

## Sec. 3—Legislative, Diplomatic, and Law Enforcement Duties of the President

budgetary responsibility provided for mandatory reporting of impoundments to Congress, for congressional disapproval of impoundments, and for court actions by the Comptroller General to compel spending or obligation of funds.<sup>706</sup>

Generally speaking, the law recognized two types of impoundments: “routine” or “programmatic” reservations of budget authority to provide for the inevitable contingencies that arise in administering congressionally-funded programs and “policy” decisions that are ordinarily intended to advance the broader fiscal or other policy objectives of the executive branch contrary to congressional wishes in appropriating funds in the first place.

Routine reservations were to come under the terms of a revised Anti-Deficiency Act.<sup>707</sup> Prior to its amendment, this law had permitted the President to “apportion” funds “to provide for contingencies, or to effect savings whenever savings are made possible by or through changes in requirements, greater efficiency of operations, or other developments subsequent to the date on which such appropriation was made available.” President Nixon had relied on this “other developments” language as authorization to impound, for what in essence were policy reasons.<sup>708</sup> Congress deleted the controverted clause and retained the other language to authorize reservations to maintain funds for contingencies and to effect savings made possible in carrying out the program; it added a clause permitting reserves “as specifically provided by law.”<sup>709</sup>

“Policy” impoundments were to be reported to Congress by the President as permanent rescissions and, perhaps, as temporary deferrals.<sup>710</sup> Rescissions are merely recommendations or proposals of the President and must be authorized by a bill or joint resolution, or, after 45 days from the presidential message, the funds must be made available for obligation.<sup>711</sup> Temporary deferrals of budget authority for less than a full fiscal year, as provided in the 1974 law, were to be effective unless either the House of Representatives or

<sup>706</sup> Congressional Budget and Impoundment Control Act, Pub. L. 93-344, title X, §§ 1001-1017, 88 Stat. 332 (1974), as amended, 2 U.S.C. §§ 681-88.

<sup>707</sup> Originally passed as the Act of Feb. 27, 1906, ch. 510, § 3, 34 Stat. 27, 48. The provisions as described in the text were added in the General Appropriations Act of 1951, ch. 896, § 1211(c)(2), 64 Stat. 595, 765. The amendments made by the Impoundment Control Act, were § 1002, 88 Stat. 332, 31 U.S.C. §§ 1341, 1512. On the Anti-Deficiency Act generally, see Stith, *Congress's Power of the Purse*, 97 YALE L. J. 1343, 1370-1377 (1988).

<sup>708</sup> L. Fisher, *supra* at 154-57.

<sup>709</sup> 31 U.S.C. § 1512(c)(1) (present version). Congressional intent was to prohibit the use of apportionment as an instrument of policymaking. 120 CONG. REC. 7658 (1974) (Senator Muskie); *id.* at 20472-20473 (Senators Ervin and McClellan).

<sup>710</sup> §§ 1011(1), 1012, 1013, 88 Stat. 333-34, 2 U.S.C. §§ 628(1), 683, 684.

<sup>711</sup> 2 U.S.C. § 683.