

the period covered by both fiscal years is reduced by at least \$100 million.

The Senate amendment specifies the conditions for determining (for purposes of this requirement) whether an action by the Federal Government constitutes a transfer and further specifies that its provisions shall be enforced on the basis of estimates made by the House and Senate Budget Committees.

#### *Conference Agreement*

The conference agreement prohibits the savings resulting from the transfer of outlays, receipts, or revenues from one year to another to be counted as changing the deficit, except for certain types of transfers identified in law. The conferees recognize that the determinations required under this provision for the 1974 Budget Act will be based on estimates made by the House and Senate Budget Committees.

### 8. Extension of State and Local Government Cost Estimates

#### *Current Law*

The State and Local Cost Estimate Act of 1981 (Public Law 97-108) amended the 1974 Budget Act to require that the Congressional Budget Office (CBO) estimate the cost to State and local governments of authorizing legislation reported by House or Senate committees. The Act expires on September 30, 1987.

#### *Senate Amendment*

The Senate amendment (Section 227) repeals the expiration date of the State and Local Cost Estimate Act, thus extending indefinitely the CBO reporting requirement on State and local costs.

#### *Conference Agreement*

The House recedes and concurs in the Senate amendment.

### 9. Codification of Law Regarding Deferral Authority

#### *Current Law*

The Supreme Court in *Immigration and Naturalization v. Chadha*, 462 U.S. 919 (1983), held legislative vetoes unconstitutional. Applying *Chadha*, the Court of Appeals in *City of New Haven v. United States*, 809 F. 2d 900 (D.C. Cir. 1987), struck down Section 1013 of the 1974 Impoundment Control Act, dealing with deferrals, thereby denying the President his sole statutory authority to make deferrals for policy reasons. The Court noted its view that the Executive's power to defer was now limited to so-call programmatic deferrals under the Antideficiency Act, which it characterized as dealing with "routine" and "trivial" matters "relating to the normal and orderly operation of the Government that Congress expected to present little controversy." The reporting requirements of Section 1013 have continued in force by virtue of other statutory reference to that section.

Section 1015 of the 1974 Impoundment Control Act directs the Comptroller General to report to Congress when he determines that the President has failed to transmit a special message with re-

spect to a deferral or rescission, or has incorrectly classified an action in such message. Section 1016 of the Act empowers the Comptroller General to bring a civil action to require that unlawfully impounded budget authority be made available for obligation. The Comptroller General has expressed the view that he lacks authority to take any action to compel the release of impounded funds since such authority was linked to the invalidated Section 1013.

#### *Senate Amendment*

The Senate amendment (Section 229) enacts a new Section 1013 that codifies the *New Haven* decision and General Accounting Office administrative interpretations by prohibiting policy deferrals and providing that deferrals will be permissible only: (1) for contingencies, (2) for efficiency, or (3) as specifically provided for by law. Programmatic deferrals must be reported to the Congress and be accompanied by a detailed description and justification of the proposal. Deferrals may not be proposed for any period extending beyond the end of the fiscal year in which the proposal is reported.

The Senate amendment also reaffirms the Comptroller General's authority under Sections 1015 and 1016 of the Act to initiate suits to compel the release of impounded funds and his duty to safeguard Congress' institutional interest in the spending process.

#### *Conference Agreement*

The House recedes and concurs in the Senate amendment.

### 10. Clarification of Congressional Intent Regarding Rescission Authority

#### *Current Law*

Section 1012(b) of the 1974 Impoundment Control Act empowers the President to withhold spending appropriated funds during a period of 45 days of continuous session while Congress considers a rescission proposal. Under General Accounting Office interpretations which allow preparation time for the submittal message, and because certain days are not counted as days of continuous session, rescission proposals sometimes result in appropriated funds being withheld for up to 75 or more calendar days. Serial proposals covering the same subject matter have the effect of extending indefinitely the period of unavailability.

#### *Senate Amendment*

The Senate amendment (Section 230) adds language to Section 1012(b) to prohibit the Executive practice of submitting serial rescission messages covering similar matter when Congress fails to act on such proposals within the statutory 45-day period. The Senate amendment limits the Executive to one rescission proposal in any year regarding substantially the same budget authority.

#### *Conference Agreement*

The conference agreement amends Section 1012(b) of the Impoundment Control Act of 1974 to prohibit proposals to rescind budget authority which were the object of a previous rescission pro-