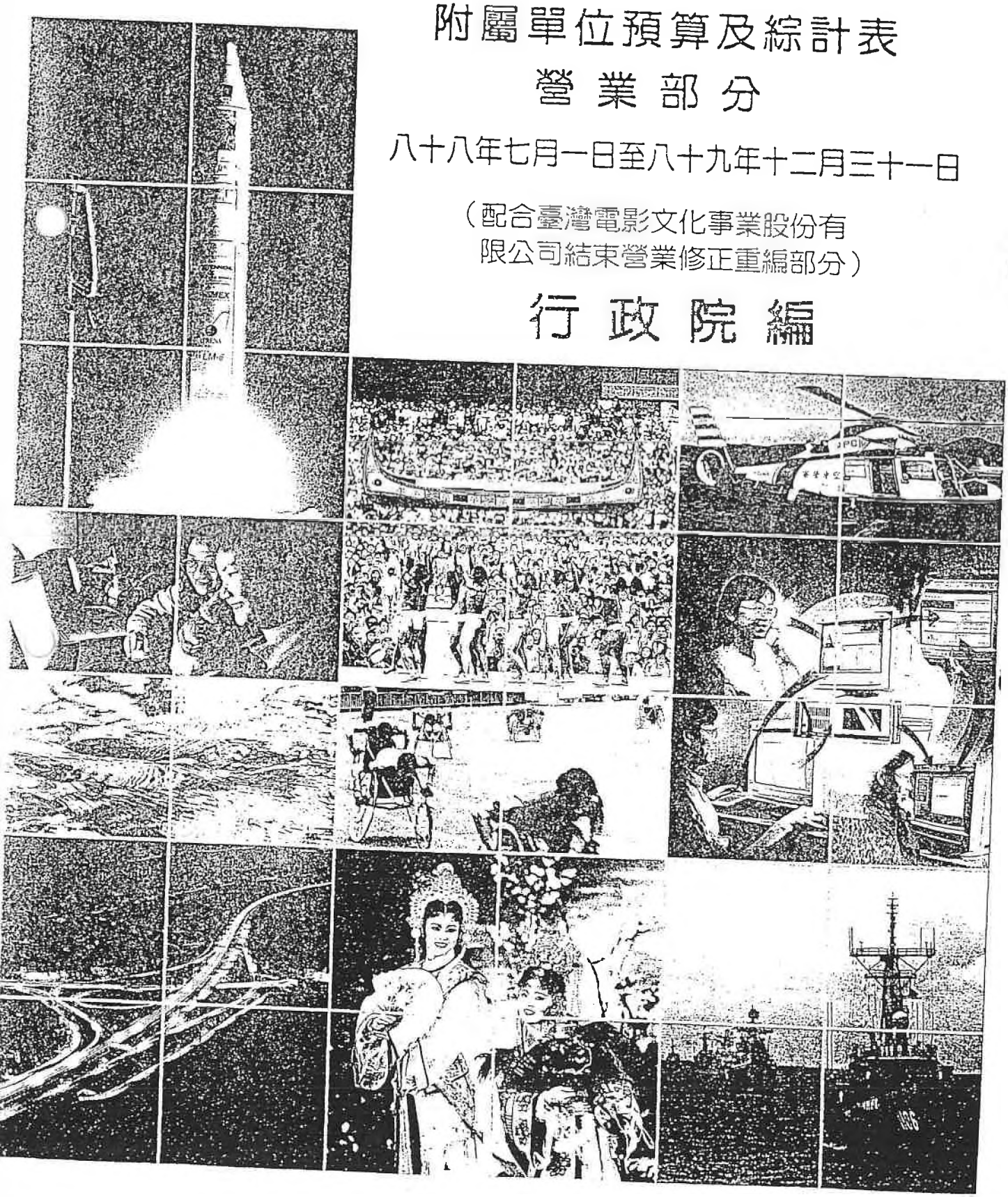
附屬單位預算及綜計表

營業部分

八十八年七月一日至八十九年十二月三十一日

（配合臺灣電影文化事業股份有
限公司結束營業修正重編部分）

行政院編



說　　明

臺灣電影文化事業股份有限公司原預定於八十八年下半年及八十九年度移轉民營，嗣因受九二一集集大地震影響，廠房嚴重受損，基地隆起，損失慘重，民營化條件喪失，業於本（八十八）年十月三十一日結束營業，致本院於本年二月二十五日以臺（八十八）忠授一字第０一三五０號函隨同中央政府總預算案送請　貴院審議之中華民國八十八年下半年及八十九年度中央政府總預算案附屬單位預算及綜計表（營業部分）以及本年十月二日以臺（八十八）孝授一字第０九四六九號函送配合臺灣肥料公司、中國農民銀行、交通銀行移轉民營及麻醉藥品經理處依法改制修正重編之中華民國八十八年下半年及八十九年度中央政府總預算案附屬單位預算及綜計表（營業部分）之內容均已有變動，故依預算法規定，重行編製該公司結束預算，並於本年十一月十一日以臺（八十八）孝授一字第一一六六五號函送請　貴院審議在案。

由於臺灣電影文化事業股份有限公司所編結束預算，其主要預算內容為資產負債之清理及有關之收支，其科目及內容與一般國營事業之附屬單位預算內容（主要為營業收支之估計、固定資產建設改良擴充、長期債務舉借及償還、資金轉投資及其盈虧、盈虧撥補等）並不相同，無法綜計表達，爰將上開原編送　貴院審議之中央政府總預算案附屬單位預算及綜計表（營業部分）內所含該公司相關預算數額予以悉數修正減列，並重編相關綜計表，再函送　貴院，敬請惠予連同本院前函送之該公司結束預算一併審議。

中華民國八十八年下半年及八十九年度

中央政府總預算案

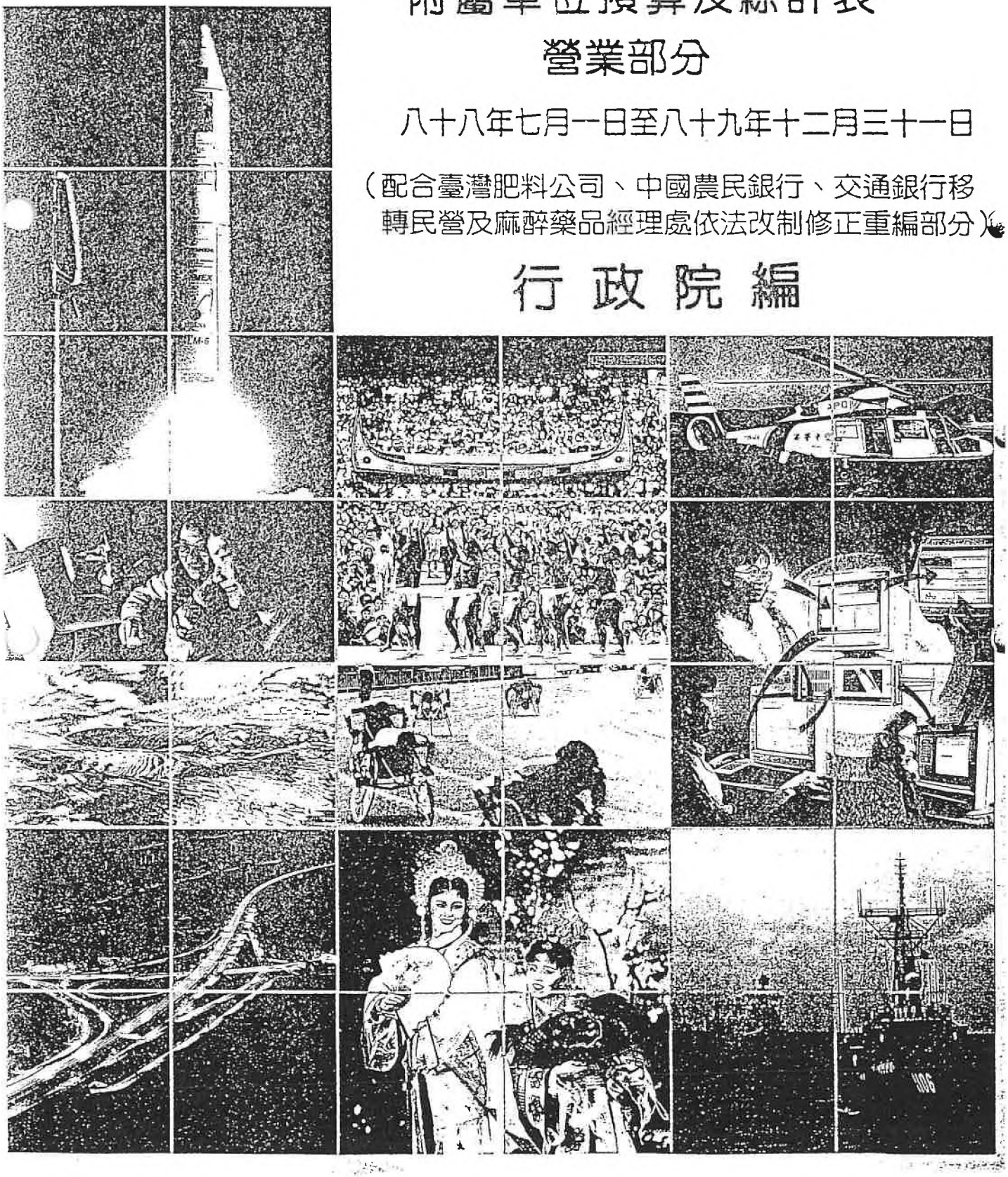
附屬單位預算及綜計表

營業部分

八十八年七月一日至八十九年十二月三十一日

（配合臺灣肥料公司、中國農民銀行、交通銀行移轉民營及麻醉藥品經理處依法改制修正重編部分）

行政院編



說　　明

中華民國八十八年下半年及八十九年度中央政府總預算案附屬單位預算及綜計表（營業部分），前經依預算法規定籌編完成，並隨同中央政府總預算案於本（八十八）年二月二十五日送請　貴院審議。嗣因經濟部所屬臺灣肥料公司，及財政部所屬中國農民銀行及交通銀行分別於本年九月一日、三日及十三日完成移轉民營，故依預算法規定請免編附屬單位預算；另衛生署所屬之麻醉藥品經理處，依管制藥品管理條例及行政院衛生署管制藥品管理局組織條例之規定改制為管制藥品管理局，並附設製藥工廠，其中管制藥品管理局部分屬公務機關，其八十八年下半年及八十九年度所需經費改由第二預備金支應，綜上原因，本院原編送　貴院審議之八十八年下半年及八十九年度中央政府總預算案附屬單位預算及綜計表（營業部分）之內容已有若干變動，爰經配合調整修正並重編相關綜計表，再函送貴院，敬請惠予併案審議。

查本年六月二日　總統公布之管制藥品管理條例規定，管制藥品由中央衛生主管機關專設管制藥品管理局管理之，其組織以法律定之。為辦理管制藥品之輸入、輸出、製造及販賣，管制藥品管理局應設立製藥工廠為之。又同日總統公布之行政院衛生署管制藥品管理局組織條例規定，管制藥品管理局設製藥工廠，以特種基金運作。故本院原送請　貴院審議之八十八年下半年及八十九年度中央政府總預算案附屬單位預算及綜計表（營業部分）內之麻醉藥品經理處預算，除管制藥品管理局部分已改制為公務

機關應予減列外，其餘屬製藥工廠部分（名稱訂為“管制藥品管理局製藥工廠”）之預算，則仍以營業預算型態編列。

上開修正內容，主要係將原編送　貴院審議之中央政府總預算案附屬單位預算及綜計表（營業部分）內所含之臺灣肥料公司、中國農民銀行及交通銀行暨麻醉藥品經理處中屬管制藥品管理局公務機關部分之相關預算數額，予以修正減列，至中央政府總預算，配合上開修正結果，應隨同調整部分，俟　貴院審議後，再依預算法第七十七條及相關規定，以適當科目處理。