



AN APPROPRIATIONS TOOLKIT

FOR THE NATIONAL ASSEMBLY OF NIGERIA

**A PRACTICAL GUIDE TO
METHODS AND TECHNIQUES
USED TO
DRAFT AND AMEND APPROPRIATIONS BILLS**

Preliminary Draft Version

PREPARED BY
**THE NATIONAL DEMOCRATIC INSTITUTE
FOR INTERNATIONAL AFFAIRS (NDI)**
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1717 MASSACHUSETTS AVENUE, NW
FIFTH FLOOR
WASHINGTON, DC 20036
(202) 328-3136
FAX: (202) 939-3166
EMAIL: DEMOS@NDI.ORG
HTTP://WWW.NDI.ORG

THE NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS

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INTRODUCTION

The Constitutions of both the Federal Republic of Nigeria and the United States of America stipulate that no funds may be taken from the national treasury unless they have first been appropriated by the Legislative Branch.

Appropriations is the formal process by which a nation's resources are allocated for specific purposes. More specifically, the Appropriations process is the mechanism by which the Legislative Branch sets aside specific amounts of funding for Executive Branch departments, ministries, and agencies, and provides direction on how the funds may be spent.

The process of appropriating funds is complex and can consume much of a legislature's time and energy. It is critical that legislative bodies have the tools at their disposal to translate the decisions they make about how funds should be allocated into legislative language that accurately reflects their decisions and conveys them clearly to the Executive Branch. A body of legislative language and techniques has been developed to accurately and efficiently implement the will of legislative bodies through appropriations bills.

Where Legislative and Executive Branch priorities coincide, appropriating funds can be straightforward and easy. A simple allocation of funding is usually sufficient and the Executive is commonly given broad discretion in determining the specifics of how funds are spent. Where there are differences of opinion over what programs should be funded and at what level, however, the Legislative Branch may find it necessary to ensure that its will is

carried out by including directive language in appropriations bills.

This booklet is designed to provide elected Members of the Nigerian Senate and the House of Representatives, National Assembly staff, Nigerian citizens, and Nigerian organizations with a practical overview of some of the most common methods and techniques used to translate Legislative Branch priorities into clear and understandable legislative language.

Fifteen of the most commonly used techniques for asserting Legislative Branch priorities through the appropriations process are described in the following text. Each technique and its effect in law is described and the key legislative terminology that has evolved is listed. On the page opposite the description for each technique are actual examples from legislation introduced in the United States Congress illustrating how the technique is used in practice.*

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This handbook was prepared by NDI following a series of workshops on appropriations issues and legislative procedure conducted by NDI for the National Assembly of the Federal Republic of Nigeria. The handbook was produced under a grant from the United States Agency

for International development (USAID).

* Minor modifications may have been made to some examples for the purpose of clarity.

COMPARATIVE OVERVIEW OF TOOLS AND TECHNIQUES

The careful use of legislative language in appropriations bills can assist the National Assembly to exercise its constitutional prerogative over the power of the purse, ensure that funding is provided for priority programs, and conduct oversight over the Executive and its use of appropriated funds.

Generally, the appropriations tools available to the Legislative Branch fall into the four broad categories outlined below. Within each of these categories, there are gradations of language that provide the Executive Branch with more or less discretion to act, depending on the Legislative Branch's perception of its need to exercise oversight and direct spending to priority areas and away from other areas.

Legislators may choose from this menu of options the most appropriate language to achieve their goals. Each of the techniques highlighted below is described in greater detail later in this booklet.

■ **Restrictions on the Executive's Spending Discretion**

The Legislative Branch may choose to set limits on the flexibility of the Executive to spend appropriated monies. The following legislative techniques range from the least restrictive language to the most restrictive.

- The technique that places the fewest restrictions on the Executive is simply the **allocation of funding** for broad categories of programs. Allocation of funding is the basic function of appropriations bills.

- Somewhat more directive is the **sub-allocation of funding** within these broad categories.
- Much more directive is the **earmark**, which requires the Executive to spend a specific amount on a certain, designated project or program.
- Legislators may also permit partial Executive Branch spending flexibility to by imposing a **spending floor** or a **spending ceiling**.
- The most absolute limitation on the Executive's discretion over spending is a **prohibition on spending** on a particular program or activity.

■ **Placing Conditions on Availability of Funds**

The Legislative Branch may have concerns about certain programs or projects for which the Executive has requested funding. Rather than withholding funding, the Legislative Branch may practice enhanced oversight by placing certain conditions on the funding's availability to the Executive.

- When concern over funding a program is moderate, the Executive may be required to submit **a report or study** clarifying various aspects of the program before it is permitted to spend the funds.
- When oversight is a high priority the Legislative Branch may also **require the Executive to notify it, in writing, prior to**

spending funds on a specified program, enabling the legislature to monitor expenditures closely.

- When concern over a program is greater, a stronger response is to condition availability of funding for the program on **certification by the Executive Branch** that concerns about the program have been resolved.
- When there is a need to carefully monitor the outflow of funds for a certain program, the Legislative Branch may dictate **the rate at which funds can be spent** on a certain program throughout the fiscal year.
- **Ongoing Legislative Branch Control Oversight Over Appropriated Funds**

Ongoing oversight over how the Executive uses appropriated funds is a principal legislative responsibility. The following techniques enable the Legislative Branch to continue to exercise oversight over funds after they have been appropriated.

- If the Legislative Branch feels that the Executive is not using appropriated monies wisely, in violation of legislative intent, or will not need all of the funds previously appropriated, it can **rescind the funding**, returning it to the Treasury to be allocated by the legislature for use on other programs.
- The Executive Branch is not permitted to expend funds for any purpose for which they were not appropriated. Circumstances may change after funds have been appropriated, however, and the Legislative Branch may

choose to provide **transfer authority** to permit it to move funds from one account to another.

- The Legislative Branch may want to identify a specific **source of funding** for a particular program other than "general revenues". This tool may be used to encourage the Executive to collect certain taxes or fees, to limit expenditures on a certain program, or to keep revenues from being funneled to purposes opposed by the Legislative Branch.

■ **Other Appropriations Tools**

- The Legislative Branch may want to provide non-binding advice, direction, or observations to assist the Executive in spending appropriated monies. Most **appropriations bills are accompanied by a report**; a document which contains a description of the provisions of the bill and the Legislative Branch's views on how it should be implemented in plain, non-legislative language.
- The Legislative Branch may find it expedient to **make exceptions to current law** to allow appropriations to be used to meet special circumstances or needs.

APPROPRIATIONS TOOLS AND TECHNIQUES

I. ALLOCATION OF FUNDS

Effect in Law

The allocation of funds through the appropriations process makes funding available to the Executive Branch to implement broad categories of activities.

Operative Legislative Language

- For [purpose]; \$[amount].

Explanation

Allocating specific amounts of funding to the various functions of government is the principal purpose of the appropriations process. Funds may be allocated to broad and general purposes (e.g. agricultural research) or to more specific purposes (e.g. corn borer research). Determining how much detail to include about how funding should be spent by the Executive Branch accounts for much of the work of the Appropriation Committees.

Funds are generally allocated by "heading," with each heading in an appropriations bill consisting of funding for a single office, function of government, or program. Allocating funds by heading provides structure to appropriations bills and enables the Legislative Branch to establish priorities and keep track of how funds are spend by the Executive Branch. Funds provided under a certain heading must be used by the Executive Branch for that purpose only and may not be transferred to another purpose without the consent of the Legislative Branch.

ALLOCATION OF FUNDS -- EXAMPLES

TITLE I

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

IMMEDIATE OFFICE OF THE SECRETARY

For necessary expenses of the Immediate Office of the Secretary,
\$1,623,800.

NATIVE AMERICAN INSTITUTIONS ENDOWMENT FUND

For establishment of a Native American institutions endowment fund,
as authorized by Public Law 103-382, \$4,600,000.

WILDLAND FIRE MANAGEMENT

For necessary expenses for fire preparedness, suppression, and
operations by the Department of the Interior, \$292,282,000.

II. SUB-ALLOCATION OF FUNDS

Effect in Law

The sub-allocation of funding provides specific amounts for sub-categories of activities within headings in appropriations bills.

Operative Legislative Language

- [Broad allocation], Of which [x Naira] is for. . .

Explanation

Appropriators often want to provide additional direction (and less discretion) to the Executive Branch regarding how funding should be spent within broad categories. One way to achieve this end is to sub-allocate funds within headings to ensure that the Executive provides adequate funds to Legislative Branch priorities.

Appropriators may sub-allocate a portion of the funds within a heading, leaving the Executive Branch discretion over the use of the remaining funds, or Appropriators can sub-allocate all of the funding within a heading, effectively directing how all of the available funds must be spent and leaving the Executive no discretionary funds. The Executive Branch retains the latitude, however, to determining how sub-allocated funds may be spent within the parameters of the sub-allocation.

SUB-ALLOCATION OF FUNDS -- EXAMPLES

Sub-allocating a Portion of the Funds in a Heading

For necessary expenses of repair and rehabilitation of facilities owned by the Smithsonian Institution, \$47,900,000, of which \$6,000,000 is for repair and rehabilitation of facilities at the National Zoological Park.

For necessary expenses to carry out the Natural Resources Conservation Act of 1935, including preparation of conservation plans and establishment of measures to conserve soil and water, \$610,000,000, of which \$5,835,000 is for snow survey and water forecasting, and not less than \$8,825,000 is for operation and establishment of the plant materials centers.

Sub-allocating All of the Funds in a Heading

For necessary expenses to conduct the decennial census, \$900,000,000, of which \$300,000,000 is for Program Development and Management; of which \$300,000,000 is for Data Content and Products; and of which \$300,000,000 is for Field Data Collection and Support Systems.

III. EARMARKING FUNDS

Effect in Law

Earmarks require that the Executive expend a certain amount of funding for a very specific purpose.

Operative Legislative Language

- Of these funds, [x Naira] shall be used for...
- Of the funds made available under this heading [x Naira] is for. . .
- Of the funds made available in this Act, [x Naira] shall be used for . . .

Explanation

"Earmarking" funding is a further refinement of the concept of sub-allocation. An earmark is a provision in a appropriations bill that requires an agency or department of the Executive Branch to spend a specific amount of funding for a very specific purpose. The use of unambiguous wording like "shall" and "is for" make the language's intent clear. Once legislation containing earmarks is signed into law, the earmarks have the force of law and must be honored by the Executive.

Because they are very specific in nature, earmarks provide considerably less discretion to the Executive Branch than sub-allocations. They are often used to ensure that funds are targeted to priority areas that the Legislative Branch feels are being overlooked by the Executive Branch. Earmarks are also sometimes included at the request of individual legislators to fund road construction, research, or other federal projects in their home districts.

EARMARKING FUNDS -- EXAMPLES

Provided further, That of the funds made available under this heading, \$250,000 shall be available until expended for facilities renovations at the Gillis W. Long Hansen's Disease Center.

Sec. 335. Of the funds provided under Coast Guard "Operating Expenses", \$1,000,000 is only for the Secretary of Transportation, in consultation with the Commandant of the Coast Guard, to establish a blue-ribbon panel to study the future capital requirements, roles, and missions of the U.S. Coast Guard.

Provided, That of the funds appropriated under this heading, \$6,000,000 shall be made available to improve agricultural irrigation systems on Native American lands in North Dakota.

IV. MAXIMUM FUNDING LEVELS (FUNDING CEILINGS)

Effect in Law

Maximum funding levels, also known as "funding ceilings," set an upper limit on how much funding the Executive Branch may allocate to a particular purpose.

Operative Legislative Language

- Up to [x Naira] shall be used for...
- Not more than [x Naira] may be used for...
- Not to exceed [x Naira] shall be used for...

Explanation

Maximum funding levels are used most commonly to fund projects or programs that are a high priority for the Executive Branch, but a lower priority for the Legislative Branch. Ceilings give the Executive Branch latitude to provide as little funding as it wishes, but set an upper limit, ensuring that funds are available for other priorities, too, and that spending on Executive Branch priorities does not consume the entire budget.

Ceilings have the force of law and may not be breached unless permission is sought and received from the Legislative Branch.

Because funding ceilings contain definitive language prohibiting spending in excess of a certain amount (e.g. "not more than," "not to exceed"), when drafting ceilings the words "shall" and "may" can be used interchangeably with the same effect.

MAXIMUM FUNDING LEVELS -- EXAMPLES

SEC. 8033. Funds provided in Title II of this Act for Real Property Maintenance may be obligated and expended for the renovation of bachelor enlisted living quarters up to a level of \$1,000,000 per facility project.

SEC. 707. Not to exceed \$50,000 of the appropriations available to the Department of Agriculture in this Act shall be available to provide orientation and training pursuant to Public Law 94-449.

Provided further, Notwithstanding any other provision of law, not to exceed \$11,000,000 may be used to support victims of and programs related to the holocaust.

Provided further, That of the total amount appropriated, not to exceed \$36,570,000 shall be available for the renovation and construction of United States Marshals Service prisoner-holding facilities.

V. MINIMUM FUNDING LEVELS (FUNDING FLOORS)

Effect in Law

Minimum funding levels, also known as "funding floors," set a minimum on how much funding the Executive Branch must allocate to a particular purpose.

Operative Legislative Language

- Not less than [x Naira] shall be used for ...

Explanation

Funding floors are commonly used when the Legislative Branch wants to demonstrate its support for a particular program, there is a possibility that additional funds may become available within the heading, or if there is concern that the Executive may not otherwise provide adequate funding for programs that are a high priority for the Legislative Branch .

Funding floors are similar to earmarks because they require the Executive Branch to obligate a certain amount of funding for a particular project or activity. Funding floors differ from earmarks, however, because they contain no upper limit to the amount of funding that may be provided, thereby giving the Executive Branch the flexibility to dedicate additional spending to the program, within the overall allocation for the heading within which it falls.

MINIMUM FUNDING LEVELS -- EXAMPLES

Provided, That of the funds provided in this paragraph, not less than \$7,000,000 shall be made available for Tunisia.

Provided further, That of the funds provided in this Act, not less than \$64,000,000 shall be made available for Community Policing program with an emphasis on youth.

Provided further, That in addition to any funds previously made available to establish and operate the International Law Enforcement Academy, from the funds made available in this heading, not less than \$5,000,000 shall be made available for the Academy.

VI. PROHIBITION ON FUNDING

Definition

Prohibitions on funding designate specific programs and policies for which appropriated funds may not be spent by the Executive Branch.

Operative Legislative Language

- None of these funds may be used for...
- No part of this appropriation may be expended for...

Explanation

Just as the Legislative Branch may require that funds be spent for a certain purpose, it may impose blanket prohibitions or targeted restrictions on the use of funds for particular purposes.

Prohibitions on funding generally fall into three categories: programs, policy, and staffing. Prohibitions on funding for programs block the Executive Branch from obligating funds for programs or particular aspects of programs. Prohibitions on funding for policies block the Executive Branch from using any resources, including staff time, to implement or promote designated policies. Prohibitions on staffing may set limits on the total number of staff that may be hired, their activities, or their compensation and benefits.

Funding prohibitions are implemented for a wide variety of reasons including to ensure that adequate funds are available for higher priority items, disagreements between the Legislative and Executive Branches on priorities, and disagreements on policy issues that have not been resolved in other ways.

PROHIBITION OF FUNDING -- EXAMPLES

Program

None of the funds appropriated by this Act may be used for research, planning, or production of any tracked combat vehicles, unless specifically provided in this Act.

Policy

Sec. 505. None of the funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

Sec. 8052. None of the Funds in this or any other Act shall be available for preparation of studies on the feasibility of storing any nuclear waste or by-product in the State of Nevada.

Staff

No part of this appropriation may be expended to pay the salary of any employee of the District of Columbia government whose name, title, grade, salary, past work experience, and salary History are not available for inspection by the House and Senate Committees on Appropriations.

VII. REQUIRING A REPORT FROM THE EXECUTIVE BRANCH

Effect in Law

Reporting requirements are mandates that the Executive Branch submit a report (or periodic reports) to the Legislative Branch on designated issues affecting operations and/or use of appropriated monies.

Operative Legislative Language

- The [agency] shall submit a report on [topic] no later than [date].

Explanation

Appropriations bills occasionally contain provisions requiring the Executive Branch to submit periodic reports on topics directly relating to activities being funded in the bill. Such reports are frequently requested when the Legislative Branch feels it does not have enough information about the activities being undertaken by the Executive Branch, has concerns over the program for which the funds have been requested, is uncertain whether the level of funding that has been approved is appropriate, or simply feels that the implementation of the program being funded should be carefully monitored. Executive Branch officials may be requested to appear before the Appropriations Committees or other committees to present the report's contents and respond to questions.

The content of such reports does not in itself trigger any action, but may provide the basis for future legislative action by the Committee.

**REQUIRING A REPORT FROM THE EXECUTIVE BRANCH --
EXAMPLES**

FEDERAL PAYMENT FOR METROPOLITAN POLICE DEPARTMENT

For Payment to the Metropolitan Police Department, \$1,000,000, for a program to eliminate open air drug trafficking in the District of Columbia: *Provided*, That the Chief of Police shall provide quarterly reports on the status of the project financed under this heading to the Committees on Appropriations by the 15th calendar day after the end of each quarter beginning December 31, 1999.

**REPORTING REQUIREMENTS REGARDING NORTH KOREAN NARCOTICS
ACTIVITY**

Sec. 520. Not later than 3 months after the date of enactment of this Act, the President shall transmit to the appropriate committees a report on the cultivation, production and transshipment of opium by North Korea. The report shall be based on all available information.

AGENCY FOR INTERNATIONAL DEVELOPMENT BUDGET SUBMISSION

Sec. 581. Beginning with the Fiscal Year 2001 Budget, the Agency for International Development shall submit to the Committees on Appropriations a detailed budget for each fiscal year. The budget shall contain the estimated level of obligations for the current fiscal year and the actual levels for the two previous years, and the president's request for new budget authority. . .

VIII. REQUIRING ADVANCE NOTIFICATION OF SPENDING

Effect in Law

Notification requires the Executive Branch to alert the Legislature in writing prior to obligating funds for particular purposes or from a particular pool of funds.

Operative Legislative Language

- The President shall notify the Assembly twenty days prior to...
- The President shall submit a notification before obligating any funds for...

Explanation

It is often difficult for the Legislative Branch to keep abreast of when and how the Executive Branch is obligating appropriated funding. In order to know when money is being obligated for certain purposes, legislatures sometimes require the Executive Branch to notify them in advance of these actions.

Notification is commonly utilized by the Legislative Branch to closely monitor the use of appropriated funding by the Executive Branch when differences of opinion exist over how the funds should be expended.

Notification is usually required in writing and is sent to the Committees on Appropriations, and sometimes to other relevant committees. If the Legislative Branch disapproves of the expenditure of funds outlined in a notification, it may informally ask that the Executive Branch desist or may take formal legislative action to prohibit the action or rescind the funding in dispute.

REQUIRING ADVANCE NOTIFICATION OF SPENDING — EXAMPLES

At least fifteen days prior to obligating any such cash transfer, the President shall submit a notification through the regular notification procedures of the Committee on Appropriations, which shall include a detailed description of how the funds proposed to be made available will be used, with a discussion of the national interests that will be served by the assistance.

Provided, That the President shall not enter into any commitment of funds appropriated under this heading for the provision of major defense equipment, other than conventional ammunition, or other major defense items determined to be aircraft, ships, missiles, or combat vehicles, not previously justified to Congress unless the Committees on Appropriations are notified in advance of such commitment.

Provided, That the Secretary of State shall inform the Committees on Appropriations at least twenty days prior to the obligation of funds for the Nuclear Test Ban Treaty Preparation Commission.

IX. REQUIRING EXECUTIVE BRANCH CERTIFICATION

Effect in Law

Certification prohibits the expenditure of appropriated funds for a specific purpose until the President or other Executive Branch official certifies, in writing, that a specified event has taken place or finding made.

Operative Legislative Language

- None of these funds may be obligated until the President certifies in writing to the National Assembly that. . .

Explanation

Requiring the President to certify, in writing, prior to providing funding that an event has occurred or that he has made a determination on a certain issue may be done for several reasons. The Legislature's decision whether to provide funding for a project or policy may hinge on the outcome of a question that may not be known until part way through the fiscal year. It may therefore be desirable to set the funding aside in the event that it will be needed.

Additionally, by requiring a certification the Legislature knows that the Executive cannot make, shortcomings in existing Executive Branch policy or agency operation may be highlighted.

Making funding available, but contingent on a certain finding by the President, may also help to bring about action desired by the Legislative Branch. If the necessary certification is not made, the funding reverts back to the Treasury at the expiration of the fiscal year. Certification is more demanding than notification because it requires a finding by the Executive in order to trigger the availability of funds rather than a simple declaration of intent to spend.

REQUIRING EXECUTIVE BRANCH CERTIFICATION --EXAMPLES

SEC. 570. None of the funds appropriated by this Act may be provided for assistance for the central Government of the Democratic Republic of the Congo until such time as the President certifies in writing to the Congress that the central Government is --

- (1) investigating and prosecuting those responsible for human rights violations committed in the Democratic Republic of the Congo; and
- (2) implementing a credible democratic transition program.

The President may waive in whole or in part the provisions of this subsection if the president certifies to Congress that he has determined that the waiver is in the national security interest of the United States.

Sec. 539. No sanction with respect to Serbia may cease to be effective unless the President first submits in writing a certification to Congress that there is substantial improvement in the human rights situation in Kosovo and that international human rights observers are permitted to return to Kosovo.

X. PACE OF SPENDING

Effect in Law

The Legislative Branch may place requirements on the pace at which the Executive Branch may or must spend appropriated funding.

Operative Legislative Language

- Not more than xx% of the funds in this Act may be obligated [time period]. . .
- [Designated funding] to Remain available until expended. . .

Explanation

On occasion, the Legislative Branch may wish to mandate how rapidly or slowly funds appropriated for certain purposes may be spent. This technique may be used to enable the Legislative Branch to monitor a program throughout the year, to ensure that funds remain available until the end of the fiscal year for emergencies, or to ensure that unexpended balances are not spent unwisely as the year draws to a close. Exemptions are usually provided for emergency spending and programs that may have cyclical resource needs.

In addition to mandating the pace of spending within a fiscal year, the Legislative Branch may also limit the amount of time funds may be available to be obligated for the purpose they were appropriated. Funds are generally available for use only in the fiscal year for which they were appropriated, unless specifically exempted from this requirement. Funds that are available until expended are commonly called "no year" funds.

PACE OF OBLIGATION— EXAMPLES

Provided, That not more than 15% of the funds appropriated under this heading may be available for obligation in any given month,

SEC. 501. Except for the appropriations entitled "International Disaster Assistance", not more than 20 percent of any appropriation item made available by this Act shall be obligated during the last month of availability.

SEC. 511. No part of any appropriations contained in this Act shall remain available for obligation after the expiration of the current fiscal year unless expressly provided in this Act.

KAHO'OLAWA ISLAND CONVEYANCE, REMEDIATION, AND ENVIRONMENTAL RESTORATION TRUST FUND

For payment to the Kaho'olawe Island Conveyance, Remediation, and Environmental Restoration Trust Fund, as authorized by law, \$25,000,000, to remain available until expended.

XI. RESCISSION OF FUNDING

Effect in Law

A rescission takes from a ministry its authority to spend funds that had been previously made available to it through the appropriations process.

Operative Legislative Language

- Of the unobligated balances available under this heading, [x Naira] are rescinded.

Explanation

Occasionally, needs change and the Executive Branch does not expend all of the funds appropriated to it for a given activity. When this occurs, the Legislative Branch may choose to reclaim the funds -- rescind them -- that were appropriated in previous fiscal years and return them to the Treasury. Funds that have been rescinded are then available to be reallocated through the appropriations process to any function of government the Legislative Branch chooses. The Legislative Branch also sometimes rescinds unspent funds when it is unhappy with the way the Executive is implementing a program with them. The Legislature may also rescind funds from programs important to the Executive to send a message on unrelated matters.

Rescissions differ from transfers in that transfers are a reallocation of funds within accounts controlled by the same ministry. Monies that rescinded are returned to the treasury and are available to be reallocated by the Legislative Branch to any ministry or purpose.

RESCISSION OF FUNDING -- EXAMPLES

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION OPERATIONS, RESEARCH, AND FACILITIES

(Rescissions)

Of the unobligated balances available under this heading, \$10,000,000 are rescinded.

Sec. 8083. Of the funds provided in Department of Defense Appropriations Acts, the following funds are hereby rescinded from the following accounts in the following amounts:

"Aircraft procurement, Air Force, 1994/1996",
\$53,654,000;

"Missile procurement, Air Force, 1994/1996",
\$16,783,000;

"Weapons Procurement, Navy, 1995.1997",
\$14,600,000. . .

HAZARDOUS WASTE MANAGEMENT

Of the unobligated balances available under this heading from fiscal year 1996, \$10,000,000 are rescinded.

XII. SOURCE OF FUNDS

Effect in Law

Appropriations bills may designate a source of federal funding for particular programs other than general revenues.

Operative Legislative Language

- [Amount] shall be derived from [funding source].

Explanation

All appropriations bills passed by the United States Congress contain a standard clause stipulating that:

the following sums are appropriated, out of any money in the Treasury not otherwise appropriated.

Rather than relying on general revenues, however, legislatures sometimes find it desirable to identify a specific "designated funding source" for certain appropriations. These designated funding sources include:

- 1) trust funds, which are funded by taxes earmarked specifically for them (e.g. the U.S. Federal Highway Trust Fund is funded by revenue from the federal tax on gasoline); and
- 2) user fees collected directly by the agency being funded (e.g. entrance fees for National Parks may be channeled to the National Park Service for its operating expenses)

This tool may also be used to encourage the Executive to collect certain taxes or fees, to limit expenditures on a certain program, or to keep revenues from being funneled to purposes opposed by the Legislative Branch.

SOURCE OF FUNDS -- EXAMPLES

FISHERMAN'S CONTINGENCY FUND

For carrying out the provisions of Title IV of Public Law 95-372, not to exceed \$1,000,000, to be derived from receipts collected pursuant to that Act.

For necessary expenses of the Office of the Assistant Secretary for Aviation and International Affairs, \$7,002,200; *Provided*, That notwithstanding any other provision of law, there may be credited to this appropriation up to \$1,000,000 in funds received in user fees.

VIOLENT CRIME REDUCTION PROGRAMS, GENERAL LEGAL ACTIVITIES

For the expeditious exportation of denied asylum applicants, as authorized by the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322), as amended, \$7,750,000, to remain available until expended, which shall be derived from the Violent Crime Reduction Trust Fund.

XIII. TRANSFER AUTHORITY BETWEEN ACCOUNTS

Effect in Law

Transfer authority permits a ministry to shift a designated amount of funding between accounts under its jurisdiction.

Operative Legislative Language

[Amount] under this heading may be transferred to [heading].

Explanation

Most appropriations bills passed by the U.S. Congress contain the following clause:

None of the funds made available in this Act may be obligated under an appropriation account to which they were not appropriated, except for transfers specifically provided for in this Act.

The effect of this clause is to require the Executive Branch to expend funds only for the purposes for which they were provided by the Legislature.

The Legislative Branch recognizes, however, that it may be desirable to provide the Executive Branch with the flexibility to transfer funding between accounts under certain circumstances. As a result, many appropriations bills provide explicit "transfer authority" which allows the President or a Minister to transfer certain funds to other designated accounts at his discretion or provide a certain amount of transfer authority that may be used at the Ministry's discretion. The Executive usually must notify the Legislative Branch in advance of any anticipated transfer.

The Legislative Branch may also extend a blanket transfer authority to the Executive Branch with the requirement that the President "consult with and provide written policy justification to" the Legislature prior to making the transfer of funds to a new account.

TRANSFER AUTHORITY BETWEEN ACCOUNTS -- EXAMPLES

Provided, That of the amount made available under this heading, not to exceed \$86,000 may be transferred to and merged with the appropriation for "general operating expenses" at the discretion of the Secretary.

Of which \$3,000,000 shall be available for transfer to the Office of Professional Responsibility.

Sec. 501. The Secretary of Labor is authorized to transfer unexpended balances of prior appropriations to accounts corresponding to current appropriations provided in this Act; *Provided*, That such transferred balances are used for the same purpose, and for the same periods of time, for which they were originally appropriated.

Sec. 509. None of the funds made available by this Act shall be obligated under an appropriation account to which they were not appropriated, except for transfers specifically provided in this Act, unless the President, prior to the exercise of any transfer consults with and provide written policy justification to the Committees on Appropriations.

XIV. REPORT LANGUAGE

Effect in Law

Report language is not binding in law, but highlights the Appropriations Committee's priorities and concerns and may contain non-binding recommendations for ministries.

Operative Language

Report language can range from a review of the history of an issue to detailed proposals for ministry operations. Because of the vast variety of topics covered there is no set pattern to the language used in reports. However certain phrases such as "The Committee notes," "The Committee is concerned," "The Committee urges the President," and "The Committee supports" appear frequently in report language.

Explanation

The Appropriations Committees in the U.S. Congress prepare a "report" to accompany each appropriations bill. These reports are explanations in plain, non-legislative language of the contents of the bills. Reports usually contain commentary on priorities and issues of concern to the Committee and directives to the Ministries and Departments that are funded in the bill. As such, they serve as important tools in legislative oversight of the Executive Branch.

Reports and the "report language" they contain do not have the force of law, but are clear indications of Congress' intent. Ministries usually strive to be responsive to the issues raised in report language in order to avoid facing binding legislative language in the future. Reports also may serve as a forum to highlight minority party views.

REPORT LANGUAGE -- EXAMPLES

CHILD SURVIVAL AND DISEASE PROGRAMS FUND

The Committee strongly encourages USAID to reserve funds from the Child Survival and Disease Programs Fund for the establishment of a global infectious disease reserve.

FUND FOR THE IMPROVEMENT OF EDUCATION

The Committee is very concerned that major initiatives are being established within the fund for the improvement of education with no Congressional involvement.

COUNTER-DRUG INITIATIVE

The Committee believes that a much more aggressive effort is needed to fight the war on drugs and that the current response of the Administration is inadequate. . . Therefore, the bill provides an increase above the President's budget request of \$73,800,000 for Coast Guard counter drug activities.

FOOD SAFETY AND INSPECTION SERVICE

The Committee remains concerned that the Food Safety and Inspection Service has not promulgated regulations governing the storage and transportation of shell eggs. Legislation enacted in 1991 mandates the promulgation of regulations on this issue with which the agency has not complied. The Committee directs the agency to comply by December 31, 1997.

XV. EXEMPTING AN ACTIVITY FROM CURRENT LAW

Effect in Law

Exempting an activity from current law permits appropriated funds to be used regardless of any existing provisions in law that would prohibit the activity.

Operative Legislative Language

- Notwithstanding any other provision of law. . .

Explanation

During the appropriations process, the Legislative Branch may find it expedient to make exceptions to current law to meet special circumstances or needs.

"Notwithstanding any other provision of law" is a powerful term that enables the Legislative Branch to appropriate funds for activities that are desirable, but would otherwise be prohibited. This terminology provides a useful legislative shortcut by eliminating the need to draft specific legislative language permitting the desired activity.

EXEMPTING FROM CURRENT LAW-- EXAMPLES

Notwithstanding any other provision of law, the Secretary of State may procure motor vehicles for use in the Middle East without regard for existing "Buy American" provisions in law and regulation.

Provided, That notwithstanding any other provision of law, the Director of the Financial Crimes Enforcement Network may procure up to \$500,000 in specialized and/or unique automatic data processing equipment without regard to otherwise applicable procurement laws and regulations.

Notwithstanding any other provision of law, funds available to the Department of Defense shall be made available to provide transportation of medical supplies and equipment to American Samoa.

Notwithstanding section 109 of the Foreign Assistance Act of 1961, of the funds appropriated under this heading, \$2,500,000 may be transferred to "International Organizations and Programs" for a contribution to the International Fund for Agricultural Development (IFAD).

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