



THE PERIODIC COUNSEL ADVISORY



"Knowledge is Good" - Emil Faber

TWO FISCAL YEARS AND LESSONS UNLEARNED

A tale of two resolutions, not the best of times, not the worst of times (yet).

"The collapse of budgeting hastens the erosion of congressional governing. The more Congress tolerates its fiscal ineptitude, the more inept it becomes at legislating in general."

House Committee on the Budget
H. Rept. 114-47
March 20, 2015

This ominous sentiment is from the House Budget Committee's report on its budget resolution for fiscal year 2016 (what became S. Con. Res. 11). Congress did adopt a budget resolution for that year, staving off "collapse" – if only for a short time since the next year saw an inability to even pass a resolution through the House. The fiscal year 2017 process certainly has been a greater failure than any of the previous four years, and arguably ever. It spawns a question – how did success one year turn to strewn rubble the next? This is the story of those two budget resolutions. Whether the Budget Committee's use of the terms "ineptitude" and "collapse" is a proper depiction of budget action in the 114th Congress (the terms are decidedly not appropriate for previous Congresses), only those in authority there can really say. Of far greater importance is what the story of the budget resolutions means for the future of the overall budget process and how it affects the general legislative process. These are serious matters.

BUMBLE QUERY: WITH NO BUDGET WHAT HAPPENS TO ADVANCE APPROPRIATIONS?

When a new budget resolution is adopted, the previous one is supplanted. If a new one fails to materialize, the existing one simply is not replaced. This produces myriad questions as to what the implications are. The House has already faced one in section 3304 of S. Con. Res. 11 (114th Congress). This section prohibits appropriating budget authority for fiscal year 2017, the year following the budget resolution year, which is fiscal year 2016. Right now, this makes no sense at all, but lacking a fiscal year 2017 budget resolution, even one just deemed in force, such inconveniences occur. With no expiration, it continues on. Therefore any appropriation "making general appropriations or continuing appropriations, for the fiscal year following fiscal year 2016" will cause a point of order. For this reason, it is waived. Rules on Appropriation bills will henceforth waive the point of order, like this from H. Rept. 114-591 for the Energy and Water appropriations bill: "Section 3 of the resolution provides that during consideration of H.R. 5055, section 3304 of Senate Concurrent Resolution 11 shall not apply."

At a glance, the budget resolutions for fiscal years 2016 and 2017 are quite different in how each (S. Con. Res. 11 and H. Con. Res. 125) culminated. The first concluded with the adoption by the House and Senate of a conference report for fiscal year 2016. The second concluded differently – so much so it does not, in fact, exist. The Senate took a short cut by having one put in for itself in an enacted law. The House does not have even that, only reporting H. Con. Res. 125 from committee.

In the House, the rule has been for many years that budget resolutions are never as good as Members want, but are never so bad they fail to pass. The nix is in now for “never” since too many Republican Members saw the fiscal year 2017 budget as being so on the “bad” side, they will not vote for it. H. Con. Res. 125 has never seen the floor and almost certainly never will.

BIPARTISAN BUDGET RESOLUTION? Few people left working on Capitol Hill have seen the adoption of a truly bipartisan budget resolution. The word “bipartisan” can be tricky since views differ as to how much party support qualifies. In 1990 and 1997, agreements were reached claiming it. For these two, and to a lesser degree the BBA 2013, the Congressional budget resolution served as the framework. The 1990 and 1997 budget resolutions were even enshrined in statute in section 250(b) of the *Balanced Budget and Emergency Deficit Control Act of 1985*: See: “(b) General Statement of Budget Enforcement Through Sequestration” (2 U.S.C. 900(b)). H. Con. Res. 310 (*Budget Enforcement Act of 1990*) was later replaced by H. Con. Res. 84 (*Budget Enforcement Act of 1997*). Some dispute they were bipartisan since many Republicans disliked the BEA 1990 and many Democrats similarly opposed BEA 1997. For “truly bipartisan”, the budget resolutions from 1981 through 1987 meet the test. At the time, the GOP controlled the Senate and the House had a Democratic majority. During those years, success still was achieved despite different parties controlling the House and Senate. Since the 107th Congress, this has not even been attempted (except the BBA 2013).

was a buzzy flurry of budget activity, this is true. A conference agreement had not been attained despite long hours, staff run ragged, endless drafting, negotiations minor and major, use of all the fun words like inter and intra, partisan and cameral, and agreements among Congress and Executive, House and Senate, majority and minority.

The begged question remains: How does apparent success turn into “collapse” in a year? The answer is that the initial success was chimerical and was actually repudiated only a few months later. When S. Con. Res. 11 was first adopted, it did not give Congress a context in which a bipartisan agreement could be reached, not even the possibility of one was baked into it. An agreement was reached anyway, of course, in the form of the *Bipartisan Budget Act of 2015* (BBA 2015), but it was hardly bipartisan, gaining only 79 House Republican votes (all Democrats voted “aye”). When the 2017 budget set spending at BBA 2015 levels, many of the 167 Republicans who voted “no” a few months before refused to reverse themselves.

Not many expected this disintegration at the beginning of the 114th Congress. For good or ill, it saw a new Chair of the House Budget Committee and its former Chair become head of the Ways and Means Committee. A positive portent for a successful budget year was the new Republican majority in the U.S. Senate. Certainly the springtime of each was very different. When the rains came in 2015, Congress had adopted a conference report for S. Con. Res. 11. This by any measure was something noteworthy since Congress had not fully adopted a budget since fiscal year 2010. The period



S. Con. Res. 11 was not a pretty thing. It was underwhelming in craftsmanship and lacking in form. Yet by the sole fact it was a conference report, it was a success. If the goal is to get to the church on time, a Ford Pinto coughing and sputtering into the parking lot has to be given credit for at least arriving.

Flipping the calendar forward a fiscal year to H. Con. Res. 125, the House budget resolution for fiscal year 2017, reported by the Budget Committee, is now all but dead. If not resuscitated, it will be the second time the House has been unable to pass its own budget, and the first time for a Republican majority. This second is particularly stinging since it was something of a point of pride that House Republicans had always managed to do what was within their purview, under their control, to move the budget process forward.

S. Con. Res. 11 and H. Con. Res. 125 are two chapters of the same book. Though dissimilar in result, the two budget resolutions are inextricably intertwined. S. Con. Res. 11, by not addressing major budget issues, set the stage for the failure of H. Con. Res. 125. It is the predictable, and predicted, result of avoiding decisions, or perhaps not understanding them well enough in the first place. Simply because something is foreseeable does not mean those in the fore are able to see.

A greater understanding of the two budget resolutions can be achieved by comparing the two Bipartisan Budget Acts. While they merit separate review, their development and relation to the budget resolutions preceding their enactment sheds light on budgeting in the 114th Congress. The *Bipartisan Budget Act of 2013* (BBA 2013) resulted in discretionary spending levels agreed to by Congress and the President for fiscal years 2014 and 2015. This agreement did not address fiscal years 2016 and 2017. For fiscal year 2016, the authors of S. Con. Res. 11 used the discretionary spending limit set in law by the *Budget Control Act of 2011*.

President Obama loudly declared that amount was too low. He wanted more money and it mattered not that it was at a level he negotiated and agreed to back in 2011. That was then, this is now. A more sophisticated argument was neither sought nor really expected.

Added to this, many Members of Congress wanted more money too. Generally speaking, Democrats were concerned over the domestic spending limits and some Republicans had concerns over the defense limits. Despite this, and though the defense number nearly derailed the budget resolution early in the fiscal year 2016 process, the statutory spending level was ac-



cepted, in form anyway. That the resolution would be undone was evident in May even before it passed, even before the conference report was signed. After the vote, the question hovered over the Capitol: When would the actual deal be cut between Congress and the President? It was most likely after the end of the fiscal year and before the first session of Congress ended. For S. Con. Res. 11, this was put aside. Ignored really.

This is not only surprising because it is so fundamental, but because the problem had been seen before and steps taken in the budget to account for it. The previous two years had seen procedures in budget resolutions, a government shutdown, a sequestration, and ultimately a deal. In 2012, the House went through a process to “replace” the looming fiscal year 2013 spending cuts. This meant raising the discretionary spending levels in exchange for direct spending reductions. This effort was led by then-Chairman Paul Ryan of the House Budget Committee (now Speaker).

The idea was to couple a budget process bill (the *Sequester Replacement Act of 2012*) with a direct spending reduction “reconciliation” bill (the *Sequester Replacement Reconciliation Act of 2012*). In very un-Congress like fashion, Congress foresaw unsustainable discretionary spending levels and moved legislation to address the problem. The two were combined, passed the House, but did not pass a Democratically-controlled Senate.

It was a dry run for what followed – a government shutdown, the imposition of across-the-board spending cuts lovingly known as “sequestration” and then the deal: the *Bipartisan Budget Act of 2013*. Similar to the sequester replacement bill, the budget resolution for fiscal year 2014 was used as the context for an agreement. This time it resulted in an agreement between Chairs Ryan and Patty Murray of the Senate Budget Committee. They negotiated a compromise through the structure of a budget conference and though it never reported a final budget resolution, it did bring about the enactment of the BBA 2013. The law revised the statutory spending limits, cut direct spending, and gained relatively broad bipartisan support.

Thus, the lesson book was written, but the lesson was not learned. When the BBA 2013 expired, the Budget Committees’ time was at hand to act again. The result was S. Con. Res. 11. HBC and SBC produced a budget, but when BBA 2015, which replaced BBA 2013, was negotiated, it was without any Budget Committee involvement. With nothing in the budget resolution allowing for it, when the BBA 2015 was enacted on November 2, 2015, it repudiated S. Con. Res. 11 – a mere six months after the resolution’s adoption on May 6 of that year.



The BBA 2015 was also for two years – fiscal years 2016 and 2017. Though the law bears a striking resemblance in its structure and budget drafting to the BBA 2013, the context in which it was adopted was starkly different. Its namesake predecessor was not really expected, while the deal manifested as the BBA 2015, and enacted on November 2, 2015, was considered likely even before the budget season began that February. Preparatory or anticipatory provisions could have been placed in the fiscal year 2016 budget resolution. They were not.

The reason to have a budget is to plan for upcoming fiscal years. Though exaggerated, among the most important components of a budget resolution is the maximum discretionary spending level for a fiscal year. S. Con. Res. 11 used the statutory level set by the *Budget Control Act of 2011* (BCA 2011) and nothing more was said. The main problem in doing so was that those familiar with the budget situation did not believe it.

Identifying this flaw in S. Con. Res. 11 is not simplistic after-the-fact criticism, fortified and eased by clear-eyed hindsight. It was augured before the time S. Con. Res. 11 was written. Two resolutions preceding it included processes to allow for the possibility of a revision of the discretionary levels.

The first, H. Con. Res. 112 (112th Congress), the budget resolution for fiscal year 2013, was the precursor for the sequester replacement bills. It included the reconciliation instructions and the replacement directive tasking the Budget Committee to report a bill “to replace the sequester” set by the BCA 2011 “consistent with this concurrent resolution.”

H. Con. Res. 25 (113th Congress), the budget resolution for fiscal year 2014, and additionally deemed in force for fiscal year 2015, also provided a mechanism for an agreement: “The chair of the Committee on the Budget may revise the allocations, aggregates, and other appropriate levels in this concurrent resolution to accommodate the enactment of a deficit and long-term debt reduction agreement if it includes permanent spending reductions and reforms to direct spending programs.”

Its report (H. Rept. 113-17) said “the resolution assumes discretionary spending at the post-sequester levels, section 409 provides the Chairman of the Budget Committee authority to make changes to the allocations, aggregates, and other appropriate levels in this budget resolution to accommodate the enactment of an agreement between the House, the Senate, and the President that accomplishes permanent reforms of mandatory spending programs and provides long-term deficit and debt reduction.”



When the 114th Congress began, the authors of S. Con. Res. 11, in setting a new path, either did not know about, or ignored, the history described here. They did not seem to understand the importance of the events leading to the BBA 2013, and did not for some reason accept the guidance incorporated into the two previous budget resolutions. Why they approached budgeting this way is difficult to know. Whether this was a major cause of House and Senate Committees on the Budget being entirely frozen out of the bipartisan agreement is unclear. The budgetary aspect of the agreement is unquestionably central to their formal jurisdiction and historic responsibilities. Their complete exclusion has never been explained.

Thus, the script was written, the props were distributed, the lighting fixed, the actors hired and rehearsed, in short – the stage was set for the fiscal year 2017 meltdown. Continuing the metaphor, that particular play still might have had a different ending. This was not to be, since again nothing was really done to address the fact that BBA 2015 was broadly unpopular among Republicans in the House. The possibility this might spill over into the following year seems hard to miss, but the winter months after its enactment saw no attempt to revisit what had been ignored. Perhaps nothing could have succeeded, but failure is certain when endeavor is absent.

In the ominous sentiment mentioned at the beginning – it asserted a collapsed budget process, and that fiscal ineptitude would lead to inept legislating in general. The latter, at least, has not happened. Congress is puttering along as it always has, not perfectly, but it never has been that. The enemy of the appropriations process now appears to be a lack of legislative days not a lack of a budget resolution. The recent events are more ominous for the budget process itself. The rising signs are more an indication of the deepest procedural problems faced yet for budgetary decisions rather than a harbinger of legislative doom. Unless reform comes, budget decisions will continue to be made outside the process rather than because of it.

Quote of the Day

“Ducking this issue calls for real leadership.”

Mayor “Diamond Joe” Quimby

