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THE WHITE HOUSE
WASHINGTON

August 25, 1975

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR:

RODERICK HILLS
PAUL O'NEILL

FROM:

JIM CONNOR 

SUBJECT:

Federal Pay Comparability Act
One-House Veto

The President has reviewed your memorandum of August 15th on the above subject and approved your recommendation to wait until he returns to Washington and meets with his principal advisors before making his decision.

Please follow-up plans for a meeting.

cc: Don Rumsfeld
Jerry Jones

THE PRESIDENT HAS SEEN.

THE WHITE HOUSE

WASHINGTON

August 15, 1975

Ok
wait for
mtg on
return

MEMORANDUM FOR THE PRESIDENT

FROM: Roderick Hills ^{RH} AND Paul O'Neill

SUBJECT: Federal Pay Comparability Act: One-House Veto

The Federal Pay Comparability Act, under which you are required to adjust the rates of pay for federal employees under the civil service general schedule in accordance with prescribed criteria, contains a one-house veto provision. Under the provisions of that Act, if the President wishes to effectuate a pay raise percentage different from the recommendation of his pay agents and Advisory Committee on Federal Pay, he must submit an alternative plan to Congress. This plan is subject to a thirty-day, one-House veto, the same type of legislative override provision that you have previously stated, on advice of Counsel, presents grave constitutional questions.

It is the opinion of the Attorney General that Committee vetoes, one-House vetoes, and two-House vetoes of executive action are unconstitutional encroachments on the powers and responsibilities of the President and contravene the fundamental principle of separation of powers.

If you submitted a 5 percent alternative plan under the Comparability Act and Congress failed to veto it under the one-House provision, the 5 percent pay rate would go into effect. It is certain that an affected Federal employee would bring a constitutional challenge, asserting in a suit that the basic comparability scheme in the statute is severable from the unconstitutional provision of an alternative plan subject to Congressional override. The Attorney General, in such a suit, would confess error.

The following considerations should be kept in mind as you consider this issue:

(1) During your year as President, you have expressed your concern in signing statements about the constitutionality of legislative overrides in the following acts: Amtrak Improvement Act of 1975, Child Support Amendments of 1975, and the Education Amendments of 1974. At the same time, however, you have proposed an extension of the Reorganization Act which contains a one-house veto; and you signed into law, without adverse comment, the Trade Act of 1974 which contains four one-house legislative overrides, one of which was proposed by former President Nixon in order to gain inclusion in the Act of Presidential authority to negotiate agreements with foreign countries on non-tariff barriers.

(2) You could no longer report to the Congress deferrals of spending on fiscal policy grounds under the Impoundment Control Act. You would have to send up proposed legislation authorizing such deferrals. Pending enactment of that legislation, the funds would continue to be spent.

(3) It would void, by analogy, the statute requiring the President to recommend to Congress every four years adjustments of executive, legislative and judicial salaries subject to one-House disapproval (2 U.S.C. 351 et seq.). To be consistent with the attached message to Congress, you would have to refuse to make a recommendation because of Congress's disapproval power. This quadrennial adjustment, which next occurs in February 1977, provides the most likely device for increasing legislative, judicial and executive salaries substantially and alleviating the pay compression problem in the upper General Schedule grades. In the absence of this mechanism the present problems will continue unless Congress enacts new pay legislation, at best a questionable prospect in the foreseeable future.

The effect of a judicial decision that legislative override provisions offend the Constitution is difficult to gauge. In each instance, the court would first determine whether the override language is mechanically severable from the language granting the related substantive authority. If so, the court would next seek to determine whether Congress would have been willing to grant the authority unfettered with the override provision. Unless the answer to both questions is affirmative, the grant of authority would be struck down along with the unconstitutional restriction on its exercise. There is

also a possibility that Congress may seek to repeal Executive authorities which survive the court tests.

In assessing your available options, the Counsel's office suggests that you consider the following action: submit an alternative 5 percent plan to Congress but state your serious reservations, as you have done with other bills, about its constitutionality. At the same time, also submit legislation restricting the pay rate increase to 5 percent and urge Congress to pass this bill in order to insure constitutionally valid action. It should be pointed out in this regard, however, that Jack Marsh and Max Friedersdorf are of the opinion that Congress may well fail to veto a 5 percent alternative plan, but that it is unlikely Congress would pass 5 percent legislation.

Recommendation:

In view of the complexities and far-reaching consequences inherent in this issue, the Counsel's office and OMB recommend that you postpone your decision until you return to Washington and have an opportunity to discuss it with your principal advisors.

Attachment (Tab A): A list of approximately 80 statutes which give both Houses, one House or a Committee of Congress power to either disapprove or approve executive action.

ONE HOUSE VETOS

June 23, 1975

Statute	Description	Appropriations Involved	Concerned Agency
2 U.S.C. 359(1)	President's recommendations of rates of pay for Members of Congress, Judges, Executive Schedule, etc. effective unless <u>disapproved</u> by either House prior to first pay period following recommendation.		OMB
5 U.S.C. 906(a)	Either House can <u>disapprove</u> Reorganization plans submitted by President.		OMB
5 U.S.C. 5305(c)	Annual pay reports and adjustments; President's proposals on pay rates become effective unless either House <u>disapproves</u> of the plan within 30 days after its submission.		OMB
8 U.S.C. 1254, 1255B	Either House by resolution may <u>disapprove</u> Attorney General's suspension of deportation or adjustment of status of alien.		A.G./Justice
10 U.S.C. 2307 (P.L. 93-155, Sec. 807(c))	Advance payments on procurement may exceed \$25M subject to <u>disapproval</u> of either House.	X	
15 U.S.C. 753(g) (P.L. 93-511)	Emergency Petroleum Allocation Act. Before the termination of authority (currently August 31, 1975) for President's fixing of prices he may <u>rescind</u> those controls if neither House <u>disapproves</u> within five day time limit.		F.E.A.
16 U.S.C. 1606(a)	Either House can <u>disapprove</u> within 60 days a long-range program submitted by Agriculture to utilize renewable resources.		Agriculture
19 U.S.C. 1503(e) (P.L. 93-618, Sec. 331(a))	Authority of Secretary of Treasury to suspend certain duties is subject to <u>disapproval</u> by either House.		Treasury/STR
19 U.S.C. 2437(c) (2) (P.L. 93-618, Sec. 407)	President's extension of non-discriminatory treatment to products of any foreign country may be <u>disapproved</u> by either House within 90 days of submission.		Treasury/STR
19 U.S.C. 2437(c) (3) (P.L. 93-618, Sec. 407)	President's extension of non-discriminatory treatment to "non-market economy countries" may be <u>disapproved</u> by either House within 90 days of submission.		Treasury/STR

Statute	Description	Appropriations Involved	Concerned Agency
20 U.S.C. 1070A (a) (3)A(ii)	Educational Opportunity Grants: Either House may <u>disapprove</u> of schedule of family contribu- tions.		HEW
22 U.S.C. 2587	Presidential transfer of activi- ties and facilities to Arms Con- trol and Disarmament Agency subject to <u>disapproval</u> by either House within 60 days.		Arms Control & Disarmament Agency
25 U.S.C. 1405 (P.L. 93-134, Sec. 5)	Either House can <u>disapprove</u> a plan involving distribution of funds resulting from satisfaction of judg- ments of the Indian Claims Commission within 60 days of submission by the Secretary of the Interior.		Interior
29 U.S.C. 1232 (d) (P.L. 93-406, Sec. 3032)	Regulations developed by the Secretary of Labor to protect pension rights take effect 120 days after their sub- mission to Congress unless either House <u>disapproves</u> .		Labor
31 U.S.C. 1403 (P.L. 93-344, Sec. 1013)	1974 Impoundment Control Act: Either House can <u>disapprove</u> President's pro- posal to defer funds.	X	OMB
40 U.S.C. 874 (d)	Pennsylvania Avenue Development Corporation may proceed with development 60 days after sub- mission of plan to Congress unless either House <u>disapproves</u> .		Pennsylvania Avenue Develop- ment Corp.
44 U.S.C. 2107 Note (P.L. 93-526, Sec. 104)	Administrator of GSA shall submit plan to Congress providing for public access to Presidential tape recordings. Plan shall take effect unless within 90 days of submission either House <u>dis- approves</u> .		GSA
45 U.S.C. 564 (P.L. 94-25, Sec. 8)	National Railroad Passenger Service Corp. may make plans to discontinue routes, alter service, etc.; except that either House may <u>disapprove</u> the plans within 60 days. (AMTRAK Improve- ment Act)		DOT
45 U.S.C. 713 (P.L. 93-236, Sec. 208)	Within 60 days of submission, either House can <u>disapprove</u> a plan for regional rail development submitted by U.S. Rail- way Association.		DOT
50 U.S.C. 1431	National Defense Contracts. If Presi- dent determines that contracts will involve national defense matters, then agency may circumvent other laws on		Defense

Statute	Description	Appropriations Involved	Concerned Agency
	contracting, but for amounts greater than \$25M, either House has 60 days to <u>disapprove</u> .		
50 U.S.C. App. 468 (P.L. 93-155, Sec. 807(d))	To expedite contracts related to national security President may authorize placing of orders of procurement in value up to \$25M; beyond that amount either House can <u>disapprove</u> .	X	Defense
50 U.S.C. App. 1941G, U, V, W, X, Y	Contracts providing for the disposal of Government-owned rubber producing facilities may be <u>disapproved</u> (in whole or part) by either House within 60 day time period: (These contracts have probably been executed by now.)		GSA
50 U.S.C. App. 2092 (P.L. 93-155, Sec. 807(b))	Either House can within 60 days <u>disapprove</u> loans of over \$25M made to expedite performance of Government contracts.		
P.L. 93-552 (88 Stat. 1766)	Authorized funds may be obligated for construction of project at Diego Garcia unless within 60 days either House <u>disapproves</u> .	X	Defense
P.L. 93-577, Sec. 12	Within 30 days either House can <u>disapprove</u> Presidential order requiring allocation of scarce material for energy research and development.		ERDA
Pending Amendments to Emergency Petroleum Allocation Act of 1973. Now pending in conference cttee.	Would allow either House to <u>disapprove</u> President's increase in oil tariffs or prices.		FEA
H.R. 7977	Either House can within 60 days (30 days in some cases) <u>disapprove any</u> proposed rule the violation of which subjects a person to a criminal penalty.		
H.R. 7689	Either House can within 60 days <u>disapprove any</u> proposed rule which "goes beyond the mandate of legislation".		

CONCURRENT RESOLUTION VETO

June 23, 1975

Statute	Description	Appropriations Involved	Concerned Agency
8 U.S.C. 1254(c) (3)	Congress may <u>disapprove</u> suspension of deportation by Attorney General for aliens specified in Section 1254(a) (2).		Justice
8 U.S.C. 1256(a)	Within Period of 5 years following adjustment of alien's status under Section 1254, Attorney General may find that adjustment was not justified and then Congress may <u>disapprove</u> suspension of deportation.		Justice
10 U.S.C. 7308	Secretary of Navy may transfer obsolete, condemned or captured vessels unless within 60 days after notice of proposed transfer, Congress <u>disapproves</u> the transfer.		Navy
10 U.S.C. 7545	Secretary of Navy may lend or give certain materials (books, models, ordnance) unless within 30 days after notice of proposed transfer, Congress <u>disapproves</u> the loan or gift.		Navy
15 U.S.C. 1410b(d) P.L. 93-492 Sec. 109	Motor Vehicle and School Bus Safety Amendment of 1974. No occupant restraint system other than seat-belts can be mandatory on manufacturers until Congress is given 60 days to <u>disapprove</u> the standards promulgated by the Secretary of Transportation for such a system.		DOT
16 U.S.C. 831c	TVA shall have the power to convey real property to any person for shipping purposes, if Congress <u>approves</u> .		TVA
19 U.S.C. 1356A	Congress may determine that an unwarranted increase in price of coffee has occurred and then <u>terminate</u> certain tariff and quota <u>powers of President</u> under International Coffee Agreement of 1962.		Tariff Comm Treasury
19 U.S.C. 1981(a)	Congress may implement decision of Tariff Commission even though President disagrees.		Tariff Comm

Statute	Description	Appropriations Involved	Concerned Agency
19 U.S.C. 2253(c) P.L. 93-618 Sec. 203	If the Tariff Commission recommends import relief for certain industries and the President refuses to provide such relief, the Congress may require him to do so.		Treasury
19 U.S.C. 2412 P.L. 93-618 Sec. 302	Congress may <u>disapprove</u> of President's imposition of trade sanctions within 90 days of his submission of a report of his action.		Treasury
19 U.S.C. 2432 P.L. 93-618 Sec. 402	President may waive certain trade restrictions on countries if emigration practices of that country meet certain requirements. Extension of President's authority beyond 18 months requires congressional <u>approval</u> .		State
20 U.S.C. 246 P.L. 93-380 Sec. 842	U.S. Commissioner of Education shall promulgate guidelines to direct development of state plans for financial assistance to local educational agencies. (Plans are to equalize educational opportunities.) Both one-House and Con. Res. <u>disapproval</u> of these guidelines is provided.		HEW
20 U.S.C. 1232(d) P.L. 93-380 Sec. 509(a)	Within 45 days of submission Congress may <u>disapprove</u> education regulations.		HEW
22 U.S.C. 267	Representative of U.S. on permanent commission of the International Geodetic Association is entitled to vote with the other members on matters including the extension of the commission, subject to the <u>approval</u> of Congress.		NOAA
22 U.S.C. 276cc	Only with the <u>approval</u> of Congress may the Kermit Roosevelt Fund accept funds, gifts, etc. which entail any expenditure not to be made out of the gift's resources.		Kermit Roosevelt Fund
22 U.S.C. 287d	President can negotiate armed forces agreement with the Security Council, subject to congressional <u>approval</u> .		Defense/NSC
22 U.S.C. 289	Statute authorizes U.S. membership in international refugee organization, but no resettlement of refugees allowed without congressional <u>approval</u> . Similarly, plans for refugees which would effect change in the immigration laws, may not become effective without congressional <u>approval</u> .		State
22 U.S.C. 1354	Both the President and the Congress, by majority vote of one-House or by concurrent resolution, may initiate an investigation by the Tariff Commission.		Tariff Comm.

Statute	Description	Appropriations Involved	Concerned Agency
25 U.S.C. 12	Commissioner of Indian Affairs may, by his representative, negotiate the commutation of perpetual annuities payable to Indian Tribes, but the agreement must be <u>approved</u> by Congress.		Interior
25 U.S.C. 348	Contracts between U.S. Government and Indian tribes must be <u>approved</u> by Congress.		Interior
25 U.S.C. 383	No project costing more than \$35,000 may be undertaken on an Indian reservation without <u>specific authority of Congress</u> .	X	Interior
25 U.S.C. 386a	Secretary of Interior can adjust or eliminate debts of Indians, subject to Congressional <u>disapproval</u> within 60 days of submission.		Interior
29 U.S.C. 1306 (a) (2) P.L. 93-406 Sec. 4006	Congress must <u>approve</u> a revision of coverage schedules for Pension Benefit Guaranty Corp.		IRS
30 U.S.C. 185 (u) P.L. 93-153 Sec. 101	Alaska Pipeline Act; limitation on exports: export of oil allowed only if President makes certain determinations of national interest, but Congress may <u>disapprove</u> the exports.		Treasury
22 U.S.C. 2355 (a)	By concurrent resolution Congress may provide that commodities and defense articles procured for foreign aid purposes may be utilized by the U.S. government.		State
22 U.S.C. 2370 (k)	Foreign assistance, including military assistance, to an individual country must have express congressional <u>approval</u> if it amounts to more than \$100,000,000.	X	State
22 U.S.C. 2443 P.L. 93-559 Sec. 47	President can obligate authorized funds for certain foreign aid programs unless within 30 days Congress <u>disapproves</u> .	X	State
22 U.S.C. 2672	U.S. may not belong to any international organization for more than one year without the <u>approval</u> of Congress.		State
22 U.S.C. 2776 P.L. 93-559 Sec. 45 (a) (5)	Congress has 20 days to <u>disapprove</u> a "letter of offer" (to sell defense articles in excess of \$25M) issued by the President <u>unless</u> the President certifies that an emergency exists.		Defense/Stat
23 U.S.C. 104 (b) (5)	Through 1979 the Secretary of Transportation is to make periodic estimates of the cost of completing the interstate highway system. The Congress must <u>approve</u> each of these plans.		DOT

Statute	Description	Appropriations Involved	Concerned Agency
50 U.S.C. 1544 P.L. 93-148 Sec. 5	1973 War Powers Act: During 60 day period in which President can use troops abroad without a declaration of war or its equivalent, Congress can still recall troops by a concurrent resolution.		Defense
50 U.S.C. App. 454(k) (2)	Congress by concurrent resolution can decrease the period of active service in armed forces.		Defense
50 U.S.C. App. 1917	Commodity Credit Corp. can carry out projects (loans, furnishing supplies, etc.) to increase food production in non-European countries if Congress does not <u>disapprove</u> within 60 days.		Commodity Credit Corp.
50 U.S.C. App. 2091	Except with the <u>approval</u> of the Congress obligations of any guaranteeing agency under any loan etc., entered into under this section shall not exceed \$20M.		
50 U.S.C. App. 2168	Cost accounting standards promulgated by the Cost Accounting Standards Board, an independent commission, may be <u>disapproved</u> by Congress.		CASB
42 U.S.C. 2074 P.L. 93-377 Sec. 2	Congress may <u>disapprove</u> proposed distribution of certain nuclear material to the International Atomic Energy Agency.		NRC/State
42 U.S.C. 2153(d) P.L. 93-485 Sec. 1	Congress can <u>disapprove</u> any proposed agreement for international cooperation with respect to nuclear technology.		NRC/State
42 U.S.C. 2453(c)	A transfer of function to the Administration of NASA shall not be made until Congress has had 60 days to <u>disapprove</u> .		NASA
43 U.S.C. 615ss	Water contracts with Indians must be <u>approved</u> by Congress.		Interior
43 U.S.C. 1598(a) P.L. 93-320 Sec. 208	60 day waiting period for committee <u>approval</u> of expenditures for salinity control projects may be waived by concurrent resolution.	X	
50 U.S.C. 98B	Stockpiled materials may not be disposed of without the <u>approval</u> of the Congress, except where material is obsolete.		Defense

Statute	Description	Appropriations Involved	Concerned Agency
50 U.S.C. App. 2281(g)	Interstate compacts for civil defense purposes shall be valid, unless Congress <u>disapproves</u> the plan within 60 days of its submission.		Defense
50 U.S.C. App. 2403-1	Secretary of Defense's recommendation not to export high technology materials to communist block countries, if overruled by the President, may be reinstated by the Congress within 60 days of the President's decision.		Defense
P.L. 93-198 (87 Stat. 784)	Amendment to D.C. charter shall take effect only if Congress <u>approves</u> within 35 days.		
P.L. 93-485	Agreement for atomic reactor cooperation effective unless within 60 days Congress <u>disapproves</u> .		NRC
P.L. 93-646 (88 Stat. 2336)	The President may recommend to the Export-Import Bank that loan authority, relating to fossil fuel projects for the Soviet Union, be increased, but Congress must <u>approve</u> the proposal.		Export-Import Bank
H.R. 6674 (Senate amendment to weapons procurement bill)	Flight testing of MaRV will be permitted only if the President certifies to the Congress that the USSR is conducting such tests and Congress <u>approves</u> of U.S. tests within 60 days.		Defense

June 23, 1975

COMMITTEE VETOES

Statute	Description	Appropriations Involved	Concerned Agency
20 U.S.C. 1853 (93-380, Sec. 402(a) (1))	No appropriated funds shall be spent in accordance with an education plan, if within sixty days of submission of the plan either substantive ctte <u>disapproves</u> .	X	HEW
33 U.S.C. 1252a	Substantial modification of previously authorized reservoir projects must be <u>approved</u> by appropriate cttes.		Interior/Corps Engineers
40 U.S.C. 616	District of Columbia cannot enter into a purchase contract for the construction of an Eisenhower Bicentennial Civic Center unless within 30 days of submittal of plans for Center the District and the Appropriations Cttes <u>approve</u> .	X	District of Columbia
42 U.S.C. 2476a	Ctce <u>approval</u> required for disposal of excess land by NASA, if value of land is greater than \$50,000.		NASA
43 U.S.C. 1598(a) (93-320, Sec. 208)	No funds to be expended for any salinity control projects unless substantive committee given 60 days to <u>disapprove</u> .	X	Corps of Engineers
50 U.S.C. 502	Secretary of the Air Force must obtain <u>approval</u> of Armed Services Committees before acquiring any lands or rights for the establishment of a guided missile proving ground.	X	Air Force
P.L. 93-391, Section 313 (88 Stat. 781)	Transportation Appropriation Act, 1975. No funds may be spent to implement any program in DOT to impose or increase certain fees without <u>approval</u> by the appropriate committees.	X	DOT
P.L. 93-404 (88 Stat. 817)	Interior Appropriation Act, 1975. No funds can be spent to change the boundaries of, or abolish, any forest region, to move or close any regional office, etc., without the <u>approval</u> of both the Appropriations and Agriculture and Forestry Committees of both Houses.	X	Interior

MISCELLANEOUS

June 23, 1975

Statute	Description	Appropriations Involved	Concerned Agency
16 U.S.C. 831c (f)	Any member of the corporate board of TVA may be removed at any time by Congress.		TVA
16 U.S.C. 513	President of Senate and Speaker of the House each appoint two members to the National Forest Reservation Commission. The purpose of the Commission concerns land sales or purchases for national forests.		
P.L. 93-443	Federal Election Campaign Act. Congress appoints four members to the Commission which enforces the Act.		
18 U.S.C. 798, 18 U.S.C. 2157, 18 U.S.C. 2391, 18 U.S.C. 3287, 22 U.S.C. 441, 22 U.S.C. 1354, 22 U.S.C. 1965, 10 U.S.C. 2733(b), 31 U.S.C. 241(d), 32 U.S.C. 715(b), 38 U.S.C. 101, 42 U.S.C. 1477, 43 U.S.C. 279, 46 U.S.C. 1241, 47 U.S.C. 606, 50 U.S.C. App. 38,	All of these statutes provide for or refer to the initiation or cessation of a state of emergency, period of armed conflict, or similar condition by Concurrent Resolution of the Congress.		
50 U.S.C. App. 645(z) 50 U.S.C. App. 1435 50 U.S.C. App. 1736(f) 50 U.S.C. App. 2004(i) (1) 50 U.S.C. App. 2005(f) 50 U.S.C. App. 2166 50 U.S.C. App. 2291 50 U.S.C. App. 2413 H.R. 3884	All of these statutes provide for or refer to the initiation or cessation of a state of emergency, period of armed conflict, or similar condition by Concurrent Resolution of the Congress.		
28 U.S.C. 2076	Either House can, within 180 days of submission of amendments to Federal Rules of Evidence by the Supreme Court, <u>disapprove</u> any amendment so reported.		
7 U.S.C. 1011 15 U.S.C. 1431 15 U.S.C. 2081 16 U.S.C. 590p(e) (6) 16 U.S.C. 1002 40 U.S.C. 356(e) 40 U.S.C. 606 43 U.S.C. 422D(d)	All of these statutes provide that no appropriations for certain purposes shall be made until substantive committees have approved. Because this procedure restricts the appropriations process, a proper legislative function, the Executive Branch has not considered these statutes objectionable legislative vetoes.		